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

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206–AN14

Federal Employees Health Benefits Program; Subrogation and Reimbursement Recovery

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The United States Office of Personnel Management (OPM) is issuing a final rule to amend the Federal Employees Health Benefits (FEHB) Program regulations to reaffirm the conditional nature of FEHB Program benefits and benefit payments under the plan's coverage as subject to a carrier's entitlement to subrogation and reimbursement recovery, and therefore, that such entitlement falls within the preemptive scope of the FEHA Act. FEHB contracts and brochures must include, and in practice already include, a provision incorporating the carrier's subrogation and reimbursement rights, and FEHB plan brochures must contain an explanation of the carrier's subrogation and reimbursement policy.

DATES: This final rule is effective June 22, 2015.

FOR FURTHER INFORMATION CONTACT: Marguerite Martel, Senior Policy Analyst at (202) 606–0004.

SUPPLEMENTARY INFORMATION: The FEHB Act, as codified at 5 U.S.C. 8902(m)(1), provides: ''The terms of any contract under this chapter which relate to the nature, provision, or extent of coverage or benefits (including payments with respect to benefits) shall supersede and preempt any State or local law, or any regulation issued thereunder, which relates to health insurance or plans.'' This final regulation reaffirms that a covered individual's entitlement to FEHB benefits and benefit payments is conditioned upon, and limited by, a carrier's entitlement to subrogation and reimbursement recoveries pursuant to a subrogation or reimbursement clause in the FEHB contract. This final regulation also reaffirms that a FEHB carrier's rights and responsibilities pertaining to subrogation and reimbursement relate to the nature, provision and extent of coverage or benefits and benefit payments provided under title 5, United States Code Chapter 89, and therefore are effective notwithstanding any state or local law or regulation relating to health insurance or plans. Some state courts have interpreted ambiguity in Section 8902(m)(1) to reach a contrary result and thereby to allow state laws to prevent or limit subrogation or reimbursement rights under FEHB contracts. In this final rule, OPM is exercising its rulemaking authority under 5 U.S.C. 8913 to ensure that carriers enjoy the full subrogation and reimbursement rights provided for under their contracts.

The interpretation of Section 8902(m)(1) promulgated herein comports with longstanding Federal policy and furthers Congress's goals of reducing health care costs and enabling uniform, nationwide application of FEHB contracts. The FEHB program insures approximately 8.2 million federal employees, annuitants, and their families, a significant proportion of whom are covered through nationwide fee-for-service plans with uniform rates. The government pays on average approximately 70% of Federal employees' plan premiums. 5 U.S.C. 8906(b), (f). The government's share of FEHB premiums in 2014 was approximately $33 billion, a figure that tends to increase each year. OPM estimates that FEHB carriers were reimbursed by approximately $126 million in subrogation recoveries in that year. Subrogation recoveries translate to premium cost savings for the federal government and FEHB enrollees.

OPM proposed this amendment in a notice of proposed rulemaking on January 7, 2015 (80 FR 931). The proposed rule had a 30 day comment period during which OPM received 3 comments.

Responses to comments on the proposed rule:

OPM received comments from an association of FEHB carriers, a trade association serving subrogation and recovery professionals, and a provider of subrogation and recovery services. The comments all expressed support for the regulation and suggested some changes to clarify the language in the proposed rule.

All commenters suggested edits to the proposed definitions of ''subrogation'' and ''reimbursement'' at 5 CFR 890.101 to more completely reflect the universe of FEHB Program plan recoveries. All three commenters expressed concern with the reference to ''a responsible third party'' in the definitions, indicating that the use of this phrase has been interpreted to foreclose ''first party'' claims for subrogation and recoveries, such as uninsured and underinsured motorist coverage, and recommended adding other insurance including workers' compensation insurance, to the definition to be consistent with entitlements listed in the proposed § 890.106(c)(2) and (f). OPM agrees that the definitions of subrogation and reimbursement should include first party claims. In addition, commenters noted that § 890.106(b) and (f) should be updated to reflect this change. The definitions at § 890.101 and other corresponding sections have been updated accordingly as necessary.

The commenters also suggested additional specific changes to the proposed definition of ''reimbursement.'' Two of the commenters noted that the definition of reimbursement should address the situation of both illness and injury. OPM has revised the definition of reimbursement to accept this change. One commenter suggested that the final rule clarify that the right of reimbursement is cumulative with and not exclusive of the right of subrogation. OPM has incorporated this clarification. Two commenters suggested that the definition should reflect that a covered individual need not have actually received a recovery payment so long as the covered individual is entitled to receive a payment. OPM does not agree that the right of reimbursement is sufficiently broad to require an individual to reimburse the carrier in a circumstance where the individual has not actually received a recovery, and rejects this change. One commenter indicated that the right of reimbursement is specific to a recovery from an individual who has received a

third party payment while the right of subrogation permits a carrier to recover directly from other sources. OPM agrees with this comment and has clarified the definition of ''subrogation'' accordingly.

One commenter suggested that § 890.106(b) be amended to align the regulation and FEHB carrier contract requirements. OPM has revised this section to refer to contractual requirements.

One commenter noted that § 890.106(f) should be clarified to ensure that the carrier has a subrogation right to recover directly from a responsible insurer all amounts available to or on behalf of the covered individual. We have clarified the provision accordingly.

Two commenters noted that proposed § 890.106(b) and (h) did not clearly reflect OPM's intention for this regulation to apply to existing contracts. We agree and are slightly revising the language of paragraphs (b) and (h) to be clearer. Paragraph (h) formalizes OPM's longstanding interpretation of what Section 8902(m)(1) has meant since Congress enacted it in 1978. This interpretation applies to all FEHBA contracts. Paragraph (b)(1) in the final rule likewise formalizes OPM's longstanding interpretation of subrogation and reimbursement clauses in carrier contracts as constituting a condition of and a limitation on the nature of benefits or benefits payments and on the provision of benefit payments. See Carrier Letter 2012–18. FEHBA contracts that contain subrogation and reimbursement clauses condition benefits and benefit payments on giving the carrier a right to pursue subrogation and reimbursement and therefore are directly related to benefits, benefit payments, and coverage within the meaning of Section 8902(m)(1). The interpretations in paragraphs (b)(1) and (h) together clarify and ensure that carriers enjoy full subrogation and reimbursement rights notwithstanding any state law to the contrary, and they apply in any pending or future case.

To clarify further the relationship among subrogation, reimbursement, benefits, and coverage, we are also in paragraph (b)(2) requiring carrier contracts that contain subrogation and reimbursement clauses to contain language specifying that benefits and benefit payments are extended to a covered individual on the condition that the carrier may pursue and receive subrogation and reimbursement. This substantive requirement, unlike the interpretation discussed above, will govern any benefit payment made under any carrier contract entered into after this regulation goes into effect.

OPM is issuing this final rule with changes to §§ 890.101(a) and 890.106(b) and (f) as described above.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation because the regulation only affects health insurance benefits of Federal employees and annuitants. Executive Order 12866.

Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Orders 13563 and 12866.

Federalism

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this rule restates existing rights, roles and responsibilities of State, local, or tribal governments.

List of Subjects in 5 CFR Parts 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Iraq, Kuwait, Lebanon, Military personnel, Reporting and recordkeeping requirements, Retirement.

U.S. Office of Personnel Management.

Katherine Archuleta,

Director.

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

■ 1. The authority citation for part 890 continues to read as follows:

Authority: 5 U.S.C. 8913. Sec. 890.301 also issued under sec. 311 of Pub. L. 111–03, 123 Stat. 64; Sec. 890.111 also issued under section 1622(b) of Pub. L. 104–106, 110 Stat. 521; Sec. 890.112 also issued under section 1 of Pub. L. 110–279, 122 Stat. 2604; 5 U.S.C. 8913; Sec. 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c–1; subpart L also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended; Sec. 890.102 also issued under sections 11202(f), 11232(e), 11246 (b) and (c) of Pub. L. 105–33, 111 Stat. 251; and section 721 of Pub. L. 105–261, 112 Stat. 2061.

■ 2. In § 890.101, in paragraph (a), add definitions in alphabetical order for ''reimbursement'' and ''subrogation'' to read as follows:

§ 890.101 Definitions; time computations.

(a) * * *

Reimbursement means a carrier's pursuit of a recovery if a covered individual has suffered an illness or injury and has received, in connection with that illness or injury, a payment from any party that may be liable, any applicable insurance policy, or a workers' compensation program or insurance policy, and the terms of the carrier's health benefits plan require the covered individual, as a result of such payment, to reimburse the carrier out of the payment to the extent of the benefits initially paid or provided. The right of reimbursement is cumulative with and not exclusive of the right of subrogation.

* * * * *

Subrogation means a carrier's pursuit of a recovery from any party that may be liable, any applicable insurance policy, or a workers' compensation program or insurance policy, as successor to the rights of a covered individual who suffered an illness or injury and has obtained benefits from that carrier's health benefits plan.

* * * * *

■ 3. Section 890.106 is revised to read as follows:

§ 890.106 Carrier entitlement to pursue subrogation and reimbursement recoveries.

(a) All health benefit plan contracts shall provide that the Federal Employees Health Benefits (FEHB) carrier is entitled to pursue subrogation and reimbursement recoveries, and shall have a policy to pursue such recoveries in accordance with the terms of this section.

(b)(1) Any FEHB carriers' right to pursue and receive subrogation and reimbursement recoveries constitutes a condition of and a limitation on the nature of benefits or benefit payments and on the provision of benefits under the plan's coverage.

(2) Any health benefits plan contract that contains a subrogation or reimbursement clause shall provide that benefits and benefit payments are extended to a covered individual on the condition that the FEHB carrier may pursue and receive subrogation and reimbursement recoveries pursuant to the contract.

(c) Contracts shall provide that the FEHB carriers' rights to pursue and receive subrogation or reimbursement recoveries arise upon the occurrence of the following:

(1) The covered individual has received benefits or benefit payments as a result of an illness or injury; and

(2) The covered individual has accrued a right of action against a third party for causing that illness or injury; or has received a judgment, settlement or other recovery on the basis of that illness or injury; or is entitled to receive compensation or recovery on the basis of the illness or injury, including from

insurers of individual (non-group) policies of liability insurance that are issued to and in the name of the enrollee or a covered family member.

(d) A FEHB carrier's exercise of its right to pursue and receive subrogation or reimbursement recoveries does not give rise to a claim within the meaning of 5 CFR 890.101 and is therefore not subject to the disputed claims process set forth at 5 CFR 890.105.

(e) Any subrogation or reimbursement recovery on the part of a FEHB carrier shall be effectuated against the recovery first (before any of the rights of any other parties are effectuated) and is not impacted by how the judgment, settlement, or other recovery is characterized, designated, or apportioned.

(f) Pursuant to a subrogation or reimbursement clause, the FEHB carrier may recover directly from any party that may be liable, or from the covered individual, or from any applicable insurance policy, or a workers' compensation program or insurance policy, all amounts available to or received by or on behalf of the covered individual by judgment, settlement, or other recovery, to the extent of the amount of benefits that have been paid or provided by the carrier.

(g) Any contract must contain a provision incorporating the carrier's subrogation and reimbursement rights as a condition of and a limitation on the nature of benefits or benefit payments and on the provision of benefits under the plan's coverage. The corresponding health benefits plan brochure must contain an explanation of the carrier's subrogation and reimbursement policy.

(h) A carrier's rights and responsibilities pertaining to subrogation and reimbursement under any FEHB contract relate to the nature, provision, and extent of coverage or benefits (including payments with respect to benefits) within the meaning of 5 U.S.C. 8902(m)(1). These rights and responsibilities are therefore effective notwithstanding any state or local law, or any regulation issued thereunder, which relates to health insurance or plans.

[FR Doc. 2015–12378 Filed 5–20–15; 8:45 am]

BILLING CODE 6325–63–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE306; Special Conditions No. 23–246–SC]

Special Conditions: Cirrus Design Corporation Model SF50 airplane; Full Authority Digital Engine Control (FADEC) System; Withdrawal

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; withdrawal.

SUMMARY: The FAA is withdrawing a previously published document granting special conditions for the Cirrus Design Corporation model SF50 airplane. We are withdrawing Special Condition No. 23–246–SC through mutual agreement with Cirrus Design Corporation.

DATES: Effective May 21, 2015, the special condition published on April 20, 2010 (75 FR 20518) is withdrawn.

FOR FURTHER INFORMATION CONTACT: Jeff Pretz, Federal Aviation Administration, Small Airplane Directorate, Aircraft Certification Service, 901 Locust, Room 301, Kansas City, MO 64106; telephone (816) 329–3239; facsimile (816) 329–4090, email *jeff.pretz@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On September 9, 2008, Cirrus Design Corporation applied for a type certificate for their new model SF50 aircraft. Under the provisions of 14 CFR part 21, § 21.17, Cirrus Design Corporation must show that the model SF50 meets the applicable provisions of part 23, as amended by amendments 23–1 through 23–59.

On April 20, 2010, the FAA published Special Condition No. 23–246–SC for the Cirrus Design Corporation model SF50 airplane. The Cirrus SF50 is a low-wing, five-plus-two-place (2 children), single-engine turbofan-powered aircraft. The airplane engine is controlled by an Electronic Engine Control (EEC), also known as a Full Authority Digital Engine Control (FADEC).

On December 11, 2012 Cirrus Design Corporation elected to adjust the certification basis of the SF50 to include 14 CFR part 23 through amendment 62. Special Condition No. 23–246–SC is therefore being withdrawn. It no longer reflects the appropriate part 23 amendment level of the aircraft and the basic Special Condition requirement for EEC equipped aircraft has been revised.

Reason for Withdrawal

The FAA is withdrawing Special Condition No. 23–246–SC because Cirrus Design Corporation elected to revise the model SF50 certification basis to amendment 23–62.

The authority citation for this Special Condition withdrawal is 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.17; and 14 CFR 11.38 and 11.19.

Conclusion

Withdrawal of this special condition does not preclude the FAA from issuing another document on the subject matter in the future or committing the agency to any future course of action.

Issued in Kansas City, Missouri on May 11, 2015.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–12262 Filed 5–20–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–1570; Directorate Identifier 2014–SW–054–AD; Amendment 39–18161; AD 2015–10–05]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters (Previously Eurocopter France) Helicopters

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for Airbus Helicopters (previously Eurocopter France) Model AS365N3, EC155B, and EC155B1 helicopters with an external life raft in the footsteps with certain part-numbered junction units. This AD requires inspecting the junction units of the external life raft deployment system for corrosion, removing any corrosion, and performing certain measurements to determine whether the junction unit must be replaced. This AD is prompted by failure of a life raft deployment test and corrosion damage inside the left-hand junction unit. These actions are intended to prevent failure of an external life raft to deploy preventing evacuation of passengers during an emergency.

DATES: This AD becomes effective June 5, 2015.

The Director of the Federal Register approved the incorporation by reference of certain documents listed in this AD as of June 5, 2015.

We must receive comments on this AD by July 20, 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 AD, the European Aviation Safety Agency (EASA) AD, the economic evaluation, any incorporated by reference service information, any comments received, and other information. The street address for the Docket Operations Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

For service information identified in this AD, contact Airbus Helicopters, Inc., 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.airbushelicopters.com/techpub*. You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. It is also available on the Internet at *http://www.regulations.gov* in Docket No. FAA–2015–1570.

FOR FURTHER INFORMATION CONTACT: Martin R. Crane, Aviation Safety Engineer, Regulations Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5112; email *martin.r.crane@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Discussion

We are adopting a new AD for Airbus Helicopters (previously Eurocopter France) Model AS365N3, EC155B, and EC155B1 helicopters with an external life raft in the footsteps with a junction unit, manufacturer part number (P/N) 200197 or P/N 200188 (Airbus Helicopters P/N 704A341302.48 or P/N 704A341302.30), installed. This AD requires inspecting the external life raft deployment system junction unit for corrosion, removing any corrosion, and measuring the clearance between the internal and external pulleys and the junction unit cover. If the clearance exceeds a certain threshold, this AD requires replacing the junction unit. This AD is prompted by failure of the external life raft deployment test and corrosion damage inside the left-hand junction unit, which blocked the deployment handle. These actions are intended to prevent corrosion damage inside a junction unit, which can prevent a deployment handle from functioning correctly and cause failure of an external life raft to deploy, preventing evacuation of passengers during an emergency.

EASA, which is the Technical Agent for the Member States of the European Union, has issued AD No. 2014–0214, dated September 24, 2014, to correct an unsafe condition for Airbus Helicopters Model AS365N3, EC155B, and EC155B1 helicopters with external life rafts in the footsteps with certain part-numbered junction units installed. EASA advises that failure of the external life raft deployment test was reported by a Model AS365 helicopter operator when the affected external life raft underwent a scheduled maintenance. The failure occurred during an attempt to release the life raft by pulling the left-hand internal deployment handle. Subsequent investigations revealed corrosion damage inside the left-hand junction unit, which blocked the deployment handle. The EASA AD requires an inspection of the tensile loads during a functional test of the life-raft system, the junction unit cover for drainage holes, and the junction unit cover for corrosion. The EASA AD also requires measuring operational clearance of the right-hand and the left-hand junction units of the external life raft deployment system and, depending on the findings, corrective action and reporting the results to Airbus.

FAA's Determination

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

Related Service Information Under 1 CFR Part 51

Airbus Helicopters issued Alert Service Bulletin (ASB) No. EC155–05A027 for the Model EC155B and B1 helicopter and ASB No. AS365–05.00.67 for the Model AS365N3 helicopter. Both ASBs are Revision 1 and dated September 1, 2014. The ASBs specify checking the tensile load during a functional test of the life-raft system, checking that the drainage hole blank is correctly positioned, inspecting the junction units for corrosion, and measuring the operational clearance between the junction unit pulleys and the cover. If necessary, the ASBs call for removing the corrosion from the cover surface or pulleys and replacing the junction unit.

The ASBs state that the life raft deployment test on a Model AS365 helicopter failed when the left-hand internal deployment handle did not function correctly because the handle was blocked by corrosion inside the junction unit. ASB No. EC155–05A027 further states that Model EC155B and B1 helicopters are equipped with similar junction units.

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 AD.

AD Requirements

This AD requires, before further flight:

- Inspecting each external life raft deployment system unit for corrosion, and if there is corrosion, either removing the corrosion and applying a protective coating, primer, and paint to the surface or replacing the junction unit with an airworthy junction unit.
- Measuring the diameter of the junction unit cover and of each (internal and external) junction unit pulley for operational clearance. If the clearance is greater than 0.029 inch (0.75 mm), replacing the junction unit with an airworthy junction unit.
- Inspecting the drainage holes on the upper face and the lower surface of the junction unit cover to determine whether they are plugged. This AD requires plugging the drainage hole on the upper face if it is not plugged and removing the plug in the drainage hole on the lower surface if it is plugged.

Differences Between This AD and the EASA AD

The EASA AD requires a tensile load inspection and, depending on the results of the inspection, may allow a longer compliance time for the remaining required actions. This AD does not require the tensile load inspection and requires all required actions before further flight. The EASA AD allows the operational clearance measurements to be taken before any corrosion is removed, while this AD requires removing any corrosion before taking measurements. The EASA AD requires reporting the inspection results to the manufacturer; this AD does not.

Costs of Compliance

There are no costs of compliance with this AD because there are no helicopters equipped with the life raft deployment system that is the subject of this AD.

FAA's Justification and Determination of the Effective Date

There are no helicopters with the affected life raft deployment system; therefore, we believe it is unlikely that we will receive any adverse comments or useful information about this AD from U.S. Operators.

Since an unsafe condition exists that requires the immediate adoption of this AD, we determined that notice and opportunity for public comment before issuing this AD are unnecessary because there are no helicopters with the affected life raft deployment system and that good cause exists for making this amendment effective in less than 30 days.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify that this AD:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2015–10–05 Airbus Helicopters (previously Eurocopter France): Amendment 39–18161; Docket No. FAA–2015–1570; Directorate Identifier 2014–SW–054–AD.

(a) Applicability

This AD applies to Model AS365N3, EC155B, and EC155B1 helicopters with an external life raft in the footstep installed with a junction unit, manufacturer part number (P/N) 200197 or P/N 200188 (Airbus Helicopters P/N 704A341302.48 or 704A341302.30), certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as corrosion damage inside a junction unit, which can prevent a deployment handle from functioning correctly. This condition could result in failure of an external life raft to deploy, preventing evacuation of passengers during an emergency.

(c) Effective Date

This AD becomes effective June 5, 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

Before further flight:

(1) Inspect each external life raft deployment system left-hand and right-hand junction unit for corrosion in the areas shown in Figure 3 of Airbus Helicopters Alert Service Bulletin (ASB) No. EC155–05A027, Revision 1, dated September 1, 2014 (ASB No. EC155–05A027), or ASB No. AS365–05.00.67, Revision 1, dated September 1, 2014, (ASB No. AS365–05.00.67), as applicable to your helicopter model.

(2) If there is corrosion, either remove the corrosion and apply a protective coating, primer, and paint to the surface or replace the junction unit with an airworthy junction unit.

(3) Measure the diameter of the junction unit cover and of each (internal and external) junction unit pulley for operational clearance. If the clearance is greater than 0.029 inch (0.75 mm) as depicted in Figure 4 of ASB No. EC155–05A027 or Figure 5 of ASB No. AS365–05.00.67, as applicable to your helicopter model, replace the junction unit with an airworthy junction unit.

(4) Inspect the drainage hole on the upper face of the junction unit cover, and if it is unplugged, plug it.

(5) Inspect the drainage hole on the lower surface of the junction unit cover, and if it is plugged, remove the plug.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Martin R. Crane, Aviation Safety Engineer, Regulations Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5112; email *martin.r.crane@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

The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2014–0214, dated September 24, 2014. You may view the EASA AD on the Internet at *http://www.regulations.gov* in Docket No. FAA–2015–1570.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 2564 Equipment/Furnishing.

(i) Material Incorporated by Reference

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

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

(i) Airbus Helicopters Alert Service Bulletin (ASB) No. EC155–05A027, Revision 1, dated September 1, 2014.

(ii) Airbus Helicopters ASB No. AS365–05.00.67, Revision 1, dated September 1, 2014.

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

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

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

Issued in Fort Worth, Texas, on May 11, 2015.

Lance T. Gant,

Acting Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2015–12004 Filed 5–20–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31015; Amdt. No. 3641]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective May 21, 2015. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of May 21, 2015.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops–M30, 1200 New Jersey Avenue SE., West Bldg., Ground Floor, Washington, DC 20590–0001.

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at fdc.faa.gov to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Richard A. Dunham III, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part § 97.20. The applicable FAA forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPS, Takeoff

Minimums and/or ODPS as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as Amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C 553(d), good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26,1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC on April 24, 2015.

John Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 28 May 2015

Glencoe, MN, Glencoe Muni, RNAV (GPS) RWY 13, Orig
Glencoe, MN, Glencoe Muni, RNAV (GPS) RWY 31, Amdt 1
Rutherfordton, NC, Rutherford Co—Marchman Field, Takeoff Minimums and Obstacle DP, Amdt 3
Houston, TX, Lone Star Executive, RNAV (GPS) RWY 14, Amdt 1A
Boscobel, WI, Boscobel, RNAV (GPS) RWY 25, Amdt 1

Effective 25 June 2015

Gary, IN, Gary/Chicago Intl, RNAV (GPS) Y RWY 12, Amdt 1
Gary, IN, Gary/Chicago Intl, RNAV (RNP) Z RWY 12, Amdt 1
Portland, OR, Portland Intl, RNAV (RNP) Y RWY 28L, Amdt 2
Portland, OR, Portland Intl, RNAV (RNP) Y RWY 28R, Amdt 2
Johnstown, PA, John Murtha Johnstown-Cambria County, VOR/DME RWY 15, Amdt 7
Johnstown, PA, John Murtha Johnstown-Cambria County, VOR/DME RWY 23, Amdt 4
Greenville, SC, Greenville Downtown, ILS Y OR LOC Y RWY 1, Orig
Greenville, SC, Greenville Downtown, ILS Z OR LOC Z RWY 1, Amdt 30
Greenville, SC, Greenville Downtown, RNAV (GPS) RWY 10, Amdt 1
Greenville, SC, Greenville Downtown, RNAV (GPS) RWY 19, Amdt 1
Greenville, SC, Greenville Downtown, RNAV (GPS) RWY 28, Orig
Richland/Ashland, VA, Hanover County Muni, RNAV (GPS) RWY 34, Orig
Buffalo, WY, Johnson County, Takeoff Minimums and Obstacle DP, Amdt 2
Sheridan, WY, Sheridan County, ILS OR LOC/DME RWY 33, Amdt 2
Sheridan, WY, Sheridan County, RNAV (GPS) RWY 15, Amdt 1
Sheridan, WY, Sheridan County, RNAV (GPS) RWY 33, Amdt 1
Sheridan, WY, Sheridan County, Takeoff Minimums and Obstacle DP, Amdt 4
Sheridan, WY, Sheridan County, VOR RWY 15, Amdt 2

[FR Doc. 2015–12123 Filed 5–20–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31017; Amdt. No. 3643]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective May 21, 2015. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of May 21, 2015.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE., West Bldg., Ground Floor, Washington, DC, 20590–0001.

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South

MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Richard A. Dunham III, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part § 97.20. The applicable FAA forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPS, Takeoff Minimums and/or ODPS as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as Amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C 553(d), good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26,1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC on May 8, 2015.

John Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 25 JUNE 2015

Forrest City, AR, Forrest City Muni, GPS RWY 36, Orig–B, CANCELED
Forrest City, AR, Forrest City Muni, Takeoff Minimums and Obstacle DP, Amdt 2, CANCELED
Washington, DC, Manassas Rgnl/Harry P Davis Field, Takeoff Minimums and Obstacle DP, Amdt 4A
Homerville, GA, Homerville, NDB RWY 14, Amdt 3
Homerville, GA, Homerville, RNAV (GPS) RWY 14, Amdt 1
Homerville, GA, Homerville, RNAV (GPS) RWY 32, Amdt 1
Homerville, GA, Homerville, VOR/DME–A, Amdt 5
Boise, ID, Boise Air Terminal/Gowen Fld, ILS OR LOC/DME RWY 28R, Orig
Boise, ID, Boise Air Terminal/Gowen Fld, RNAV (GPS) Y RWY 28R, Amdt 5
Gary, IN, Gary/Chicago Intl, Takeoff Minimums and Obstacle DP, Amdt 8
Detroit, MI, Willow Run, RNAV (GPS) RWY 14, Amdt 1, CANCELED
Camdenton, MO, Camdenton Memorial-Lake Rgnl, RNAV (GPS) RWY 15, Amdt 1A
Camdenton, MO, Camdenton Memorial-Lake Rgnl, RNAV (GPS) RWY 33, Amdt 1A
Camdenton, MO, Camdenton Memorial-Lake Rgnl, VOR–A, Amdt 5B
Deming, NM, Deming Muni, RNAV (GPS) RWY 26, Orig, CANCELED
Deming, NM, Deming Muni, RNAV (GPS)-A, Orig
Kingston, NY, Kingston-Ulster, RNAV (GPS) RWY 15, Amdt 1

Kingston, NY, Kingston-Ulster, RNAV (GPS) RWY 33, Amdt 1
Millersburg, OH, Holmes County, GPS RWY 27, Orig, CANCELED
Millersburg, OH, Holmes County, RNAV (GPS) RWY 9, Orig
Millersburg, OH, Holmes County, RNAV (GPS) RWY 27, Orig
Millersburg, OH, Holmes County, Takeoff Minimums and Obstacle DP, Amdt 2
Millersburg, OH, Holmes County, VOR–A, Amdt 7
Corvallis, OR, Corvallis Muni, Takeoff Minimums and Obstacle DP, Amdt 6
North Bend, OR, Southwest Oregon Rgnl, COPTER ILS OR LOC RWY 4, Amdt 1
North Bend, OR, Southwest Oregon Rgnl, ILS OR LOC RWY 4, Amdt 8
North Bend, OR, Southwest Oregon Rgnl, NDB RWY 4, Amdt 6
North Bend, OR, Southwest Oregon Rgnl, RNAV (GPS) Y RWY 4, Amdt 1
North Bend, OR, Southwest Oregon Rgnl, RNAV (RNP) Z RWY 4, Amdt 1
North Bend, OR, Southwest Oregon Rgnl, Takeoff Minimums and Obstacle DP, Amdt 6
North Bend, OR, Southwest Oregon Rgnl, VOR–A, Amdt 6
North Bend, OR, Southwest Oregon Rgnl, VOR/DME RWY 4, Amdt 11
North Bend, OR, Southwest Oregon Rgnl, VOR/DME–B, Amdt 5
Tillamook, OR, Tillamook, RNAV (GPS) RWY 13, Orig-A
Bedford, PA, Bedford County, RNAV (GPS) RWY 14, Amdt 2
Bedford, PA, Bedford County, RNAV (GPS) RWY 32, Amdt 2
Wilkes-Barre/Scranton, PA, Wilkes-Barre/Scranton Intl, ILS OR LOC/DME RWY 22, Amdt 9
Brookings, SD, Brookings Rgnl, ILS OR LOC RWY 12, Orig
Brookings, SD, Brookings Rgnl, Takeoff Minimums and Obstacle DP, Amdt 2
Dallas-Fort Worth, TX, Dallas Fort/Worth Intl, ILS OR LOC RWY 36L, ILS RWY 36L (SA CAT II), Amdt 3
Mesquite, TX, Mesquite Metro, ILS OR LOC RWY 18, Amdt 1D
Mesquite, TX, Mesquite Metro, LOC/DME BC RWY 36, Amdt 4
Mesquite, TX, Mesquite Metro, RNAV (GPS) RWY 18, Amdt 1A
Mesquite, TX, Mesquite Metro, RNAV (GPS) RWY 36, Amdt 2
Mesquite, TX, Mesquite Metro, Takeoff Minimums and Obstacle DP, Amdt 4A
New Braunfels, TX, New Braunfels Rgnl, Takeoff Minimums and Obstacle DP, Amdt 1
Sturgeon Bay, WI, Door County Cherryland, SDF RWY 2, Amdt 8A, CANCELED

[FR Doc. 2015–12111 Filed 5–20–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31016; Amdt. No. 3642]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective May 21, 2015. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 21, 2015.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE., West Bldg., Ground Floor, Washington, DC 20590–0001;

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Richard A. Dunham III, Flight Procedure Standards Branch (AFS–420) Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary. This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each

separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC on April 24, 2015.

John Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, (14 CFR part 97), is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
28–May–15	AL	Gadsden	Northeast Alabama Rgnl	5/4765	03/24/15	This NOTAM, published in TL 15–11, is hereby rescinded in its entirety.
28–May–15	AL	Gadsden	Northeast Alabama Rgnl	5/4766	03/24/15	This NOTAM, published in TL 15–11, is hereby rescinded in its entirety.
28–May–15	AL	Gadsden	Northeast Alabama Rgnl	5/4767	03/24/15	This NOTAM, published in TL 15–11, is hereby rescinded in its entirety.
28–May–15	AL	Gadsden	Northeast Alabama Rgnl	5/4768	03/24/15	This NOTAM, published in TL 15–11, is hereby rescinded in its entirety.
28–May–15	AL	Gadsden	Northeast Alabama Rgnl	5/4769	03/24/15	This NOTAM, published in TL 15–11, is hereby rescinded in its entirety.
28–May–15	HI	Honolulu	Honolulu Intl	5/6631	03/27/15	This NOTAM, published in TL 15–11, is hereby rescinded in its entirety.
28–May–15	MO	Marshall	Marshall Memorial Muni	4/0075	04/14/15	RNAV (GPS) Rwy 36, Amdt 3
28–May–15	MO	Marshall	Marshall Memorial Muni	4/0084	04/14/15	NDB Rwy 36, Amdt 4
28–May–15	MO	Kansas City	Charles B Wheeler Downtown.	4/0091	04/14/15	RNAV (GPS) Rwy 21, Amdt 1B
28–May–15	MO	Kansas City	Charles B Wheeler Downtown.	4/0094	04/14/15	VOR Rwy 21, Amdt 14A
28–May–15	MO	Kansas City	Charles B Wheeler Downtown.	4/0102	04/14/15	RNAV (GPS) Rwy 3, Amdt 2
28–May–15	MN	Two Harbors	Richard B Helgeson	4/0103	04/14/15	RNAV (GPS) Rwy 24, Orig-A
28–May–15	MO	Kansas City	Charles B Wheeler Downtown.	4/0105	04/14/15	VOR Rwy 3, Amdt 19
28–May–15	MO	Kansas City	Charles B Wheeler Downtown.	4/0108	04/14/15	ILS OR LOC Rwy 3, Amdt 4
28–May–15	MN	Rochester	Rochester Intl	4/0114	04/14/15	RNAV (GPS) Rwy 2, Amdt 3
28–May–15	MN	Rochester	Rochester Intl	4/0115	04/14/15	RNAV (GPS) Rwy 20, Amdt 2
28–May–15	MN	Staples	Staples Muni	4/0119	04/14/15	RNAV (GPS) Rwy 32, Orig
28–May–15	MN	Marshall	Southwest Minnesota Rgnl Marshall/Ryan Fld.	4/0189	04/14/15	RNAV (GPS) Rwy 12, Amdt 1
28–May–15	IN	Tell City	Perry County Muni	4/0203	04/14/15	RNAV (GPS) Rwy 31, Orig
28–May–15	MN	Red Wing	Red Wing Rgnl	4/0205	04/14/15	ILS OR LOC Rwy 9, Amdt 1

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
28–May–15	MN	Red Wing	Red Wing Rgnl	4/0207	04/14/15	RNAV (GPS) Rwy 9, Amdt 1
28–May–15	MO	Eldon	Eldon Model Airpark	4/0211	04/14/15	RNAV (GPS) Rwy 18, Orig
28–May–15	MN	Marshall	Southwest Minnesota Rgnl Marshall/Ryan Fld.	4/0353	04/14/15	RNAV (GPS) Rwy 30, Orig-A
28–May–15	MO	Mountain View	Mountain View	4/0364	04/14/15	RNAV (GPS) Rwy 28, Orig-A
28–May–15	MI	Boyne City	Boyne City Muni	4/0365	04/14/15	RNAV (GPS) Rwy 27, Orig
28–May–15	MI	Boyne City	Boyne City Muni	4/0371	04/14/15	RNAV (GPS) Rwy 9, Orig
28–May–15	MN	Minneapolis	Airlake	4/0394	04/14/15	RNAV (GPS) Rwy 30, Orig
28–May–15	MO	Moberly	Omar N Bradley	4/0395	04/14/15	RNAV (GPS) Rwy 13, Orig
28–May–15	MO	Moberly	Omar N Bradley	4/0404	04/14/15	RNAV (GPS) Rwy 31, Orig
28–May–15	MI	Clare	Clare Muni	4/0406	04/14/15	RNAV (GPS) Rwy 4, Orig
28–May–15	MO	Aurora	Jerry Sumners Sr Aurora Muni.	4/0416	04/14/15	RNAV (GPS) Rwy 36, Orig
28–May–15	MN	Moose Lake	Moose Lake Carlton County.	4/0420	04/14/15	RNAV (GPS) Rwy 4, Orig
28–May–15	MO	Branson West	Branson West Muni-Emerson Field.	4/0427	04/14/15	RNAV (GPS) Rwy 3, Amdt 1
28–May–15	MI	Hillsdale	Hillsdale Muni	4/0428	04/14/15	RNAV (GPS) Rwy 10, Orig
28–May–15	MN	Worthington	Worthington Muni	4/0454	04/14/15	VOR Rwy 11, Amdt 3
28–May–15	MN	Worthington	Worthington Muni	4/0470	04/14/15	VOR Rwy 36, Amdt 6
28–May–15	MN	Worthington	Worthington Muni	4/0471	04/14/15	RNAV (GPS) Rwy 11, Orig
28–May–15	MN	Winona	Winona Muni-Max Conrad Fld.	4/0475	04/14/15	RNAV (GPS) Rwy 30, Amdt 1
28–May–15	MO	Houston	Houston Memorial	4/0489	04/14/15	RNAV (GPS) Rwy 34, Orig
28–May–15	MN	Staples	Staples Muni	4/0492	04/14/15	NDB Rwy 14, Amdt 3
28–May–15	MN	Staples	Staples Muni	4/0493	04/14/15	RNAV (GPS) Rwy 14, Orig
28–May–15	MN	St Paul	St Paul Downtown Holman Fld.	4/0498	04/14/15	RNAV (GPS) Rwy 14, Amdt 1
28–May–15	MO	Gideon	Gideon Memorial	4/0499	04/14/15	RNAV (GPS) Rwy 15, Orig
28–May–15	MO	Gideon	Gideon Memorial	4/0500	04/14/15	VOR Rwy 15, Amdt 3
28–May–15	MN	Elbow Lake	Elbow Lake Muni-Pride Of The Prairie.	4/0505	04/14/15	RNAV (GPS) Rwy 14, Orig
28–May–15	MN	Elbow Lake	Elbow Lake Muni-Pride Of The Prairie.	4/0506	04/14/15	RNAV (GPS) Rwy 32, Orig
28–May–15	MO	Eldon	Eldon Model Airpark	4/0507	04/14/15	RNAV (GPS) Rwy 36, Orig
28–May–15	MO	Cuba	Cuba Muni	4/0508	04/14/15	RNAV (GPS) Rwy 36, Orig-A
28–May–15	MN	St Paul	Lake Elmo	4/0509	04/14/15	NDB Rwy 4, Amdt 5
28–May–15	ND	Carrington	Carrington Muni	4/0535	04/14/15	RNAV (GPS) Rwy 31, Orig
28–May–15	MN	Morris	Morris Muni-Charlie Schmidt Fld.	4/0561	04/14/15	RNAV (GPS) Rwy 32, Amdt 1
28–May–15	MN	Morris	Morris Muni-Charlie Schmidt Fld.	4/0562	04/14/15	VOR Rwy 14, Amdt 1A
28–May–15	MN	Fosston	Fosston Muni	4/0683	04/15/15	RNAV (GPS) Rwy 16, Orig-A
28–May–15	MN	Morris	Morris Muni-Charlie Schmidt Fld.	4/0684	04/14/15	RNAV (GPS) Rwy 14, Amdt 1
28–May–15	MN	Morris	Morris Muni-Charlie Schmidt Fld.	4/0685	04/14/15	VOR Rwy 32, Amdt 5A
28–May–15	MI	Marquette	Sawyer Intl	4/0695	04/14/15	RNAV (GPS) Rwy 1, Orig
28–May–15	MN	Hibbing	Range Rgnl	4/0696	04/14/15	RNAV (GPS) Rwy 31, Amdt 1
28–May–15	IA	Albia	Albia Muni	4/0699	04/15/15	RNAV (GPS) Rwy 13, Orig
28–May–15	IA	Albia	Albia Muni	4/0702	04/15/15	RNAV (GPS) Rwy 31, Amdt 1
28–May–15	MN	Owatonna	Owatonna Degner Rgnl	4/0703	04/14/15	VOR Rwy 12, Amdt 10
28–May–15	MN	Owatonna	Owatonna Degner Rgnl	4/0704	04/14/15	RNAV (GPS) Rwy 12, Amdt 1
28–May–15	MN	Park Rapids	Park Rapids Muni-Konshok Field.	4/0705	04/14/15	VOR/DME Rwy 13, Amdt 9
28–May–15	MN	Park Rapids	Park Rapids Muni-Konshok Field.	4/0718	04/14/15	RNAV (GPS) Rwy 13, Orig
28–May–15	MN	Rochester	Rochester Intl	4/0805	04/14/15	RNAV (GPS) Rwy 31, Amdt 1
28–May–15	MN	St Paul	Lake Elmo	4/0806	04/14/15	RNAV (GPS) Rwy 32, Amdt 1
28–May–15	MO	Springfield	Springfield-Branson National.	4/0807	04/14/15	ILS OR LOC Rwy 14, Orig-B
28–May–15	MO	Springfield	Springfield-Branson National.	4/0808	04/14/15	RNAV (GPS) Rwy 14, Amdt 2A
28–May–15	MN	Two Harbors	Richard B Helgeson	4/0856	04/14/15	RNAV (GPS) Rwy 6, Orig
28–May–15	IL	Springfield	Abraham Lincoln Capital	4/0948	04/14/15	VOR/DME Rwy 4, Orig
28–May–15	IL	Springfield	Abraham Lincoln Capital	4/0953	04/14/15	RNAV (GPS) Rwy 4, Orig-B
28–May–15	IL	Springfield	Abraham Lincoln Capital	4/0955	04/14/15	ILS OR LOC Rwy 4, Amdt 25E
28–May–15	IL	Mount Vernon	Mount Vernon	4/0985	04/14/15	ILS OR LOC Rwy 23, Amdt 11B
28–May–15	IN	Indianapolis	Indianapolis Metropolitan	4/0995	04/14/15	VOR Rwy 33, Amdt 10
28–May–15	MN	Owatonna	Owatonna Degner Rgnl	4/0998	04/14/15	ILS OR LOC Rwy 30, Amdt 2B
28–May–15	MN	Owatonna	Owatonna Degner Rgnl	4/1000	04/14/15	RNAV (GPS) Rwy 30, Orig-A
28–May–15	IL	Macomb	Macomb Muni	4/1090	04/14/15	RNAV (GPS) Rwy 9, Amdt 1
28–May–15	IL	Belleville	Scott AFB/MidAmerica	4/5880	04/15/15	ILS OR LOC/DME Rwy 14L, Orig-E

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
28–May–15	IL	Belleville	Scott AFB/MidAmerica	4/5973	04/15/15	ILS OR LOC Rwy 32R, Orig-E
28–May–15	CA	Little River	Little River	5/1337	04/08/15	RNAV (GPS) Rwy 29, Amdt 1
28–May–15	TX	Dallas	Dallas Love Field	5/1799	04/07/15	ILS OR LOC Y Rwy 13L, Amdt 32B
28–May–15	TX	Fredericksburg	Gillespie County	5/1828	04/09/15	RNAV (GPS) Rwy 32, Amdt 1A
28–May–15	TX	Fredericksburg	Gillespie County	5/1829	04/09/15	VOR/DME A, Amdt 3A
28–May–15	TX	Fredericksburg	Gillespie County	5/1874	04/09/15	RNAV (GPS) Rwy 14, Amdt 1A
28–May–15	FL	Sarasota/Bradenton.	Sarasota/Bradenton Intl	5/2002	04/14/15	RNAV (GPS) Rwy 4, Amdt 2
28–May–15	FL	Sarasota/Bradenton.	Sarasota/Bradenton Intl	5/2003	04/14/15	ILS OR LOC Rwy 14, Amdt 6
28–May–15	FL	Sarasota/Bradenton.	Sarasota/Bradenton Intl	5/2004	04/14/15	VOR Rwy 14, Amdt 18
28–May–15	FL	Sarasota/Bradenton.	Sarasota/Bradenton Intl	5/2005	04/14/15	RNAV (GPS) Rwy 14, Amdt 3
28–May–15	FL	Sarasota/Bradenton.	Sarasota/Bradenton Intl	5/2006	04/14/15	ILS OR LOC Rwy 32, Amdt 8
28–May–15	FL	Sarasota/Bradenton.	Sarasota/Bradenton Intl	5/2007	04/14/15	RNAV (GPS) Rwy 32, Amdt 3
28–May–15	FL	Sarasota/Bradenton.	Sarasota/Bradenton Intl	5/2008	04/14/15	VOR Rwy 32, Amdt 10
28–May–15	FL	Sarasota/Bradenton.	Sarasota/Bradenton Intl	5/2009	04/14/15	RNAV (GPS) Rwy 22, Amdt 2
28–May–15	MN	St Paul	Lake Elmo	5/2091	04/13/15	Takeoff Minimums and (Obstacle) DP, Amdt 1
28–May–15	FL	Jacksonville	Cecil	5/2720	04/14/15	ILS OR LOC Rwy 36R, Amdt 3
28–May–15	FL	Jacksonville	Cecil	5/2721	04/14/15	RNAV (GPS) Rwy 9R, Amdt 1
28–May–15	FL	Jacksonville	Cecil	5/2722	04/14/15	RNAV (GPS) Rwy 18R, Orig
28–May–15	FL	Jacksonville	Cecil	5/2723	04/14/15	RNAV (GPS) Rwy 27L, Amdt 1
28–May–15	FL	Jacksonville	Cecil	5/2724	04/14/15	RNAV (GPS) Rwy 36L, Orig-A
28–May–15	FL	Jacksonville	Cecil	5/2725	04/14/15	RNAV (GPS) Rwy 36R, Amdt 1
28–May–15	FL	Jacksonville	Cecil	5/2726	04/14/15	VOR Rwy 9R, Amdt 1
28–May–15	FL	Jacksonville	Cecil	5/2727	04/14/15	TACAN Rwy 9R, Orig
28–May–15	FL	Jacksonville	Cecil	5/2728	04/14/15	TACAN Rwy 27L, Orig
28–May–15	FL	Jacksonville	Cecil	5/2729	04/14/15	RNAV (GPS) Rwy 18L, Amdt 1
28–May–15	DC	Washington	Ronald Reagan Washington National.	5/2831	04/09/15	RNAV (GPS) Rwy 33, Orig-A
28–May–15	DC	Washington	Ronald Reagan Washington National.	5/2837	04/09/15	VOR/DME OR GPS Rwy 15, Amdt 1C
28–May–15	NC	Washington	Warren Field	5/2889	04/09/15	RNAV (GPS) Rwy 5, Amdt 1
28–May–15	NC	Washington	Warren Field	5/2891	04/09/15	LOC Rwy 5, Amdt 1A
28–May–15	FL	Orlando	Kissimmee Gateway	5/2892	04/09/15	RNAV (GPS) Rwy 6, Orig-A
28–May–15	FL	Orlando	Kissimmee Gateway	5/2893	04/09/15	RNAV (GPS) Rwy 33, Amdt 2A
28–May–15	MI	Houghton Lake	Roscommon County-Blodgett Memorial.	5/2922	04/14/15	RNAV (GPS) Rwy 27, Amdt 1A
28–May–15	MI	Houghton Lake	Roscommon County-Blodgett Memorial.	5/2924	04/14/15	RNAV (GPS) Rwy 9, Amdt 2B
28–May–15	MI	Houghton Lake	Roscommon County-Blodgett Memorial.	5/2925	04/14/15	VOR Rwy 9, Amdt 5A
28–May–15	MI	Houghton Lake	Roscommon County-Blodgett Memorial.	5/2927	04/14/15	VOR Rwy 27, Amdt 4
28–May–15	AL	Tuscaloosa	Tuscaloosa Rgnl	5/3441	04/07/15	ILS OR LOC Rwy 4, Amdt 14E
28–May–15	FL	Lakeland	Lakeland Linder Rgnl	5/3447	04/08/15	VOR Rwy 27, Amdt 7E
28–May–15	FL	Lakeland	Lakeland Linder Rgnl	5/3448	04/08/15	RNAV (GPS) Rwy 5, Orig-C
28–May–15	WI	New Richmond	New Richmond Rgnl	5/3758	03/20/15	RNAV (GPS) Rwy 14, Amdt 2A
28–May–15	WI	New Richmond	New Richmond Rgnl	5/3759	03/20/15	RNAV (GPS) Rwy 32, Amdt 2
28–May–15	WI	Wautoma	Wautoma Muni	5/3771	03/23/15	RNAV (GPS) Rwy 31, Orig
28–May–15	WI	Wautoma	Wautoma Muni	5/3772	03/23/15	RNAV (GPS) Rwy 13, Orig
28–May–15	WA	Spokane	Felts Field	5/5453	04/13/15	ILS OR LOC/DME Rwy 22R, Amdt 1A
28–May–15	CA	Hawthorne	Jack Northrop Field/Hawthorne Muni.	5/5466	04/13/15	RNAV (GPS) Rwy 25, Orig-A
28–May–15	CA	Tracy	Tracy Muni	5/5467	04/14/15	RNAV (GPS) Rwy 12, Amdt 1A
28–May–15	AZ	Prescott	Ernest A Love Field	5/5468	04/13/15	ILS OR LOC/DME Rwy 21L, Amdt 4
28–May–15	MO	Springfield	Springfield-Branson National.	5/5490	04/13/15	VOR OR TACAN Rwy 20, Amdt 18D
28–May–15	MO	Springfield	Springfield-Branson National.	5/5497	04/13/15	VOR/DME OR TACAN Rwy 2, Orig-C
28–May–15	NE	Fairbury	Fairbury Muni	5/5672	04/13/15	RNAV (GPS) Rwy 17, Orig-A
28–May–15	NE	Fairbury	Fairbury Muni	5/5673	04/13/15	RNAV (GPS) Rwy 35, Orig
28–May–15	NE	Fairbury	Fairbury Muni	5/5674	04/13/15	NDB–A, Amdt 3A
28–May–15	IL	Salem	Salem-Leckrone	5/5778	04/14/15	RNAV (GPS) Rwy 36, Amdt 1
28–May–15	TX	College Station	Easterwood Field	5/5781	04/14/15	RNAV (GPS) Rwy 34, Amdt 1
28–May–15	TX	San Antonio	San Antonio Intl	5/5798	04/14/15	RNAV (RNP) Z Rwy 30L, Orig
28–May–15	TX	San Antonio	San Antonio Intl	5/5802	04/14/15	RNAV (GPS) Y Rwy 22, Amdt 2
28–May–15	TX	San Antonio	San Antonio Intl	5/5805	04/14/15	RNAV (RNP) Z Rwy 22, Amdt 1

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
28–May–15	TX	San Antonio	San Antonio Intl	5/5807	04/14/15	RNAV (RNP) Z Rwy 12R, Orig-A
28–May–15	TX	San Antonio	San Antonio Intl	5/5809	04/14/15	RNAV (GPS) Y Rwy 4, Amdt 3
28–May–15	TX	San Antonio	San Antonio Intl	5/5810	04/14/15	ILS OR LOC Rwy 4, Amdt 22
28–May–15	TX	San Antonio	San Antonio Intl	5/5813	04/14/15	RNAV (RNP) Z Rwy 4, Orig-A
28–May–15	IL	Moline	Quad City Intl	5/6045	04/15/15	RNAV (GPS) Rwy 27, Amdt 1A
28–May–15	IL	Moline	Quad City Intl	5/6046	04/15/15	RNAV (GPS) Rwy 9, Amdt 1A
28–May–15	TX	Pecos	Pecos Muni	5/6047	04/15/15	RNAV (GPS) Rwy 32, Orig
28–May–15	TX	Plains	Yoakum County	5/6048	04/14/15	RNAV (GPS) Rwy 3, Amdt 1
28–May–15	TX	Houston	George Bush Intercontinental/Houston.	5/6196	04/14/15	RNAV (GPS) Z Rwy 26R, Amdt 4
28–May–15	WY	Jackson	Jackson Hole	5/6481	04/14/15	VOR/DME Rwy 19, Orig
28–May–15	TX	Gruver	Gruver Muni	5/6739	04/15/15	RNAV (GPS) Rwy 20, Orig
28–May–15	IL	Marion	Williamson County Rgnl	5/6745	04/15/15	RNAV (GPS) Rwy 2, Amdt 1A
28–May–15	IL	Marion	Williamson County Rgnl	5/6746	04/15/15	RNAV (GPS) Rwy 20, Amdt 1A
28–May–15	FL	Destin	Destin-Fort Walton Beach.	5/6986	04/15/15	RNAV (GPS) Rwy 14, Amdt 2A
28–May–15	FL	Destin	Destin-Fort Walton Beach.	5/6987	04/15/15	RNAV (GPS) Rwy 32, Amdt 1A
28–May–15	FL	Destin	Destin-Fort Walton Beach.	5/6988	04/15/15	Takeoff Minimums and (Obstacle) DP, Orig-A
28–May–15	WV	Petersburg	Grant County	5/7047	04/09/15	RNAV (GPS) Y Rwy 31, Orig
28–May–15	VA	Quinton	New Kent County	5/7048	04/09/15	RNAV (GPS) Rwy 29, Amdt 2
28–May–15	VA	Quinton	New Kent County	5/7049	04/09/15	RNAV (GPS) Rwy 11, Amdt 2
28–May–15	WV	Martinsburg	Eastern WV Rgnl/Shepherd Fld.	5/7050	04/09/15	RNAV (GPS) Rwy 8, Amdt 1
28–May–15	MI	Detroit	Coleman A Young Muni	5/7057	04/15/15	ILS OR LOC Rwy 33, Amdt 14A
28–May–15	MI	Detroit	Coleman A Young Muni	5/7058	04/15/15	NDB Rwy 15, Amdt 23
28–May–15	MI	Detroit	Coleman A Young Muni	5/7059	04/15/15	RNAV (GPS) Rwy 15, Orig
28–May–15	MI	Detroit	Coleman A Young Muni	5/7061	04/15/15	RNAV (GPS) Rwy 33, Orig-A
28–May–15	MI	Detroit	Coleman A Young Muni	5/7065	04/15/15	VOR Rwy 33, Amdt 28
28–May–15	MI	Detroit	Coleman A Young Muni	5/7066	04/15/15	ILS OR LOC Rwy 15, Amdt 10A
28–May–15	WV	Beckley	Raleigh County Memorial	5/7069	04/09/15	RNAV (GPS) Rwy 28, Amdt 1
28–May–15	WV	Beckley	Raleigh County Memorial	5/7070	04/09/15	RNAV (GPS) Rwy 19, Amdt 1
28–May–15	WV	Beckley	Raleigh County Memorial	5/7071	04/09/15	ILS OR LOC Rwy 19, Amdt 6
28–May–15	WV	Beckley	Raleigh County Memorial	5/7072	04/09/15	RNAV (GPS) Rwy 10, Amdt 1
28–May–15	WV	Beckley	Raleigh County Memorial	5/7073	04/09/15	RNAV (GPS) Rwy 1, Amdt 1
28–May–15	TX	Perryton	Perryton Ochiltree County.	5/7080	04/15/15	RNAV (GPS) Rwy 35, Amdt 1
28–May–15	TX	Perryton	Perryton Ochiltree County.	5/7081	04/15/15	RNAV (GPS) Rwy 17, Orig
28–May–15	NC	Lumberton	Lumberton Rgnl	5/7124	04/15/15	ILS OR LOC Rwy 5, Amdt 1B
28–May–15	NC	Oak Island	Cape Fear Rgnl Jetport/Howie Franklin Fld.	5/7130	04/15/15	RNAV (GPS) Rwy 23, Orig-B
28–May–15	NC	Oak Island	Cape Fear Rgnl Jetport/Howie Franklin Fld.	5/7131	04/15/15	RNAV (GPS) Rwy 5, Amdt 1C
28–May–15	KY	Mount Sterling	Mount Sterling-Montgomery County.	5/7151	04/15/15	RNAV (GPS) Rwy 3, Orig-A
28–May–15	KY	Mount Sterling	Mount Sterling-Montgomery County.	5/7152	04/15/15	NDB Rwy 3, Amdt 2A
28–May–15	VA	Richmond	Richmond Intl	5/7153	04/15/15	RNAV (GPS) Z Rwy 2, Amdt 1A
28–May–15	VA	Richmond	Richmond Intl	5/7154	04/15/15	RNAV (RNP) Y Rwy 34, Orig-A
28–May–15	VA	Richmond	Richmond Intl	5/7155	04/15/15	ILS OR LOC Rwy 34, ILS Rwy 34 (SA CAT I), ILS Rwy 34 (CAT II & III), Amdt 14
28–May–15	VA	Richmond	Richmond Intl	5/7156	04/15/15	RNAV (GPS) Rwy 25, Amdt 1
28–May–15	VA	Richmond	Richmond Intl	5/7158	04/15/15	RNAV (GPS) Z Rwy 20, Amdt 2A
28–May–15	VA	Richmond	Richmond Intl	5/7159	04/15/15	RNAV (RNP) Y Rwy 20, Orig
28–May–15	VA	Richmond	Richmond Intl	5/7160	04/15/15	RNAV (GPS) Z Rwy 16, Amdt 1A
28–May–15	VA	Richmond	Richmond Intl	5/7161	04/15/15	RNAV (RNP) Y Rwy 16, Orig-A
28–May–15	VA	Richmond	Richmond Intl	5/7162	04/15/15	ILS OR LOC Rwy 16, Amdt 9
28–May–15	VA	Richmond	Richmond Intl	5/7163	04/15/15	RNAV (GPS) Rwy 7, Amdt 1
28–May–15	VA	Richmond	Richmond Intl	5/7164	04/15/15	VOR Rwy 2, Amdt 6
28–May–15	VA	Richmond	Richmond Intl	5/7165	04/15/15	RNAV (RNP) Y Rwy 2, Orig
28–May–15	VA	Richmond	Richmond Intl	5/7166	04/15/15	ILS OR LOC Rwy 2, Amdt 2
28–May–15	VA	Richmond	Richmond Intl	5/7167	04/15/15	RNAV (GPS) Z Rwy 34, Amdt 1A
28–May–15	PA	Pittsburgh	Pittsburgh Intl	5/7174	04/15/15	RNAV (GPS) Y Rwy 28L, Amdt 4B
28–May–15	FL	St Petersburg-Clearwater.	St Pete-Clearwater Intl	5/7193	04/09/15	ILS OR LOC Rwy 18L, ILS Rwy 18L (SA CAT I), ILS Rwy 18L (CAT II), Amdt 22A
28–May–15	FL	St Petersburg-Clearwater.	St Pete-Clearwater Intl	5/7194	04/09/15	RNAV (GPS) Rwy 18L, Amdt 1B
28–May–15	KS	Goodland	Renner Fld/Goodland Muni/.	5/7230	04/15/15	VOR/DME Rwy 30, Amdt 8A

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
28–May–15	RJ	Mayaguez	Eugenio Maria De Hostos.	5/7540	04/03/15	RNAV (GPS) Rwy 9, Orig-A
28–May–15	FL	Jacksonville	Jacksonville Executive At Craig.	5/7624	04/09/15	RNAV (GPS) Rwy 14, Amdt 1
28–May–15	FL	Jacksonville	Jacksonville Executive At Craig.	5/7625	04/09/15	RNAV (GPS) Rwy 32, Amdt 1
28–May–15	FL	Jacksonville	Jacksonville Executive At Craig.	5/7626	04/09/15	VOR/DME Rwy 32, Amdt 3
28–May–15	FL	Jacksonville	Jacksonville Executive At Craig.	5/7627	04/09/15	VOR Rwy 14, Amdt 5
28–May–15	FL	Jacksonville	Jacksonville Intl	5/7629	04/09/15	ILS OR LOC Rwy 14, Amdt 7A
28–May–15	FL	Jacksonville	Jacksonville Executive At Craig.	5/7739	04/09/15	ILS OR LOC Rwy 32, Amdt 5
28–May–15	FL	Defuniak Springs.	Defuniak Springs	5/7741	04/09/15	RNAV (GPS) Rwy 27, Amdt 1
28–May–15	FL	St Petersburg-Clearwater.	St Pete-Clearwater Intl	5/7814	04/09/15	VOR Rwy 4, Amdt 1A
28–May–15	FL	Miami	Opa-Locka Executive	5/7822	04/09/15	ILS OR LOC Rwy 12, Amdt 2
28–May–15	FL	Miami	Opa-Locka Executive	5/7824	04/09/15	RNAV (GPS) Rwy 27R, Orig-A
28–May–15	FL	Miami	Opa-Locka Executive	5/7830	04/09/15	ILS OR LOC Rwy 9L, Amdt 5
28–May–15	FL	Miami	Opa-Locka Executive	5/7831	04/09/15	RNAV (GPS) Rwy 9L, Orig
28–May–15	FL	Miami	Opa-Locka Executive	5/8188	04/09/15	RNAV (GPS) Rwy 12, Orig
28–May–15	FL	Miami	Opa-Locka Executive	5/8189	04/09/15	ILS OR LOC Rwy 27R, Amdt 1A
28–May–15	FL	Fort Pierce	St Lucie County Intl	5/8203	04/09/15	RNAV (GPS) Rwy 28L, Amdt 1
28–May–15	FL	Fort Pierce	St Lucie County Intl	5/8204	04/09/15	NDB Rwy 28L, Amdt 2
28–May–15	FL	Orlando	Executive	5/8205	04/07/15	ILS OR LOC Rwy 7, Amdt 23
28–May–15	FL	Orlando	Executive	5/8206	04/07/15	RNAV (GPS) Rwy 7, Amdt 1
28–May–15	FL	Orlando	Executive	5/8207	04/07/15	RNAV (GPS) Rwy 25, Amdt 2
28–May–15	FL	St Petersburg-Clearwater.	St Pete-Clearwater Intl	5/8219	04/09/15	VOR/DME Rwy 18L, Amdt 1B
28–May–15	FL	St Petersburg-Clearwater.	St Pete-Clearwater Intl	5/8220	04/09/15	RNAV (GPS) Rwy 36R, Amdt 2B
28–May–15	DE	Dover/Cheswold.	Delaware Airpark	5/8222	04/09/15	RNAV (GPS) Rwy 9, Amdt 2
28–May–15	DE	Dover/Cheswold.	Delaware Airpark	5/8223	04/09/15	VOR Rwy 27, Amdt 6B
28–May–15	DE	Dover/Cheswold.	Delaware Airpark	5/8224	04/09/15	RNAV (GPS) Rwy 27, Amdt 1A
28–May–15	CT	Hartford	Hartford-Brainard	5/8226	04/09/15	LDA Rwy 2, Amdt 2A
28–May–15	CT	Hartford	Hartford-Brainard	5/8227	04/09/15	RNAV (GPS) Rwy 2, Orig-A
28–May–15	FL	Plant City	Plant City	5/8230	04/09/15	RNAV (GPS) Rwy 10, Amdt 1A
28–May–15	DC	Washington	Manassas Rgnl/Harry P Davis Field.	5/8232	04/09/15	RNAV (GPS) Rwy 34R, Amdt 2
28–May–15	DC	Washington	Manassas Rgnl/Harry P Davis Field.	5/8235	04/09/15	RNAV (GPS) Rwy 16R, Amdt 1A
28–May–15	AL	Jasper	Walker County-Bevill Field.	5/8332	04/09/15	RNAV (GPS) Rwy 9, Orig
28–May–15	FL	Fort Myers	Southwest Florida Intl	5/8345	04/09/15	ILS OR LOC/DME Rwy 6, Amdt 7
28–May–15	FL	Sebring	Sebring Rgnl	5/8366	04/09/15	RNAV (GPS) Rwy 32, Orig
28–May–15	FL	Sebring	Sebring Rgnl	5/8367	04/09/15	RNAV (GPS) Rwy 14, Orig-A
28–May–15	FL	Sebring	Sebring Rgnl	5/8368	04/09/15	RNAV (RNP) Rwy 19, Amdt 1
28–May–15	FL	Sebring	Sebring Rgnl	5/8369	04/09/15	RNAV (GPS) Rwy 1, Amdt 1
28–May–15	FL	Fort Myers	Southwest Florida Intl	5/8383	04/09/15	VOR/DME OR TACAN Rwy 24, Amdt 2A
28–May–15	FL	Orlando	Executive	5/8413	04/07/15	ILS OR LOC Rwy 25, Orig
28–May–15	FL	Orlando	Orlando Sanford Intl	5/8425	04/14/15	RNAV (GPS) Rwy 18, Orig-B
28–May–15	FL	Orlando	Orlando Sanford Intl	5/8426	04/14/15	RNAV (GPS) Rwy 9L, Amdt 3
28–May–15	FL	Orlando	Orlando Sanford Intl	5/8427	04/14/15	ILS OR LOC Rwy 9R, Amdt 1
28–May–15	FL	Orlando	Orlando Sanford Intl	5/8428	04/14/15	RNAV (GPS) Rwy 9R, Amdt 1
28–May–15	FL	Orlando	Orlando Sanford Intl	5/8430	04/14/15	RNAV (GPS) Rwy 27L, Orig
28–May–15	FL	Orlando	Orlando Sanford Intl	5/8431	04/14/15	RNAV (GPS) Rwy 27R, Amdt 3
28–May–15	FL	Orlando	Orlando Sanford Intl	5/8432	04/14/15	ILS OR LOC Rwy 27R, Amdt 3
28–May–15	FL	St Augustine	Northeast Florida Rgnl	5/8435	04/09/15	RNAV (GPS) Rwy 31, Amdt 1B
28–May–15	TN	Crossville	Crossville Memorial-Whitson Field.	5/8436	04/09/15	ILS Y OR LOC Y Rwy 26, Orig
28–May–15	TN	Crossville	Crossville Memorial-Whitson Field.	5/8437	04/09/15	ILS Z OR LOC Z Rwy 26, Amdt 14
28–May–15	FL	Jacksonville	Jacksonville Intl	5/8449	04/09/15	ILS OR LOC Rwy 8, ILS Rwy 8 (SA CAT I), ILS Rwy 8 (CAT II & III), Amdt 13
28–May–15	FL	Jacksonville	Jacksonville Intl	5/8450	04/09/15	RNAV (RNP) Y Rwy 32, Amdt 1
28–May–15	FL	Jacksonville	Jacksonville Intl	5/8451	04/09/15	RNAV (GPS) Z Rwy 32, Amdt 2B
28–May–15	FL	Jacksonville	Jacksonville Intl	5/8452	04/09/15	VOR/DME Rwy 32, Amdt 2A
28–May–15	FL	Jacksonville	Jacksonville Intl	5/8453	04/09/15	RNAV (GPS) Z Rwy 14, Amdt 2A
28–May–15	AZ	Safford	Safford Rgnl	5/8728	04/06/15	RNAV (GPS) Rwy 30, Orig-A
28–May–15	AZ	Safford	Safford Rgnl	5/8731	04/06/15	RNAV (GPS) Rwy 12, Orig-B

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
28–May–15	MD	Frederick	Frederick Muni	5/8849	04/07/15	ILS OR LOC Rwy 23, Amdt 5D
28–May–15	MD	Frederick	Frederick Muni	5/8850	04/07/15	RNAV (GPS) Rwy 5, Orig-B
28–May–15	MD	Frederick	Frederick Muni	5/8851	04/07/15	RNAV (GPS) Y Rwy 23, Amdt 1B
28–May–15	MD	Frederick	Frederick Muni	5/8853	04/07/15	RNAV (GPS) Z Rwy 23, Orig-D
28–May–15	MD	Frederick	Frederick Muni	5/8854	04/07/15	VOR A, Amdt 2C
28–May–15	WV	Buckhannon	Upshur County Rgnl	5/8866	04/14/15	RNAV (GPS) Rwy 29, Amdt 2
28–May–15	WV	Buckhannon	Upshur County Rgnl	5/8867	04/14/15	RNAV (GPS) Rwy 11, Amdt 2
28–May–15	WV	Buckhannon	Upshur County Rgnl	5/8868	04/14/15	VOR A, Amdt 1
28–May–15	WV	Summersville	Summersville	5/8869	04/09/15	RNAV (GPS) Rwy 4, Orig
28–May–15	VA	Clarksville	Lake Country Regional	5/8880	04/09/15	RNAV (GPS) Rwy 4, Orig-A
28–May–15	VA	Waynesboro	Eagle's Nest	5/8881	04/09/15	RNAV (GPS) Rwy 6, Orig
28–May–15	VA	Waynesboro	Eagle's Nest	5/8882	04/09/15	RNAV (GPS) Rwy 24, Orig
28–May–15	WV	Logan	Logan County	5/8883	04/09/15	RNAV (GPS) Rwy 24, Orig
28–May–15	WV	Logan	Logan County	5/8886	04/09/15	RNAV (GPS) Rwy 6, Orig
28–May–15	MO	Springfield	Springfield-Branson National.	5/9382	04/20/15	RNAV (GPS) Rwy 20, Amdt 2A
28–May–15	MO	Springfield	Springfield-Branson National.	5/9383	04/20/15	RNAV (GPS) Rwy 2, Amdt 2A

[FR Doc. 2015–12108 Filed 5–20–15; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31018; Amdt. No. 3644]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective May 21, 2015. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 21, 2015.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE., West Bldg., Ground Floor, Washington, DC 20590–0001;
2. The FAA Air Traffic Organization Service Area in which the affected airport is located;
3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,
4. The National Archives and Records Administration (NARA).

For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Richard A. Dunham III, Flight Procedure Standards Branch (AFS–420) Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary. This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment

incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 97

Air traffic control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on May 8, 2015.

John Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, (14 CFR part 97), is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
25–Jun–15	OH	Athens/Albany	Ohio University	5/0187	04/22/15	ILS OR LOC RWY 25, Amdt 1B.
25–Jun–15	OH	Athens/Albany	Ohio University	5/0198	04/22/15	NDB RWY 25, Amdt 9A.
25–Jun–15	OH	Athens/Albany	Ohio University	5/0199	04/22/15	RNAV (GPS) RWY 25, Amdt 1A.
25–Jun–15	OH	Athens/Albany	Ohio University	5/0200	04/22/15	RNAV (GPS) RWY 7, Amdt 1.
25–Jun–15	IA	Fort Dodge	Fort Dodge Rgnl	5/0389	04/21/15	RNAV (GPS) RWY 12, Amdt 1.
25–Jun–15	IA	Fort Dodge	Fort Dodge Rgnl	5/0391	04/21/15	RNAV (GPS) RWY 24, Amdt 1.
25–Jun–15	MI	Detroit	Willow Run	5/0564	04/29/15	RNAV (GPS) RWY 23R, Amdt 1.
25–Jun–15	MI	Detroit	Willow Run	5/0568	04/29/15	RNAV (GPS) RWY 5L, Amdt 1.
25–Jun–15	MI	Detroit	Willow Run	5/0571	04/29/15	RNAV (GPS) RWY 9, Amdt 2.
25–Jun–15	MI	Detroit	Willow Run	5/0572	04/29/15	VOR A, Amdt 1.
25–Jun–15	MN	Princeton	Princeton Muni	5/0865	04/29/15	RNAV (GPS) RWY 15, Orig.
25–Jun–15	MI	Detroit	Willow Run	5/0926	04/29/15	RNAV (GPS) RWY 5R, Amdt 1.
25–Jun–15	IL	Rochelle	Rochelle Muni Airport-Koritz Field.	5/0952	04/29/15	RNAV (GPS) RWY 7, Amdt 1.
25–Jun–15	MO	Stockton	Stockton Muni	5/1027	04/29/15	RNAV (GPS) RWY 19, Orig–A.
25–Jun–15	MO	Stockton	Stockton Muni	5/1028	04/29/15	RNAV (GPS) RWY 1, Orig.
25–Jun–15	MO	Stockton	Stockton Muni	5/1030	04/29/15	VOR/DME–A, Amdt 3.
25–Jun–15	GA	Macon	Middle Georgia Rgnl	5/1727	04/29/15	RNAV (GPS) RWY 23, Amdt 2A.
25–Jun–15	GA	Macon	Middle Georgia Rgnl	5/1728	04/29/15	VOR RWY 23, Amdt 4A.
25–Jun–15	GA	Macon	Middle Georgia Rgnl	5/1730	04/29/15	RNAV (GPS) RWY 31, Amdt 1A.
25–Jun–15	GA	Macon	Middle Georgia Rgnl	5/1731	04/29/15	VOR RWY 13, Amdt 10A.
25–Jun–15	GA	Macon	Middle Georgia Rgnl	5/1733	04/29/15	RNAV (GPS) RWY 13, Amdt 2A.
25–Jun–15	DE	Middletown	Summit	5/2043	04/30/15	RNAV (GPS) RWY 17, Amdt 2.
25–Jun–15	DE	Middletown	Summit	5/2044	04/30/15	RNAV (GPS) RWY 35, Amdt 1.
25–Jun–15	DE	Middletown	Summit	5/2045	04/30/15	NDB–A, Amdt 8.
25–Jun–15	FL	Fort Lauderdale	Fort Lauderdale/Hollywood Intl.	5/2080	04/30/15	ILS OR LOC RWY 10R, Orig.
25–Jun–15	FL	Fort Lauderdale	Fort Lauderdale/Hollywood Intl.	5/2082	04/30/15	RNAV (GPS) RWY 10R, Orig.
25–Jun–15	FL	Fort Lauderdale	Fort Lauderdale/Hollywood Intl.	5/2083	04/30/15	RNAV (GPS) RWY 28L, Orig.
25–Jun–15	FL	Fort Lauderdale	Fort Lauderdale/Hollywood Intl.	5/2084	04/30/15	ILS OR LOC RWY 28L, Orig.
25–Jun–15	SC	St George	St George	5/2129	04/30/15	RNAV (GPS) RWY 5, Orig.
25–Jun–15	SD	Pine Ridge	Pine Ridge	5/2159	04/29/15	RNAV (GPS) RWY 30, Orig–A.
25–Jun–15	TX	Amarillo	Rick Husband Amarillo Intl.	5/2163	04/29/15	ILS OR LOC RWY 4, Amdt 22C.

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
25–Jun–15	PA	Towanda	Bradford County	5/2835	04/30/15	RNAV (GPS) RWY 23, Orig.
25–Jun–15	CO	Wray	Wray Muni	5/2988	04/29/15	RNAV (GPS) RWY 35, Amdt 1.
25–Jun–15	CO	Wray	Wray Muni	5/2992	04/29/15	RNAV (GPS) RWY 17, Amdt 1.
25–Jun–15	GA	Augusta	Daniel Field	5/3440	04/29/15	NDB RWY 11, Amdt 4.
25–Jun–15	GA	Augusta	Daniel Field	5/3442	04/29/15	NDB/DME–C, Amdt 4.
25–Jun–15	GA	Augusta	Daniel Field	5/3443	04/29/15	VOR/DME–B, Amdt 1.
25–Jun–15	GA	Augusta	Daniel Field	5/3444	04/29/15	RADAR–1, Amdt 7B.
25–Jun–15	FL	Crestview	Bob Sikes	5/3455	04/30/15	RNAV (GPS) RWY 17, Orig.
25–Jun–15	FL	Crestview	Bob Sikes	5/3456	04/30/15	RNAV (GPS) RWY 35, Amdt 1A.
25–Jun–15	MS	West Point	Mccharen Field	5/3458	04/30/15	RNAV (GPS) RWY 36, Orig–A.
25–Jun–15	MS	West Point	Mccharen Field	5/3459	04/30/15	RNAV (GPS) RWY 18, Orig.
25–Jun–15	GA	Nahunta	Brantley County	5/3472	04/30/15	RNAV (GPS) Y RWY 1, Orig.
25–Jun–15	GA	Nahunta	Brantley County	5/3473	04/30/15	RNAV (GPS) Z RWY 1, Orig.
25–Jun–15	GA	Nahunta	Brantley County	5/3474	04/30/15	RNAV (GPS) Y RWY 19, Orig.
25–Jun–15	GA	Nahunta	Brantley County	5/3475	04/30/15	RNAV (GPS) Z RWY 19, Orig.
25–Jun–15	MD	Ocean City	Ocean City Muni	5/4248	04/30/15	RNAV (GPS) RWY 2, Orig–A.
25–Jun–15	MD	Ocean City	Ocean City Muni	5/4250	04/30/15	RNAV (GPS) RWY 14, Orig–E.
25–Jun–15	MD	Ocean City	Ocean City Muni	5/4252	04/30/15	RNAV (GPS) RWY 32, Orig–A.
25–Jun–15	TX	Crockett	Houston County	5/5779	04/21/15	RNAV (GPS) RWY 2, Orig–A.
25–Jun–15	IL	Chicago/West Chicago	Dupage	5/6878	04/21/15	RNAV (GPS) RWY 2L, Orig–B.
25–Jun–15	IL	Chicago/West Chicago	Dupage	5/6879	04/21/15	VOR RWY 2L, Amdt 1A.
25–Jun–15	IL	Chicago/West Chicago	Dupage	5/6880	04/21/15	ILS OR LOC RWY 10, Amdt 8A.
25–Jun–15	IL	Chicago/West Chicago	Dupage	5/6881	04/21/15	RNAV (GPS) RWY 10, Orig–B.
25–Jun–15	IL	Chicago/West Chicago	Dupage	5/6882	04/21/15	VOR RWY 10, Amdt 12B.
25–Jun–15	IL	Chicago/West Chicago	Dupage	5/6883	04/21/15	RNAV (GPS) RWY 20R, Amdt 1B.
25–Jun–15	IL	Chicago/West Chicago	Dupage	5/6884	04/21/15	ILS OR LOC RWY 2L, Amdt 2B.
25–Jun–15	IN	Bloomington	Monroe County	5/7415	04/21/15	VOR/DME RWY 6, Amdt 19A.
25–Jun–15	WI	Oshkosh	Wittman Rgnl	5/7416	04/21/15	RNAV (GPS) RWY 36, Amdt 2.
25–Jun–15	FL	Naples	Naples Muni	5/7557	04/29/15	VOR RWY 5, Amdt 5.
25–Jun–15	NC	Wilmington	Wilmington Intl	5/7591	04/30/15	TACAN–A, Orig–A.
25–Jun–15	OH	Carrollton	Carroll County-Tolson	5/7778	04/21/15	RNAV (GPS) RWY 7, Orig.
25–Jun–15	MS	Starkville	George M Bryan	5/7853	04/30/15	RNAV (GPS) RWY 18, Amdt 2.
25–Jun–15	MS	Starkville	George M Bryan	5/7854	04/30/15	RNAV (GPS) RWY 36, Amdt 3A.
25–Jun–15	MS	Starkville	George M Bryan	5/7855	04/30/15	LOC/DME RWY 36, Amdt 1.
25–Jun–15	TX	Gladewater	Gladewater Muni	5/8044	04/21/15	VOR/DME RWY 14, Amdt 3.
25–Jun–15	TX	Gladewater	Gladewater Muni	5/8045	04/21/15	RNAV (GPS) RWY 14, Orig.
25–Jun–15	TX	Gladewater	Gladewater Muni	5/8046	04/21/15	RNAV (GPS) RWY 32, Orig.
25–Jun–15	CT	Bridgeport	Igor I Sikorsky Memorial.	5/8123	04/30/15	RNAV (GPS) RWY 24, Orig.
25–Jun–15	MA	Plymouth	Plymouth Muni	5/8865	04/30/15	RNAV (GPS) RWY 24, Orig–A.
25–Jun–15	MA	Plymouth	Plymouth Muni	5/8870	04/30/15	ILS OR LOC/DME RWY 6, Amdt 1C.
25–Jun–15	MA	Plymouth	Plymouth Muni	5/8871	04/30/15	RNAV (GPS) RWY 6, Amdt 1A.
25–Jun–15	TX	Harlingen	Valley Intl	5/9373	04/21/15	VOR/DME RWY 17R, Orig.
25–Jun–15	MI	Beaver Island	Beaver Island	5/9380	04/21/15	NDB RWY 27, Amdt 1.
25–Jun–15	MI	Beaver Island	Beaver Island	5/9381	04/21/15	RNAV (GPS) RWY 27, Orig.
25–Jun–15	KS	Marysville	Marysville Muni	5/9535	04/21/15	RNAV (GPS) RWY 34, Orig–A.
25–Jun–15	AL	Greenville	Mac Crenshaw Memorial.	5/9665	04/29/15	RNAV (GPS) RWY 32, Orig–A.
25–Jun–15	AL	Greenville	Mac Crenshaw Memorial.	5/9667	04/29/15	RNAV (GPS) RWY 14, Orig–A.
25–Jun–15	PA	Punxsutawney	Punxsutawney Muni	5/9674	04/29/15	VOR/DME–A, Amdt 1.
25–Jun–15	FL	Wauchula	Wauchula Muni	5/9678	04/29/15	RNAV (GPS) RWY 18, Amdt 1A.
25–Jun–15	FL	Wauchula	Wauchula Muni	5/9679	04/29/15	RNAV (GPS) RWY 36, Amdt 1A.
25–Jun–15	TX	Port Lavaca	Calhoun County	5/9682	04/21/15	RNAV (GPS) RWY 14, Amdt 2.
25–Jun–15	TX	Port Lavaca	Calhoun County	5/9683	04/21/15	RNAV (GPS) RWY 32, Orig.
25–Jun–15	TX	Port Lavaca	Calhoun County	5/9684	04/21/15	VOR/DME–A, Amdt 4A.
25–Jun–15	VA	Norfolk	Hampton Roads Executive.	5/9718	04/29/15	RNAV (GPS) RWY 10, Orig.
25–Jun–15	MN	Pinecreek	Piney Pinecreek Border.	5/9749	04/21/15	NDB RWY 33, Amdt 1.
25–Jun–15	MN	Pinecreek	Piney Pinecreek Border.	5/9751	04/21/15	RNAV (GPS) RWY 33, Orig.
25–Jun–15	MN	Pinecreek	Piney Pinecreek Border.	5/9755	04/21/15	RNAV (GPS) RWY 15, Orig.
25–Jun–15	NY	Saranac Lake	Adirondack Rgnl	5/9826	04/30/15	LOC Y RWY 23, Orig–A.
25–Jun–15	NY	Saranac Lake	Adirondack Rgnl	5/9829	04/30/15	RNAV (GPS) RWY 5, Amdt 1A.
25–Jun–15	NY	Saranac Lake	Adirondack Rgnl	5/9830	04/30/15	VOR/DME RWY 5, Amdt 4A.
25–Jun–15	NY	Saranac Lake	Adirondack Rgnl	5/9831	04/30/15	RNAV (GPS) RWY 9, Orig–A.
25–Jun–15	NY	Saranac Lake	Adirondack Rgnl	5/9832	04/30/15	VOR RWY 9, Amdt 2A.
25–Jun–15	PA	Philadelphia	Northeast Philadelphia	5/9837	04/29/15	RNAV (GPS) RWY 15, Amdt 1A.
25–Jun–15	PA	Philadelphia	Northeast Philadelphia	5/9838	04/29/15	RNAV (GPS) RWY 33, Amdt 1A.
25–Jun–15	PA	Bellefonte	Bellefonte	5/9839	04/29/15	RNAV (GPS) RWY 7, Orig.

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
25–Jun–15	PA	Bellefonte	Bellefonte	5/9841	04/29/15	RNAV (GPS) RWY 25, Orig.
25–Jun–15	FL	Merritt Island	Merritt Island	5/9884	04/30/15	RNAV (GPS) RWY 11, Amdt 1B.
25–Jun–15	PA	Meadville	Port Meadville	5/9919	04/29/15	RNAV (GPS) RWY 7, Amdt 1.
25–Jun–15	PA	Meadville	Port Meadville	5/9922	04/29/15	VOR RWY 7, Amdt 8.
25–Jun–15	PA	Meadville	Port Meadville	5/9926	04/29/15	LOC RWY 25, Amdt 6.
25–Jun–15	PA	Meadville	Port Meadville	5/9927	04/29/15	RNAV (GPS) RWY 25, Amdt 1.
25–Jun–15	NY	Oneonta	Oneonta Muni	5/9932	04/29/15	RNAV (GPS) RWY 6, Orig.
25–Jun–15	NY	Oneonta	Oneonta Muni	5/9933	04/29/15	RNAV (GPS) RWY 24, Orig.
25–Jun–15	PA	Clarion	Clarion County	5/9937	04/30/15	RNAV (GPS) RWY 24, Amdt 1A.
25–Jun–15	PA	Clarion	Clarion County	5/9938	04/30/15	VOR A, Amdt 3.
25–Jun–15	NJ	Princeton/Rocky Hill	Princeton	5/9946	04/29/15	RNAV (GPS) RWY 28, Orig.
25–Jun–15	NJ	Princeton/Rocky Hill	Princeton	5/9950	04/29/15	VOR–A, Amdt 7A.
25–Jun–15	NY	Saranac Lake	Adirondack Rgnl	5/9968	04/30/15	ILS OR LOC/DME Z RWY 23, Amdt 9A.
25–Jun–15	NY	Saranac Lake	Adirondack Rgnl	5/9969	04/30/15	RNAV (GPS) RWY 23, Orig–B.

[FR Doc. 2015–12110 Filed 5–20–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2015–0312]

Drawbridge Operation Regulation; St. Croix River, Stillwater, MN

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulations.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Stillwater Highway Drawbridge across the St. Croix River, mile 23.4, at Stillwater, Minnesota. The deviation is necessary due to increased vehicular traffic after a local Independence Day fireworks display. The deviation allows the bridge to be in the closed-to-navigation position to clear increased traffic congestion.

DATES: This deviation is effective from 10 p.m. to 11:30 p.m., July 4, 2015.

ADDRESSES: The docket for this deviation, [USCG–2014–0312] is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Eric A. Washburn, Bridge Administrator, Western Rivers, Coast Guard; telephone 314–269–2378, email *Eric.Washburn@uscg.mil.* If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Minnesota Department of Transportation requested a temporary deviation for the Stillwater Highway Drawbridge, across the St. Croix River, mile 23.4, at Stillwater, Minnesota to remain in the closed-to-navigation position on July 4, 2015 as follows:

From 10 p.m. to 11:30 p.m. on July 4, 2015, the lift span will remain in the closed-to-navigation position.

The Stillwater Highway Drawbridge currently operates in accordance with 33 CFR 117.667(b), which states specific seasonal and commuter hours operating requirements.

There are no alternate routes for vessels transiting this section of the St. Croix River.

The Stillwater Highway Drawbridge, in the closed-to-navigation position, provides a vertical clearance of 10.9 feet above normal pool. Navigation on the waterway consists primarily of commercial sightseeing/dinner cruise boats and recreational watercraft. This temporary deviation has been coordinated with waterway users. No objections were received.

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

Dated: May 18, 2015.

Eric A. Washburn,

Bridge Administrator, Western Rivers.

[FR Doc. 2015–12353 Filed 5–20–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 150406346–5346–01]

RIN 0648–BF03

International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Fishing Effort Limits in Purse Seine Fisheries for 2015

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

ACTION: Interim rule; request for comments.

SUMMARY: This interim rule establishes a limit for calendar year 2015 on fishing effort by U.S. purse seine vessels in the U.S. exclusive economic zone (U.S. EEZ) and on the high seas between the latitudes of 20° N. and 20° S. in the area of application of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention). The limit is 1,828 fishing days. This action is necessary for the United States to implement provisions of a conservation and management measure adopted by the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC or Commission) and to satisfy the obligations of the United States under the Convention, to which it is a Contracting Party.

DATES: Effective on May 21, 2015; comments must be submitted in writing by June 5, 2015.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2015–0058, and the regulatory

impact review (RIR) prepared for the interim rule, 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-2015-0058,*

2. Click the ''Comment Now!'' icon, complete the required fields, and

3. Enter or attach your comments.

—OR—

• *Mail:* Submit written comments to Michael D. Tosatto, Regional Administrator, NMFS, Pacific Islands Regional Office (PIRO), 1845 Wasp Blvd., Building 176, Honolulu, HI 96818.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, might 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 and address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Copies of the RIR and the environmental assessment prepared for National Environmental Policy Act (NEPA) purposes are available at *www.regulations.gov* or may be obtained from Michael D. Tosatto, Regional Administrator, NMFS PIRO (see address above).

FOR FURTHER INFORMATION CONTACT: Tom Graham, NMFS PIRO, 808–725–5032.

SUPPLEMENTARY INFORMATION:

Background on the Convention

A map showing the boundaries of the area of application of the Convention (Convention Area), which comprises the majority of the western and central Pacific Ocean (WCPO), can be found on the WCPFC Web site at: *www.wcpfc.int/doc/convention-area-map.* The Convention focuses on the conservation and management of highly migratory species (HMS) and the management of fisheries for HMS. The objective of the Convention is to ensure, through effective management, the long-term conservation and sustainable use of HMS in the WCPO. To accomplish this objective, the Convention established the Commission. The Commission includes Members, Cooperating Non-members, and Participating Territories (hereafter, collectively ''members''). The United States is a Member. American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands are Participating Territories.

As a Contracting Party to the Convention and a Member of the Commission, the United States is obligated to implement the decisions of the Commission. The Western and Central Pacific Fisheries Convention Implementation Act (16 U.S.C. 6901 *et seq.*; WCPFC Implementation Act) authorizes the Secretary of Commerce, in consultation with the Secretary of State and the Secretary of the Department in which the United States Coast Guard is operating (currently the Department of Homeland Security), to promulgate such regulations as may be necessary to carry out the obligations of the United States under the Convention, including implementation of the decisions of the Commission. The WCPFC Implementation Act further provides that the Secretary of Commerce shall ensure consistency, to the extent practicable, of fishery management programs administered under the WCPFC Implementation Act and the Magnuson-Stevens Fishery Conservation and Management Act (MSA; 16 U.S.C. 1801 *et seq.*), as well as other specific laws (see 16 U.S.C. 6905(b)). The Secretary of Commerce has delegated the authority to promulgate regulations under the WCPFC Implementation Act to NMFS.

WCPFC Decision on Tropical Tunas

At its Eleventh Regular Session, in December 2014, the WCPFC adopted Conservation and Management Measure (CMM) 2014–01, ''Conservation and Management Measure for Bigeye, Yellowfin and Skipjack Tuna in the Western and Central Pacific Ocean.'' CMM 2014–01 is the most recent in a series of CMMs for the management of tropical tuna stocks under the purview of the Commission. It is a successor to CMM 2013–01, adopted in December 2013. These and other CMMs are available at: *www.wcpfc.int/conservation-and-management-measures.*

The stated general objective of CMM 2014–01 and several of its predecessor CMMs is to ensure that the stocks of bigeye tuna (*Thunnus obesus*), yellowfin tuna (*Thunnus albacares*), and skipjack tuna (*Katsuwonus pelamis*) in the WCPO are, at a minimum, maintained at levels capable of producing their maximum sustainable yield as qualified by relevant environmental and economic factors. The CMM includes specific objectives for each of the three stocks: For each, the fishing mortality rate is to be reduced to or maintained at levels no greater than the fishing mortality rate associated with maximum sustainable yield.

CMM 2014–01 went into effect February 3, 2015, and is generally applicable for the 2015–2017 period. The CMM includes provisions for purse seine vessels, longline vessels, and other types of vessels that fish for HMS. The CMM's provisions for purse seine vessels include limits on the allowable number of fishing vessels, limits on the allowable level of fishing effort, restrictions on the use of fish aggregating devices, requirements to retain all bigeye tuna, yellowfin tuna, and skipjack tuna except in specific circumstances, and requirements to carry vessel observers.

The provisions of CMM 2014–01 apply on the high seas and in EEZs in the Convention Area; they do not apply in territorial seas or archipelagic waters.

Paragraphs 20–27 of CMM 2014–01 require that WCPFC members limit the amount of fishing effort by purse seine vessels in certain areas of the Convention Area between the latitudes of 20° N. and 20° S. Paragraph 23 contains the relevant provisions for the U.S. EEZ, and paragraph 25 contains the relevant provisions for U.S. fishing vessels on the high seas.

Paragraph 23 of CMM 2014–01 requires coastal members like the United States to ''establish effort limits, or equivalent catch limits for purse seine fisheries within their EEZs that reflect the geographical distributions of skipjack, yellowfin, and bigeye tunas, and are consistent with the objectives for those species.'' It further states, ''Those coastal States that have already notified limits to the Commission shall restrict purse seine effort and/or catch within their EEZs in accordance with those limits.'' The United States has regularly notified the Commission of its purse seine effort limits for the U.S. EEZ since the limits were first established in 2009 (in a final rule published August 4, 2009; 74 FR 38544). Accordingly, the applicable limit for the U.S. EEZ is the same as that implemented by NMFS since 2009, which is 558 fishing days per year. Under paragraph 23 of CMM 2014–01, this limit is applicable from 2015 through 2017.

Paragraph 25 of CMM 2014–01 requires that U.S. purse seine fishing effort on the high seas in 2015 be limited to 1,270 fishing days. It does not include limits for the years after 2015, instead stating that the Commission will review the 2015 limits in 2015 and agree on limits for later years.

The Action

This interim rule is limited to implementing CMM 2014–01's provisions on allowable levels of fishing effort by purse seine vessels on the high seas and in the U.S. EEZ in the Convention Area, and only for 2015. The CMM's other provisions would be implemented through one or more separate rules, as appropriate. NMFS is implementing the 2015 purse seine effort limits separately from other provisions of the CMM to ensure that the limits go into effect in U.S. regulations before the prescribed limits are exceeded by the fleet. Based on preliminary data available to date, NMFS expects that this could occur as early as June.

As in previous rules to implement similar Commission-mandated limits on purse seine fishing effort, this interim rule continues to implement the applicable limits for the U.S. EEZ (paragraph 23 of CMM 2014–01) and the high seas (paragraph 25 of CMM 2014–01) such that they apply to a single area, without regard to the boundary between the U.S. EEZ and the high seas. The separation in CMM 2014–01 of the high seas-related provisions from the EEZ-related provisions does not reflect differing management needs or objectives in the two respective areas, but instead reflects where, under the CMM, the management responsibility for the two areas lies. CMM 2014–01 puts the responsibility to limit fishing effort in EEZs on coastal States, while the responsibility to limit fishing effort in areas of high seas is put on flag States. In this case, the United States is both a coastal State and a flag State and will satisfy its dual responsibilities by implementing a rule that combines the two areas for the purpose of limiting purse seine fishing effort. NMFS considered both the action alternative that would combine the two areas and another alternative that would not (see the EA and the RIR for comparisons of the two alternatives). Because both alternatives would accomplish the objective of controlling fishing effort by the required amount (*i.e.,* by U.S. purse seine vessels operating on the high seas and by purse seine vessels in areas under U.S. jurisdiction, collectively), and because the alternative of combining the two areas is expected to result in greater operational flexibility to affected purse seine vessels and lesser adverse economic impacts, NMFS is implementing the alternative that would combine the two areas. This combined area (within the Convention Area between the latitudes of 20° N. and 20° S.) is referred to in U.S. regulations as the Effort Limit Area for Purse Seine, or ELAPS (see 50 CFR 300.211).

The 2015 purse seine fishing effort limit for the ELAPS is formulated as in previous rules to establish limits for the ELAPS: The applicable limit for the U.S. EEZ portion of the ELAPS, 558 fishing days per year, is combined with the applicable limit for the high seas portion of the ELAPS, 1,270 fishing days per year, resulting in a combined limit of 1,828 fishing days in the ELAPS for calendar year 2015.

The meaning of ''fishing day'' is defined at 50 CFR 300.211; that is, any day in which a fishing vessel of the United States equipped with purse seine gear searches for fish, deploys a FAD, services a FAD, or sets a purse seine, with the exception of setting a purse seine solely for the purpose of testing or cleaning the gear and resulting in no catch.

As established in existing regulations for purse seine fishing effort limits in the ELAPS, NMFS will monitor the number of fishing days spent in the ELAPS using data submitted in logbooks and other available information. If and when NMFS determines that the limit of 1,828 fishing days is expected to be reached by a specific future date, it will publish a notice in the **Federal Register** announcing that the purse seine fishery in the ELAPS will be closed starting on a specific future date and will remain closed until the end of calendar year 2015. NMFS will publish that notice at least seven days in advance of the closure date (see 50 CFR 300.223(a)(2)). Starting on the announced closure date, and for the remainder of calendar year 2015, it will be prohibited for U.S. purse seine vessels to fish in the ELAPS (see CFR 300.223(a)(3)).

This interim rule is being issued without prior notice or prior public comment because of the unusually high level of U.S. purse seine fishing effort in the ELAPS so far in 2015. To satisfy the international obligations of the United States as a Contracting Party to the Convention, NMFS must establish the applicable limits for 2015 before they are exceeded, which, based on preliminary data available to date, NMFS expects could occur as early as June of 2015. NMFS would not be able to establish the applicable limits for 2015 if it issued and considered public comments on a proposed rule prior to issuing a final rule. Nonetheless, NMFS will consider public comments on this interim rule and issue a final rule, as appropriate. NMFS is particularly interested in comments related to whether the Commission-mandated purse seine fishing effort limit for the high seas should be combined with the Commission-mandated purse seine fishing effort limit for the U.S. EEZ, as NMFS has done in this interim rule, or whether NMFS should establish separate limits for the high seas and the U.S. EEZ.

Petition for Rulemaking

On May 12, 2015, as this interim rule was being finalized for publication, NMFS received a petition for rulemaking from Tri Marine Management Company, LLC. The company requested, first, that NOAA undertake an emergency rulemaking to implement the 2015 ELAPS limits for fishing days on the high seas, and second, that NOAA issue a rule exempting from that high seas limit any U.S.-flagged purse seine vessel that, pursuant to contract or declaration of intent, delivers or will deliver at least 50 percent of its catch to tuna processing facilities based in American Samoa. NMFS will consider and respond to the petition separately from this interim rule.

Classification

The Administrator, Pacific Islands Region, NMFS, has determined that this interim rule is consistent with the WCPFC Implementation Act and other applicable laws.

Administrative Procedure Act

There is good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment on this action, because prior notice and the opportunity for public comment would be contrary to the public interest. This rule establishes a limit on purse seine fishing effort for 2015 that is identical to the limit in place for 2014. Affected entities have been subject to fishing effort limits in the affected area—the ELAPS—since 2009, and are expecting imminent publication of the 2015 fishing effort limits. Because the amount of U.S. purse seine fishing effort in the ELAPS so far in 2015 has been greater than in prior years, it is critical that NMFS publish the limit for 2015 as soon as possible to ensure it is not exceeded and the United States complies with its international legal obligations with respect to CMM 2014–01. Based on preliminary data available to date, NMFS expects that the applicable limit of 1,828 fishing days in the ELAPS could be reached as early as June of 2015. Delaying this rule to allow for advance notice and public comment would bring a substantial risk that more than 1,828 fishing days would be spent in the ELAPS in 2015, constituting non-compliance by the United States with respect to the purse seine fishing effort

limit provisions of CMM 2014–01. Because a delay in implementing this limit for 2015 could result in the United States violating its international legal obligations with respect to the purse seine fishing effort limit provisions of CMM 2014–01, which are important for the conservation and management of tropical tuna stocks in the WCPO, allowing advance notice and the opportunity for public comment would be contrary to the public interest. NMFS will, however, consider public comments received on this interim rule and issue a final rule, as appropriate.

For the reasons articulated above, there is also good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date for this rule. As described above, NMFS must implement the purse seine fishing effort provisions of CMM 2014–01 as soon as possible, in order to ensure that the applicable effort limits are not exceeded. These fishing effort provisions are intended to reduce or otherwise control fishing pressure on bigeye tuna, yellowfin tuna, and skipjack tuna in the WCPO in order to maintain or restore those stocks at levels capable of producing maximum sustainable yield on a continuing basis. Failure to immediately implement these provisions could result in excessive fishing pressure on these stocks, in violation of international and domestic legal obligations.

Coastal Zone Management Act (CZMA)

NMFS has determined that this rule will be implemented in a manner consistent, to the maximum extent practicable, with the enforceable policies of the approved coastal zone management programs of American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the State of Hawaii. These determinations have been submitted for review by the responsible territorial and state agencies under section 307 of the CZMA.

Executive Order 12866

This interim rule has been determined to be not significant for purposes of Executive Order 12866.

Regulatory Flexibility Act

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are inapplicable. Therefore, no final regulatory flexibility analysis was required and none has been prepared.

List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: May 15, 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 300 is amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart O—Western and Central Pacific Fisheries for Highly Migratory Species

■ 1. The authority citation for 50 CFR part 300, subpart O, continues to read as follows:

Authority: 16 U.S.C. 6901 *et seq.*

■ 2. In § 300.223, paragraph (a)(1) is revised to read as follows:

§ 300.223 Purse seine fishing restrictions.

* * * * *

(a) * * *

(1) For calendar year 2015 there is a limit of 1,828 fishing days.

* * * * *

[FR Doc. 2015–12286 Filed 5–20–15; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 80, No. 98

Thursday, May 21, 2015

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–0900; Directorate Identifier 2015–NE–12–AD]

RIN 2120–AA64

Airworthiness Directives; Turbomeca S.A. Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Turbomeca S.A. Arrius 2F turboshaft engines with a certain part number oil pump installed. This proposed AD was prompted by cases of deterioration of the gas generator front bearing due to a link loss between the pump driver and the oil pump shaft. This proposed AD would require inspection, and if necessary, replacement before further flight of the oil pump driver assembly and/or the oil pump shaft, or the oil pump itself. We are proposing this AD to prevent link loss between the pump driver and the oil pump shaft, which could lead to an engine in-flight shutdown, forced landing, and damage to the helicopter.

DATES: We must receive comments on this proposed AD by July 20, 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.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

For service information identified in this proposed AD, contact Turbomeca S.A., 40220 Tarnos, France; phone: 33 (0)5 59 74 40 00; telex: 570 042; fax: 33 (0)5 59 74 45 15. You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

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–2015–0900; 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 mandatory continuing airworthiness information (MCAI), the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Philip Haberlen, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7770; fax: 781–238–7199; email: *philip.haberlen@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–2015–0900; Directorate Identifier 2015–NE–12–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 with FAA personnel concerning this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2015–0049, dated March 17, 2015 (Corrected May 7, 2015) (referred to hereinafter as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> A risk of an in-flight shutdown (IFSD) has been identified on an ARRIUS 2F engine, due to deterioration of gas generator front bearing. This could be the result of lack of lubrication, due to a link loss between pump driver and oil pump shaft.
>
> This condition, if not detected and corrected, could lead to cases of IFSD, possibly resulting in forced landing with consequent damage to the helicopter and injury to occupants.

You may obtain further information by examining the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–0900.

Related Service Information Under 1 CFR Part 51

Turbomeca S.A. has issued Mandatory Service Bulletin (MSB) No. 319 79 4834, Version B, dated October 21, 2014. The MSB describes procedures for inspecting the oil pump driver assembly on the oil pump shaft, the pump driver splines, and the oil pump splines. 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 France, and is approved for operation in the United States. Pursuant to our bilateral agreement with the European Community, EASA has notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design. This proposed AD would require inspection, and if necessary, replacement before further flight, of the oil pump driver

assembly and/or the oil pump shaft, or the oil pump itself.

Costs of Compliance

We estimate that this proposed AD affects about 96 engines installed on helicopters of U.S. registry. We also estimate that it would take about two hours per product to comply with this proposed AD. The average labor rate is $85 per hour. Required parts would cost about $17,312 per engine. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $1,678,272.

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

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

List of Subjects in 14 CFR Part 39

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

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):

Turbomeca S.A.: Docket No. FAA–2015–0900; Directorate Identifier 2015–NE–12–AD.

(a) Comments Due Date

We must receive comments by July 20, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Turbomeca S.A. Arrius 2F turboshaft engines with oil pump, part number (P/N) 0319155050, installed, except for:

(1) Engines, equipped with an oil pump, P/N 0319155050, that were overhauled in a Turbomeca repair center after January 1, 2013, and

(2) Engines with a serial number of 34776 or higher, provided that the oil pump was not replaced on that engine since the first flight of that engine on a helicopter.

(d) Reason

This AD was prompted by cases of deterioration of the gas generator front bearing due to a link loss between the pump driver and the oil pump shaft. We are issuing this AD to prevent link loss between the pump driver and the oil pump shaft, which could lead to an engine in-flight shutdown, forced landing, and damage to the helicopter.

(e) Actions and Compliance

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

(1) Inspect the pump driver assembly on the oil pump shaft, the pump driver splines, and the oil pump splines, using paragraph 2.4.2, Operating Instructions, of Turbomeca S.A. Mandatory Service Bulletin (MSB) No. 319 79 4834, Version B, dated October 21, 2014, as follows:

(i) After the effective date of this AD, for engines with less than 250 engine hours (EH), since new, since last overhaul, or since last installation of an affected oil pump, whichever occurred later, inspect before exceeding 300 EH since new, since last overhaul, or since last installation of an affected oil pump, as applicable.

(ii) After the effective date of this AD, for engines with 250 EH or more, but less than 300 EH, accumulated since new, since last overhaul, or since last installation of an affected oil pump, whichever occurred later, inspect within 50 EH.

(iii) After the effective date of this AD, for engines with 300 EH or more, but less than 800 EH, accumulated since new, since last overhaul, or since last installation of an affected oil pump, whichever occurred later, inspect within 100 EH.

(iv) After the effective date of this AD, for engines with 800 EH or more, accumulated since new, since last overhaul, or since last installation of an affected oil pump, whichever occurred later, inspect during the next scheduled 500 EH inspection.

(2) If any oil pump drive assembly and/or oil pump shaft, or the oil pump itself, fails the inspection required by this AD, then before further flight, replace the failed part(s) with part(s) eligible for installation.

(3) The instruction to report inspection results and the instruction to return a compliance certificate to Turbomeca S.A. as stated in paragraph 2.4.2, Operating Instructions, of Turbomeca S.A. MSB No. 319 79 4834, Version B, dated October 21, 2014, are not required by this AD.

(f) Credit for Previous Action

If you inspected the oil pump driver assembly on the oil pump shaft, the pump driver splines, and the oil pump splines, and replaced any part(s) with part(s) eligible for installation before the effective date of this AD in accordance with Turbomeca S.A. MSB No. 319 79 4834, Version A, dated November 25, 2013, you met the requirements of this AD.

(g) Alternative Methods of Compliance (AMOCs)

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

(h) Related Information

(1) For more information about this AD, contact Philip Haberlen, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7770; fax: 781–238–7199; email: *philip.haberlen@faa.gov.*

(2) Refer to MCAI European Aviation Safety Agency AD 2015–0049, dated March 17, 2015 (Corrected May 7, 2015), for more information. 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–2015–0900.

(3) Turbomeca S.A. MSB No. 319 79 4834, Version B, dated October 21, 2014, can be obtained from Turbomeca S.A., using the contact information in paragraph (h)(4) of this proposed AD.

(4) For service information identified in this proposed AD, contact Turbomeca, S.A., 40220 Tarnos, France; phone: 33 (0)5 59 74 40 00; telex: 570 042; fax: 33 (0)5 59 74 45 15.

(5) You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

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

Colleen M. D'Alessandro,

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

[FR Doc. 2015–12039 Filed 5–20–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2015–1394; Airspace Docket No. 15–ACE–4]

Proposed Amendment of Class E Airspace; Tekamah, Nebraska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Tekamah Municipal Airport, Tekamah, NE. A Class E extension is no longer required due to the decommissioning of the Tekamah VHF Omni-directional radio range (VOR) facility and its associated standard instrument approach procedures (SIAPs). This would enhance the safety and management of instrument flight rules (IFR) operations at the airport.

DATES: 0901 UTC. Comments must be received on or before July 6, 2015.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2015–1394/Airspace Docket No. 15–ACE–4, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FAA Order 7400.9Y, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this proposed incorporation by reference material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15. For further information, you can contact the Airspace Policy and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8783.

FOR FURTHER INFORMATION CONTACT: Roger Waite, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone: (817) 321–7652.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2015–1394/Airspace Docket No. 15–ACE–4.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Availability and Summary of Documents Proposed for Incorporation by Reference

This document proposes to amend FAA Order 7400.9Y, Airspace Designations and Reporting Points, dated August 6, 2014, and effective September 15, 2014. FAA Order 7400.9Y is publicly available as listed in the **ADDRESSES** section of this proposed rule. FAA Order 7400.9Y lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by modifying Class E airspace extending upward from 700 feet above the surface to within a 6.4-mile radius of Tekamah Municipal Airport, Tekamah, NE., reconfiguring the airspace for standard instrument approach procedures at the airport. The Tekamah VOR facility has been decommissioned and its associated SIAPs have been canceled. Controlled airspace is necessary for the safety and management of IFR operations for other SIAPs at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9Y, dated August 6, 2014 and effective September 15, 2014, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant

preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend controlled airspace at the Iowa airports listed in this NPRM.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113, 40120, E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Y, Airspace Designations and Reporting Points, dated August 6, 2014 and effective September 15, 2014, is amended as follows:

Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE NE E5 Tekamah, NE [Amended]

Tekamah Municipal Airport, NE
(Lat. 41°45′49″ N., long. 96°10′41″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Tekamah Municipal Airport.

Issued in Fort Worth, TX, on May 11, 2015.

Robert W. Beck,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2015–12105 Filed 5–20–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–413]

Schedules of Controlled Substances: Temporary Placement of Acetyl Fentanyl into Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of intent.

SUMMARY: The Administrator of the Drug Enforcement Administration is issuing this notice of intent to temporarily schedule the synthetic opioid, *N*-(1-phenethylpiperidin-4-yl)-*N*-phenylacetamide (acetyl fentanyl), into schedule I pursuant to the temporary scheduling provisions of the Controlled Substances Act. This action is based on a finding by the Administrator that the placement of this opioid substance into schedule I of the Controlled Substances Act is necessary to avoid an imminent hazard to the public safety. Any final order will impose the administrative, civil, and criminal sanctions and regulatory controls applicable to schedule I substances under the Controlled Substances Act on the manufacture, distribution, possession, importation, exportation, research, and conduct of instructional activities of this opioid substance.

DATES: May 21, 2015.

FOR FURTHER INFORMATION CONTACT: John R. Scherbenske, Office of Diversion Control, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152, Telephone: (202) 598–6812.

SUPPLEMENTARY INFORMATION: Any final order will be published in the **Federal Register** and may not be effective prior to June 22, 2015.

Legal Authority

The Drug Enforcement Administration (DEA) implements and enforces titles II and III of the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended. 21 U.S.C. 801–971. Titles II and III are referred to as the ''Controlled Substances Act'' and the ''Controlled Substances Import and Export Act,'' respectively, and are collectively referred to as the ''Controlled Substances Act'' or the ''CSA'' for the purpose of this action. The DEA publishes the implementing regulations for these statutes in title 21 of the Code of Federal Regulations (CFR), chapter II. The CSA and its implementing regulations are designed to prevent, detect, and eliminate the diversion of controlled substances and listed chemicals into the illicit market while providing for the legitimate medical, scientific, research, and industrial needs of the United States. Controlled substances have the potential for abuse and dependence and are controlled to protect the public health and safety.

Under the CSA, every controlled substance is classified into one of five schedules based upon its potential for abuse, its currently accepted medical use in treatment in the United States, and the degree of dependence the drug or other substance may cause. 21 U.S.C. 812. The initial schedules of controlled substances established by Congress are found at 21 U.S.C. 812(c), and the current list of all scheduled substances is published at 21 CFR part 1308. 21 U.S.C. 812(a).

Section 201 of the CSA, 21 U.S.C. 811, provides the Attorney General with the authority to temporarily place a substance into schedule I of the CSA for two years without regard to the requirements of 21 U.S.C. 811(b) if he or she finds that such action is necessary to avoid imminent hazard to the public safety. 21 U.S.C. 811(h)(1). In addition, if proceedings to control a substance are initiated under 21 U.S.C. 811(a)(1), the Attorney General may extend the temporary scheduling for up to one year. 21 U.S.C. 811(h)(2).

Where the necessary findings are made, a substance may be temporarily scheduled if it is not listed in any other schedule under section 202 of the CSA, 21 U.S.C. 812, or if there is no exemption or approval in effect for the substance under section 505 of the Federal Food, Drug, and Cosmetic Act (FDCA), 21 U.S.C. 355. 21 U.S.C. 811(h)(1). The Attorney General has delegated scheduling authority under 21 U.S.C. 811 to the Administrator of the DEA. 28 CFR 0.100.

Background

Section 201(h)(4) of the CSA, 21 U.S.C. 811(h)(4), requires the Administrator to notify the Secretary of the Department of Health and Human Services (HHS) of her intention to temporarily place a substance into schedule I of the CSA.[1] The Administrator transmitted notice of her intent to place acetyl fentanyl in schedule I on a temporary basis to the Assistant Secretary by letter dated April 7, 2015. Any comments submitted by the Assistant Secretary in response to the notice transmitted to the Assistant Secretary shall be taken into consideration before a final order is published. 21 U.S.C. 811(h)(4).

To find that placing a substance temporarily into schedule I of the CSA is necessary to avoid an imminent hazard to the public safety, the Administrator is required to consider three of the eight factors set forth in section 201(c) of the CSA, 21 U.S.C. 811(c): The substance's history and current pattern of abuse; the scope, duration and significance of abuse; and what, if any, risk there is to the public health. 21 U.S.C. 811(h)(3). Consideration of these factors includes actual abuse, diversion from legitimate channels, and clandestine importation, manufacture, or distribution. 21 U.S.C. 811(h)(3).

A substance meeting the statutory requirements for temporary scheduling may only be placed in schedule I. 21 U.S.C. 811(h)(1). Substances in schedule I are those that have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. 21 U.S.C. 812(b)(1).

Acetyl Fentanyl

Available data and information for acetyl fentanyl indicate that this opioid substance has a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision.

[1] Because the Secretary of the HHS has delegated to the Assistant Secretary for Health of the HHS the authority to make domestic drug scheduling recommendations, for purposes of this notice of intent, all subsequent references to ''Secretary'' have been replaced with ''Assistant Secretary.'' As set forth in a memorandum of understanding entered into by the HHS, the Food and Drug Administration (FDA), and the National Institute on Drug Abuse (NIDA), FDA acts as the lead agency within HHS in carrying out the Assistant Secretary's scheduling responsibilities under the CSA, with the concurrence of NIDA. 50 FR 9518, Mar. 8, 1985.

Factor 4. History and Current Pattern of Abuse

Clandestinely produced substances structurally related to the schedule II opioid analgesic fentanyl were trafficked and abused on the West Coast in the late 1970s and 1980s. These clandestinely produced fentanyl-like substances were commonly known as designer drugs and recently, there has been a reemergence in the trafficking and abuse of designer drug substances including fentanyl-like substances. Alpha-methylfentanyl, the first fentanyl analogue identified in California, was placed into schedule I of the CSA in September 1981. Following the control of alpha-methylfentanyl, the DEA identified several other fentanyl analogues (3-methylthiofentanyl, acetyl-alpha-methylfentanyl, beta-hydroxy-3-methylfentanyl, alpha-methylthiofentanyl, thiofentanyl, beta-hydroxyfentanyl, para-fluorofentanyl and 3-methylfentanyl) in submissions to forensic laboratories. These substances were temporarily controlled under schedule I of the CSA after finding that they posed an imminent hazard to public safety and were subsequently permanently placed in schedule I of the CSA.

The National Forensic Laboratory Information System (NFLIS) is a national drug forensic laboratory reporting system that systematically collects results from drug chemistry analyses conducted by State and local forensic laboratories across the country. The first laboratory submission of acetyl fentanyl was recorded in Maine in April 2013 according to NFLIS. NFLIS registered eight reports containing acetyl fentanyl in 2013 in Louisiana, Maine, and North Dakota; and 30 reports in 2014 in Florida, Illinois, Louisiana, Maine, New Jersey, Ohio, Oregon, Pennsylvania, and Virginia.

The System to Retrieve Information from Drug Evidence (STRIDE) is a database of drug exhibits sent to DEA laboratories for analysis. Exhibits from the database are from the DEA, other Federal agencies, and some local law enforcement agencies. Acetyl fentanyl was first reported to STRIDE in September 2013 from exhibits obtained through a controlled purchase in Louisiana. In October 2013, an exhibit collected from a controlled purchase of suspected oxycodone tablets in Rhode Island contained acetyl fentanyl as the primary substance. In 2014, STARLiMS (a web-based, commercial laboratory information management system that is in transition to replace STRIDE) and STRIDE reported eight additional seizures in Colorado, Florida, Georgia, and Washington.

In August 2013, the Centers for Disease Control and Prevention (CDC) published an article in its Morbidity and Mortality Weekly Report documenting a series of 14 fatalities related to acetyl fentanyl that occurred between March and May 2013. In December 2013, another fatality associated with acetyl fentanyl was reported in Rhode Island for a total of 15 fatalities. In February 2014, the North Carolina Department of Health and Human Services issued a health advisory related to acetyl fentanyl following at least three deaths related to this synthetic drug. Toxicologists at the North Carolina Office of the Chief Medical Examiner detected acetyl fentanyl in specimens associated with deaths that occurred in January 2014 in Sampson, Person, and Transylvania counties. In July and August 2014, four additional fatalities involving acetyl fentanyl were reported for a total of seven fatalities in North Carolina. Deaths involving acetyl fentanyl have also been reported in California (1), Louisiana (14), Oregon (1), and Pennsylvania (1).

A significant seizure of acetyl fentanyl occurred in April 2013 during a law enforcement investigation in Montreal, Canada. Approximately three kilograms of acetyl fentanyl in powder form and approximately 11,000 tablets containing acetyl fentanyl were seized. Given that a typical dose of acetyl fentanyl is in the microgram range, a three kilogram quantity could potentially produce millions of dosage units. In the United States, tablets that mimic pharmaceutical opioid products have been reported in multiple states, including Colorado, Florida, Georgia, Rhode Island, and Washington. Recent reports indicate that acetyl fentanyl in powder form is available over the Internet and has been imported to addresses within the United States.

Evidence also suggests that the pattern of abuse of fentanyl analogues, including acetyl fentanyl, parallels that of heroin and prescription opioid analgesics. Seizures of acetyl fentanyl have been encountered both in powder and in tablet form. It is also known to have caused many fatal overdoses, in which intravenous routes of administration and histories of drug abuse are documented.

Factor 5. Scope, Duration and Significance of Abuse

DEA is currently aware of at least 39 fatalities associated with acetyl fentanyl. These deaths have been reported in 2013 and 2014 from six states including California, Louisiana, North Carolina,

Oregon, Pennsylvania, and Rhode Island. STARLiMS and STRIDE, databases capturing drug evidence information from DEA forensic laboratories, have a total of 10 drug reports in which acetyl fentanyl was identified in six cases for analyzed drugs submitted from January 2010—December 2014 from Colorado, Florida, Georgia, Louisiana, Rhode Island, and Washington. It is likely that the prevalence of acetyl fentanyl in opioid analgesic-related emergency room admissions and deaths is underreported as standard immunoassays cannot differentiate acetyl fentanyl from fentanyl.

The population likely to abuse acetyl fentanyl overlaps with the populations abusing prescription opioid analgesics and heroin. This is evidenced by the routes of administration and drug use history documented in acetyl fentanyl fatal overdose cases. Because abusers of acetyl fentanyl are likely to obtain the drug through illicit sources, the identity, purity, and quantity is uncertain and inconsistent, thus posing significant adverse health risks to its abusers. This risk is particularly heightened by the fact that acetyl fentanyl is a highly potent opioid (15.7-fold more than that of morphine as tested in mice using an acetic acid writhing method). Thus small changes in the amount and purity of the substance could potentially lead to overdose and death.

Factor 6. What, if Any, Risk There Is to the Public Health

Acetyl fentanyl exhibits a pharmacological profile similar to that of fentanyl and other opioid analgesic compounds and it is a potent opioid analgesic reported to be ⅓ as potent as fentanyl and 15.7 times as potent as morphine in mice tested in an acetic acid writhing method. In addition, studies also showed that the range between the effective dose (ED50) and the lethal dose (LD50) of acetyl fentanyl is narrower than that of morphine and fentanyl, increasing the risk of fatal overdose. Thus, its abuse is likely to pose quantitatively greater risks to the public health and safety than abuse of traditional opioid analgesics such as morphine.

Based on the above pharmacological data, the abuse of acetyl fentanyl at least leads to the same qualitative public health risks as heroin, fentanyl and other opioid analgesic compounds. The public health risks attendant to the abuse of heroin and opioid analgesics are well established. The abuse of opioid analgesics has resulted in large numbers of drug treatment admissions, emergency department visits, and fatal overdoses.

Acetyl fentanyl has been associated with numerous fatalities. At least 39 overdose deaths due to acetyl fentanyl abuse have been reported in six states in 2013 and 2014, including California, Louisiana, North Carolina, Oregon, Pennsylvania, and Rhode Island. This indicates that acetyl fentanyl poses an imminent hazard to public safety.

Finding of Necessity of Schedule I Placement To Avoid Imminent Hazard to Public Safety

Based on the above summarized data and information, the continued uncontrolled manufacture, distribution, importation, exportation, and abuse of acetyl fentanyl pose an imminent hazard to the public safety. The DEA is not aware of any currently accepted medical uses for this substance in the United States. A substance meeting the statutory requirements for temporary scheduling, 21 U.S.C. 811(h)(1), may only be placed in schedule I. Substances in schedule I are those that have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. Available data and information for acetyl fentanyl indicate that this substance has a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. As required by section 201(h)(4) of the CSA, 21 U.S.C. 811(h)(4), the Administrator, through a letter dated April 7, 2015, notified the Assistant Secretary of the DEA's intention to temporarily place this substance in schedule I.

Conclusion

This notice of intent initiates an expedited temporary scheduling action and provides the 30-day notice pursuant to section 201(h) of the CSA, 21 U.S.C. 811(h). In accordance with the provisions of section 201(h) of the CSA, 21 U.S.C. 811(h), the Administrator considered available data and information, herein set forth the grounds for her determination that it is necessary to temporarily schedule acetyl fentanyl in schedule I of the CSA, and finds that placement of this opioid substance into schedule I of the CSA is necessary in order to avoid an imminent hazard to the public safety.

Because the Administrator hereby finds that it is necessary to temporarily place this synthetic opioid into schedule I to avoid an imminent hazard to the public safety, any subsequent final order temporarily scheduling these substances will be effective on the date of publication in the **Federal Register**, and will be in effect for a period of two years, with a possible extension of one additional year, pending completion of the regular (permanent) scheduling process. 21 U.S.C. 811(h)(1) and (2). It is the intention of the Administrator to issue such a final order as soon as possible after the expiration of 30 days from the date of publication of this notice. Acetyl fentanyl will then be subject to the regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, possession, importation, exportation, research, and conduct of instructional activities of a schedule I controlled substance.

The CSA sets forth specific criteria for scheduling a drug or other substance. Regular scheduling actions in accordance with 21 U.S.C. 811(a) are subject to formal rulemaking procedures done ''on the record after opportunity for a hearing'' conducted pursuant to the provisions of 5 U.S.C. 556 and 557. 21 U.S.C. 811. The regular scheduling process of formal rulemaking affords interested parties with appropriate process and the government with any additional relevant information needed to make a determination. Final decisions that conclude the regular scheduling process of formal rulemaking are subject to judicial review. 21 U.S.C. 877. Temporary scheduling orders are not subject to judicial review. 21 U.S.C. 811(h)(6).

Regulatory Matters

Section 201(h) of the CSA, 21 U.S.C. 811(h), provides for an expedited temporary scheduling action where such action is necessary to avoid an imminent hazard to the public safety. As provided in this subsection, the Attorney General may, by order, schedule a substance in schedule I on a temporary basis. Such an order may not be issued before the expiration of 30 days from (1) the publication of a notice in the **Federal Register** of the intention to issue such order and the grounds upon which such order is to be issued, and (2) the date that notice of the proposed temporary scheduling order is transmitted to the Assistant Secretary of HHS. 21 U.S.C. 811(h)(1).

Inasmuch as section 201(h) of the CSA directs that temporary scheduling actions be issued by order and sets forth the procedures by which such orders are to be issued, the DEA believes that the notice and comment requirements of section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, do not apply to this notice of intent. In the alternative, even assuming that this

notice of intent might be subject to section 553 of the APA, the Administrator finds that there is good cause to forgo the notice and comment requirements of section 553, as any further delays in the process for issuance of temporary scheduling orders would be impracticable and contrary to the public interest in view of the manifest urgency to avoid an imminent hazard to the public safety.

Although the DEA believes this notice of intent to issue a temporary scheduling order is not subject to the notice and comment requirements of section 553 of the APA, the DEA notes that in accordance with 21 U.S.C. 811(h)(4), the Administrator will take into consideration any comments submitted by the Assistant Secretary with regard to the proposed temporary scheduling order.

Further, the DEA believes that this temporary scheduling action is not a ''rule'' as defined by 5 U.S.C. 601(2), and, accordingly, is not subject to the requirements of the Regulatory Flexibility Act (RFA). The requirements for the preparation of an initial regulatory flexibility analysis in 5 U.S.C. 603(a) are not applicable where, as here, the DEA is not required by section 553 of the APA or any other law to publish a general notice of proposed rulemaking.

Additionally, this action is not a significant regulatory action as defined by Executive Order 12866 (Regulatory Planning and Review), section 3(f), and, accordingly, this action has not been reviewed by the Office of Management and Budget (OMB).

This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132 (Federalism) it is determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, the DEA proposes to amend 21 CFR part 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), unless otherwise noted.

■ 2. In § 1308.11, add paragraph (h)(24) to read as follows:

§ 1308.11 Schedule I.

* * * * *

(h) * * *

(24) *N*-(1-phenethylpiperidin-4-yl)-*N*-phenylacetamide, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: Acetyl fentanyl)—(9821)

* * * * *

Dated: May 14, 2015.

Michele M. Leonhart,

Administrator.

[FR Doc. 2015–12331 Filed 5–20–15; 8:45 am]

BILLING CODE 4410–09–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2015–0260; FRL–9928–12–Region 4]

Approval and Promulgation of Implementation Plans; North Carolina: Non-Interference Demonstration for Federal Low-Reid Vapor Pressure Requirement for the Gaston and Mecklenburg Counties in North Carolina

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the State of North Carolina's April 16, 2015, revision to its State Implementation Plan (SIP), submitted through the North Carolina Department of Environment and Natural Resources, Division of Air Quality (DAQ), in support of the State's request that EPA change the Federal Reid Vapor Pressure (RVP) requirements for Gaston and Mecklenburg Counties. This RVP-related SIP revision evaluates whether changing the Federal RVP requirements in these counties would interfere with the requirements of the Clean Air Act (CAA or Act). North Carolina's April 16, 2015, RVP-related SIP revision also updates the State's maintenance plan and the associated motor vehicle emissions budgets (MVEBs) related to its redesignation request for the North Carolina portion of the Charlotte-Gastonia-Salisbury 2008 8-hour ozone nonattainment area (Charlotte 2008 Ozone Area) to reflect the requested change in the Federal RVP requirements. EPA is also proposing to approve these updates to the maintenance plan and associated MVEBs. EPA has preliminarily determined that North Carolina's April 16, 2015, RVP-related SIP revision is consistent with the applicable provisions of the CAA.

DATES: Written comments must be received on or before June 11, 2015.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R04–OAR–2015–0260 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: R4-ARMS@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* EPA–R04–OAR–2015–0260, Air Regulatory Managment Section (formerly the Regulatory Development Section), Air Planning and Implementation Branch (formerly the Air Planning Branch), Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Ms. Lynorae Benjamin, Chief, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2015–0260. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment

that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Richard Wong of the Air Regulatory Management Section, in the Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Mr. Wong may be reached by phone at (404) 562–8726 or via electronic mail at *wong.richard@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. What is being proposed?

This rulemaking proposes to approve North Carolina's April 16, 2015, SIP revision in support of the State's request that EPA relax the Federal RVP requirement from 7.8 pounds per square inch (psi) to 9.0 psi for gasoline sold between June 1 and September 15 of each year (*i.e.,* during high ozone season) in Gaston and Mecklenburg Counties. Specifically, EPA is proposing to approve the State's technical demonstration that changing the federal RVP requirements in Gaston and Mecklenburg Counties from 7.8 psi to 9.0 psi will not interfere with attainment or maintenance of any national ambient air quality standards (NAAQS) or with any other applicable requirement of the CAA.[1] In a separate SIP revision which is currently under EPA review, DAQ is requesting that EPA redesignate the North Carolina portion of the Charlotte 2008 8-hour Ozone Area to attainment.[2] Final action to approve North Carolina's requested change to the Federal RVP requirement for Gaston and Mecklenburg Counties is contingent, in part, on EPA's final action to approve North Carolina's redesignation request for the North Carolina portion of the Charlotte 2008 8-hour Ozone Area. With its redesignation request, the State included a maintenance demonstration plan that estimates emissions through 2026 using a 7.8 psi RVP requirement rather than the 9.0 psi RVP requirement. However, through the April 16, 2015 RVP-related SIP revision (the subject of this proposed rulemaking), DAQ updated the mobile emissions for that maintenance plan (including the MVEBs) to reflect the State's request for EPA to change the Federal RVP requirement for Gaston and Mecklenburg Counties to 9.0 psi. The updates are summarized on page 24 of the State's submittal titled ''Charlotte 2008 Ozone Redesignation and Maintenance SIP_with_RVP_Demo_Final_04–16–15'', and may be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2015–0260. This proposed action would also update that maintenance plan to reflect the change for mobile emissions and the associated MVEBs due to the proposed change in the Federal RVP requirements for Gaston and Mecklenburg Counties.

As mentioned above, North Carolina is requesting the removal of the Federal 7.8 psi RVP requirement for Gaston and Mecklenburg Counties and, as part of that request, has evaluated whether removal of this requirement would interfere with attainment or maintenance of the NAAQS. To make this demonstration, North Carolina completed a technical analysis to estimate the change in emissions that would result from a switch to 9.0 psi RVP fuel. EPA has reviewed this technical analysis and is proposing to find that North Carolina's technical demonstration supports the conclusion that the use of gasoline with an RVP of 9.0 psi in Gaston and Mecklenburg Counties will not interfere with attainment or maintenance of any NAAQS or with any other applicable requirement of the CAA in the Charlotte Area.[3] In addition to proposing to approve DAQ's noninterference demonstration, EPA is also proposing to approve the update to the maintenance plan and MVEBs associated with the State's request to redesignate the North Carolina portion of the Charlotte 2008 8-hour Ozone Area to reflect the requested change in the Federal RVP requirements for Gaston and Mecklenburg Counties.

This preamble is hereinafter organized into five parts. Section II provides the background of the Charlotte Area designation status with respect to the various ozone NAAQS. Section III describes the applicable history of federal gasoline regulation. Section IV provides the Agency's policy regarding relaxation of the volatility standards. Section V provides EPA's analysis of the information submitted by North Carolina to support a change to the Federal RVP standard in Gaston and Mecklenburg Counties.

II. What is the background of the Charlotte area?

The Charlotte Area was originally designated as a 1-hour ozone nonattainment area by EPA on March 3, 1978 (43 FR 8962) and was geographically defined as Mecklenburg County, North Carolina. On November 6, 1991, by operation of law under section 181(a) of the CAA, EPA classified the Charlotte Area as a moderate nonattainment area for ozone and added Gaston County to the

[1] A separate rulemaking is required for relaxation of the current requirement to use gasoline with an RVP of 7.8 psi in these counties. This action proposes EPA's evaluation of the approvability of North Carolina's noninterference demonstration pursuant to section 110(l). The decision regarding removal of Federal RVP requirements pursuant to section 211(h) in the Area includes other considerations evaluated at the discretion of the Administrator. As such, the determination regarding whether to remove the Area from those areas subject to the section 211(h) requirements is made through a separate rulemaking action.

[2] See footnote 4 for a geographic description of the Charlotte 2008 8-hour Ozone Area.

[3] The use of the term ''Charlotte Area'' in the remainder of this document refers to the EPA-designated area for the relevant NAAQS that includes Gaston and Mecklenburg Counties.

nonattainment area. *See* 56 FR 56693. Among the requirements applicable to nonattainment areas for the 1-hour ozone NAAQS was the requirement to meet certain volatility standards (known as Reid Vapor Pressure or RVP) for gasoline sold commercially. *See* 55 FR 23658 (June 11, 1990). As discussed in section III, below, a 7.8 psi Federal RVP requirement first applied to Gaston and Mecklenburg Counties during the high ozone season given its status as a nonattainment area for the 1-hour ozone standard.

DAQ requested a redesignation of the Charlotte Area to attainment for the 1-hour ozone NAAQS in 1993. The Area attained the 1-hour ozone NAAQS and was redesignated to attainment for the 1-hour ozone on July 5, 1995, based on 1990–1993 ambient air quality monitoring data. *See* 60 FR 34859. North Carolina's 1-hour ozone redesignation request did not include a request to relax the 7.8 psi Federal RVP standard.

On April 30, 2004, EPA designated and classified areas for the 1997 8-hour ozone NAAQS that was promulgated on July 18, 1997, as unclassifiable/attainment or nonattainment for the new 8-hour ozone NAAQS. *See* 69 FR 23857. The Charlotte Area was designated as nonattainment for the 1997 8-hour ozone NAAQS with a design value of 0.100 parts per million (ppm).[4] Subsequently, the Charlotte Area attained the 1997 8-hour ozone NAAQS with a design value of 0.082 ppm using three years of quality assured data for the years of 2008–2010. The Charlotte Area was redesignated to attainment for the 1997 8-hour ozone NAAQS in a final rulemaking on December 2, 2013. *See* 78 FR 72036. North Carolina's 1997 8-hour ozone redesignation request did not include a request for the removal of the 7.8 psi Federal RVP standard for the Charlotte Area, and thus modeled 7.8 psi for Gaston and Mecklenburg Counties to support the maintenance demonstration.

On May 21, 2012, EPA designated and classified areas for the 2008 8-hour ozone NAAQS that was promulgated on March 27, 2008, as unclassifiable/attainment or nonattainment for the new 8-hour ozone NAAQS. *See* 77 FR 30088. The Charlotte Area was designated as nonattainment for the 2008 8-hour ozone NAAQS with a design value of 0.079 ppm.[5] On April 16, 2015, DAQ submitted a redesignation request and maintenance plan for the North Carolina portion of the Charlotte 2008 8-hour Ozone Area for EPA's approval. In that submittal, the State included a maintenance demonstration that estimates emissions using a 7.8 psi RVP requirement for Gaston and Mecklenburg Counties for the 2008 8-hour ozone redesignation request and maintenance plan. EPA is taking action on the aforementioned redesignation request and maintenance plan in a separate rulemaking. However, also on April 16, 2015, to support its request for EPA to change the Federal RVP requirement for Gaston and Mecklenburg Counties, DAQ submitted a SIP revision that contains a noninterference demonstration that included updated modeling assuming 9.0 psi for RVP for Gaston and Mecklenburg Counties and updates the maintenance plan submission and associated MVEBs for the North Carolina portion of the Charlotte 2008 8-hour Ozone Area.

III. What is the history of the gasoline volatility requirement?

On August 19, 1987 (52 FR 31274), EPA determined that gasoline nationwide had become increasingly volatile, causing an increase in evaporative emissions from gasoline-powered vehicles and equipment. Evaporative emissions from gasoline, referred to as volatile organic compounds (VOCs), are precursors to the formation of tropospheric ozone and contribute to the nation's ground-level ozone problem. Exposure to ground-level ozone can reduce lung function (thereby aggravating asthma or other respiratory conditions), increase susceptibility to respiratory infection, and may contribute to premature death in people with heart and lung disease.

The most common measure of fuel volatility that is useful in evaluating gasoline evaporative emissions is RVP. Under section 211(c) of CAA, EPA promulgated regulations on March 22, 1989 (54 FR 11868), that set maximum limits for the RVP of gasoline sold during the high ozone season. These regulations constituted Phase I of a two-phase nationwide program, which was designed to reduce the volatility of commercial gasoline during the summer ozone control season. On June 11, 1990 (55 FR 23658), EPA promulgated more stringent volatility controls as Phase II of the volatility control program. These requirements established maximum RVP standards of 9.0 psi or 7.8 psi (depending on the State, the month, and the area's initial ozone attainment designation with respect to the 1-hour ozone NAAQS during the high ozone season).

The 1990 CAA Amendments established a new section, 211(h), to address fuel volatility. Section 211(h) requires EPA to promulgate regulations making it unlawful to sell, offer for sale, dispense, supply, offer for supply, transport, or introduce into commerce gasoline with an RVP level in excess of 9.0 psi during the high ozone season. Section 211(h) prohibits EPA from establishing a volatility standard more stringent than 9.0 psi in an attainment area, except that EPA may impose a lower (more stringent) standard in any former ozone nonattainment area redesignated to attainment.

On December 12, 1991 (56 FR 64704), EPA modified the Phase II volatility regulations to be consistent with section 211(h) of the CAA. The modified regulations prohibited the sale of gasoline with an RVP above 9.0 psi in all areas designated attainment for ozone, beginning in 1992. For areas designated as nonattainment, the regulations retained the original Phase II standards published on June 11, 1990 (55 FR 23658). A current listing of the RVP requirements for states can be found at 40 CFR 80.27(a)(2) as well as on EPA's Web site at: *http://www.epa.gov/otaq/fuels/gasolinefuels/volatility/standards.htm.*

As explained in the December 12, 1991 (56 FR 64704), Phase II rulemaking, EPA believes that relaxation of an applicable RVP standard is best accomplished in conjunction with the redesignation process. In order for an ozone nonattainment area to be redesignated

[4] The nonattainment area for the 1997 8-hour ozone standard consists of Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, Union and a portion of Iredell County (Davidson and Coddle Creek Townships), North Carolina and a portion of York County, South Carolina. The 7.8 psi RVP standard continued to apply to Gaston and Mecklenburg counties whereas the remaining counties in the nonattainment area are subject to the 9.0 psi RVP standard.

[5] The nonattainment area for the 2008 8-hour ozone standard includes the same counties in the nonattainment area for the 1997 8-hour ozone standard, but it has a smaller geographical boundary than the 1997 8-hour ozone nonattainment area. The 2008 8-hour ozone nonattainment area includes the entire county of Mecklenburg and portions of the following counties: Cabarrus (Central Cabarrus, Concord, Georgeville, Harrisburg, Kannapolis, Midland, Mount Pleasant, Odell, Poplar Tent, New Gilead and Rimertown Townships), Gaston (Dallas, Crowders Mountain, Gastonia, Riverbend and South Point Townships), Iredell (Coddle and Davidson Townships), Lincoln (Catawba Springs, Lincolnton and Ironton Townships), Rowan (Atwell, China Grove, Franklin, Gold Hill, Litaker, Locke, Providence, Salisbury, Steele and Unity Townships) and Union (Goose Creek, Marshville, Monroe, Sandy Ridge and Vance Townships) for North Carolina, and a portion of York County (excluding the Indian Country associated with the Catawba Indian Nation) for South Carolina. Though the number of counties remained the same for the 2008 ozone nonattainment area, Gaston and Mecklenburg adhered the 7.8 psi RVP requirement while remaining counties were subjected to the RVP of 9.0 psi.

as an attainment area, section 107(d)(3) of the Act requires the state to make a showing, pursuant to section 175A of the Act, that the area is capable of maintaining attainment for the ozone NAAQS for ten years after redesignation. Depending on the area's circumstances, this maintenance plan will either demonstrate that the area is capable of maintaining attainment for ten years without the more stringent volatility standard or that the more stringent volatility standard may be necessary for the area to maintain its attainment with the ozone NAAQS. Therefore, in the context of a request for redesignation, EPA will not change the volatility standard unless the state requests a change and the maintenance plan demonstrates, to the satisfaction of EPA, that the area will maintain attainment for ten years without the need for the more stringent volatility standard.

As noted above, North Carolina did not request a change of the applicable 7.8 psi Federal RVP standard when the Charlotte Area was redesignated to attainment for the either the 1-hour or the 1997 8-hour ozone NAAQS. The State, in conjunction with its request to redesignate the North Carolina portion of the Charlotte 2008 8-hour Ozone Area to attainment,[6] is now requesting a change of the Federal RVP requirement from 7.8 psi to 9.0 psi. EPA's consideration of this requested change for the Federal RVP requirements for Gaston and Mecklenburg Counties is contingent, in part, upon EPA approving North Carolina's redesignation request and maintenance plan for the North Carolina portion of the Charlotte 2008 8-hour Ozone Area. To make the requested change in the Federal RVP requirements for Gaston and Mecklenburg Counties, EPA would also have to approve the updates to North Carolina's maintenance plan and MVEBs included with the State's April 16, 2015, RVP-related SIP revision.[7]

IV. What are the section 110(l) requirements?

To support North Carolina's request to relax the Federal RVP requirement for Gaston and Mecklenburg Counties, the State must demonstrate that the requested change will satisfy section 110(l) of the CAA. Section 110(l) requires that a revision to the SIP not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of the Act. EPA's criterion for determining the approvability of North Carolina's April 16, 2015, RVP-related SIP revision is whether the noninterference demonstration associated with the relaxation request satisfies section 110(l).

EPA evaluates each section 110(l) noninterference demonstration on a case-by-case basis considering the circumstances of each SIP revision. EPA interprets 110(l) as applying to all NAAQS that are in effect, including those that have been promulgated but for which the EPA has not yet made designations. The degree of analysis focused on any particular NAAQS in a noninterference demonstration varies depending on the nature of the emissions associated with the proposed SIP revision. EPA's analysis of North Carolina's April 16, 2015, SIP revision pursuant to section 110(l) is provided below.

As previously mentioned, EPA is proposing three actions in relation to the State's April 16, 2015, noninterference demonstration. First, EPA is proposing to approve North Carolina's update to the maintenance plan associated with the State's redesignation request for the North Carolina portion of the Charlotte 2008 8-hour Ozone Area to reflect modeling of 9.0 psi for RVP for Gaston and Mecklenburg Counties. Second, EPA is proposing to approve the revised MVEBs that result from the updated mobile modeling to reflect the change in RVP for Gaston and Mecklenburg Counties. Third, EPA is proposing to approve the State's technical demonstration that the switch to the sale of gasoline with an RVP of 9.0 psi in Gaston and Mecklenburg Counties during the high ozone season will not interfere with attainment or maintenance of the NAAQS and to amend the SIP to include this demonstration. Consistent with CAA section 211(h) and the Phase II volatility regulations, a separate rulemaking is required to change the current Federal requirement to use gasoline with a 7.8 psi RVP in Gaston and Mecklenburg Counties.

V. What is EPA's analysis of North Carolina's submittal?

a. Overall Preliminary Conclusions Regarding North Carolina's Noninterference Analyses

On April 16, 2015, DAQ submitted a noninterference demonstration to support the State's request to modify the RVP summertime gasoline requirement from 7.8 psi to 9.0 psi for Gaston and Mecklenburg Counties. This demonstration includes an evaluation of the impact that the removal of the 7.8 psi RVP requirement for these counties would have on the Area's ability to attain or maintain the 1997 and 2008 ozone standards or other NAAQS in the Charlotte Area.[8] North Carolina's noninterference analysis evaluated the impact of the change in RVP on the Area's ability to attain or maintain the ozone, particulate matter (PM),[9] Nitrogen Dioxide (NO_2), sulfur dioxide (SO_2), and carbon monoxide (CO) NAAQS.

DAQ's noninterference analysis utilized EPA's 2014 Motor Vehicle Emissions Simulator (MOVES) emission modeling system to estimate emissions for mobile sources. These mobile source emissions are used as part of the evaluation of the potential impacts to the NAAQS that might result exclusively from changing the high ozone season RVP requirement from 7.8 psi to 9.0 psi. As summarized in Tables 1 and 2, below, the MOVES model predicted minor increases in on-road mobile source NO_X and VOC emissions in the North Carolina portion of the Charlotte 2008 8-hour Ozone Area due to relaxation of the RVP requirement. Daily on-road mobile NO_X emissions are projected to increase by 0.11 ton in 2015 down to an increase of 0.01 ton in 2026 during the ozone season. Daily on-road mobile VOC emissions are projected to increase by 0.18 ton in 2015 down to an increase of 0.04 ton in 2026 during the ozone season.

[6] See footnote 4 for a geographic description of the Charlotte NC 2008 8-hour Ozone Area.

[7] The maintenance plan has to ensure maintenance of the 0.075 ppm 2008 8-hour ozone NAAQS which is more stringent than the 0.080 ppm 1997 8-hour ozone NAAQS.

[8] The six NAAQS for which EPA establishes health and welfare based standards are CO, lead, NO_2, ozone, PM, and SO_2. RVP requirements do not have an impact on actual or modeled lead emissions.

[9] PM is composed of $PM_{2.5}$ and PM_{10}.

TABLE 1—ON-ROAD MOBILE SOURCE NO_X EMISSIONS (AVERAGE TONS/DAY) FOR OZONE SEASON

County	7.8 psi RVP				
	2014	2015	2018	2022	2026
Cabarrus [1]	6.60	5.93	3.94	2.79	1.86
Gaston [1 2]	8.11	7.23	4.60	3.04	1.97
Iredell [1]	3.36	3.05	2.05	1.41	0.93
Lincoln [1]	3.00	2.75	1.84	1.23	0.76
Mecklenburg [2]	26.99	24.12	14.35	9.63	6.85
Rowan [1]	6.42	5.75	3.73	2.56	1.59
Union [1]	5.67	5.14	3.41	2.28	1.51
Total	60.15	53.97	33.92	22.94	15.47
	9.0 psi RVP				
Cabarrus [1]	.....	5.93	3.94	2.79	1.86
Gaston [1 2]	.....	7.26	4.62	3.04	1.98
Iredell [1]	.....	3.05	2.05	1.41	0.93
Lincoln [1]	.....	2.75	1.84	1.23	0.76
Mecklenburg [2]	.....	24.20	14.39	9.65	6.85
Rowan [1]	.....	5.75	3.73	2.56	1.59
Union [1]	.....	5.14	3.41	2.28	1.51
Total	.....	54.08	33.98	22.96	15.48
Emissions Increase	.....	0.11	0.06	0.02	0.01

[1] Emissions are reported only for the nonattainment portion of the county included in the Charlotte, NC 2008 8-hour Ozone Area.
[2] Only Gaston and Mecklenburg counties use 7.8 psi RVP fuel. The remaining counties use 9.0 psi RVP fuel.

TABLE 2—ON-ROAD MOBILE SOURCE VOC EMISSIONS (AVERAGE TONS/DAY) FOR OZONE SEASON

County	7.8 psi RVP				
	2014	2015	2018	2022	2026
Cabarrus [1]	4.15	3.89	3.01	2.53	2.04
Gaston [1 2]	4.61	4.24	3.05	2.31	1.72
Iredell [1]	1.95	1.82	1.40	1.10	0.82
Lincoln [1]	1.91	1.81	1.37	1.07	0.79
Mecklenburg [2]	14.40	13.28	10.00	8.18	6.64
Rowan [1]	3.76	3.48	2.57	1.93	1.41
Union [1]	3.54	3.30	2.54	2.04	1.56
Total	34.32	31.82	23.94	19.16	14.98
	9.0 psi RVP				
Cabarrus [1]	.....	3.89	3.01	2.53	2.04
Gaston [1 2]	.....	4.29	3.08	2.32	1.73
Iredell [1]	.....	1.82	1.40	1.10	0.82
Lincoln [1]	.....	1.81	1.37	1.07	0.79
Mecklenburg [2]	.....	13.41	10.09	8.22	6.67
Rowan [1]	.....	3.48	2.57	1.93	1.41
Union [1]	.....	3.30	2.54	2.04	1.56
Total	.....	32.00	24.06	19.21	15.02
Emissions Increase	.....	0.18	0.12	0.05	0.04

[1] Emissions are reported only for the nonattainment portion of the county included in the Charlotte, NC 2008 8-hour Ozone Area.
[2] Only Gaston and Mecklenburg counties use 7.8 psi RVP fuel. The remaining counties use 9.0 psi RVP fuel.

Table 3, below, shows the total estimated anthropogenic emissions of NO_X and VOC from area, point, on-road, and nonroad source categories for the North Carolina Portion of the Charlotte 2008 8-hour Ozone Area. Emissions reported for 2014 assume the use of 7.8 psi RVP fuel for Gaston and Mecklenburg Counties whereas emissions from 2015 through 2026 assume the use of 9.0 psi RVP fuel. NO_X and VOC emissions are projected to continue to decrease in the Charlotte 8-hour Ozone Area using 9.0 psi RVP fuel in the entire Area for years 2015 through 2026. DAQ's analysis also estimates that RVP relaxation could increase anthropogenic VOC emissions by 0.42 tpd in 2015 and 0.32 tpd in 2026 and could increase anthropogenic NO_X emissions by 0.11 tpd in 2015 and 0.01 tpd in 2026.

TABLE 3—TOTAL ANTHROPOGENIC EMISSIONS

Year	NO_X (tons/day)	VOC (tons/day)
2014	130.18	113.12
2015	124.18	111.09
2018	94.33	104.41
2022	86.67	101.74
2026	67.54	100.46
Difference from 2014 to 2026	−62.64	−12.66

b. Noninterference Analysis for the Ozone NAAQS

As discussed above, the Charlotte Area is currently designated as attainment for the 1997 8-hour ozone NAAQS, and in a separate action, EPA is considering the State's redesignation request for the 2008 8-hour ozone NAAQS. Although the Charlotte Area was previously designated as nonattainment for the 1997 8-hour ozone NAAQS, the Charlotte Area was redesignated to attainment for that NAAQS on December 2, 2014. *See* 78 FR 72036.

Table 4, below, shows the safety margins [10] from a 2014 base year with 7.8 psi RVP fuel to the years 2015, 2018, 2022, and 2026 with 9.0 psi RVP fuel for the entire Charlotte 2008 8-hour Ozone Area. The safety margins identified in Table 4 indicate that the switch to 9.0 psi RVP fuel in Gaston and Mecklenburg Counties will not interfere with the Area's ability to attain or maintain the 2008 8-hour ozone NAAQS.[11]

TABLE 4—SAFETY MARGIN

Year	NO_X (tons/day)	VOC (tons/day)
2014	N/A	N/A
2015	−6.00	−2.03
2018	−35.85	−8.71
2022	−43.51	−11.38
2026	−62.64	−12.66

Because the 2008 8-hour ozone NAAQS is more stringent than the 1997 8-hour ozone standard, North Carolina's April 16, 2015, noninterference demonstration for the ozone NAAQS is focused on the 2008 8-hour ozone standard. The 2008 8-hour ozone NAAQS is met when the annual fourth-highest daily maximum 8-hour average concentration, averaged over 3 years is 0.075 ppm or less. As shown in Table 5, all of the ozone monitors in the Charlotte 2008 8-hour Ozone Area are currently below the 2008 8-hour ozone standard.

TABLE 5—CHARLOTTE AREA OZONE DESIGN VALUES (PPM)

Monitor	2007–2009	2008–2010	2009–2011	2010–2012	2011–2013	2012–2014
Crouse	0.076	0.072	0.071	0.075	0.072	0.068
Garinger	0.082	0.078	0.079	0.083	0.078	0.070
Arrowood	0.076	0.073	0.076	0.077	0.072	0.066
County Line	0.086	0.082	0.078	0.083	0.078	0.073
Rockwell	0.083	0.077	0.075	0.078	0.073	0.068
Enochville	0.083	0.077	0.076	0.077	0.072	([12])
Monroe	0.076	0.072	0.070	0.073	0.070	0.068
York	0.072	0.067	0.064	0.065	0.063	0.060

Table 5 also shows that there is an overall downward trend in ozone concentrations in the Charlotte 2008 8-hour Ozone Area. This decline can be attributed to Federal and State programs that have led to significant emissions reductions in ozone precursors. Given this downward trend, the current ozone concentrations in the Charlotte 2008 8-hour Ozone Area, and the results of North Carolina's emissions analysis, EPA has preliminarily determined that a change to 9.0 psi RVP fuel for Gaston and Mecklenburg Counties would not interfere with the Area's ability to attain or maintain the 1997 or 2008 ozone NAAQS in the Charlotte Area.

c. Noninterference Analysis for the PM NAAQS

Over the course of several years, EPA has reviewed and revised the $PM_{2.5}$ NAAQS a number of times. On July 16, 1997, EPA established an annual $PM_{2.5}$ NAAQS of 15.0 micrograms per cubic meter (μg/m³), based on a 3-year average of annual mean $PM_{2.5}$ concentrations, and a 24-hour $PM_{2.5}$ NAAQS of 65 μg/m³, based on a 3-year average of the 98th percentile of 24-hour concentrations. *See* 62 FR 36852 (July 18, 1997). On September 21, 2006, EPA retained the 1997 Annual $PM_{2.5}$ NAAQS of 15.0 μg/m³ but revised the 24-hour $PM_{2.5}$ NAAQS to 35 μg/m³, based again on a 3-year average of the 98th percentile of 24-hour concentrations. *See* 71 FR 61144 (October 17, 2006). On December 14, 2012, EPA retained the 2006 24-hour $PM_{2.5}$ NAAQS of 35 μg/m³ but revised the annual primary $PM_{2.5}$ NAAQS to 12.0 μg/m³, based again on a 3-year average of annual mean $PM_{2.5}$ concentrations. *See* 78 FR 3086 (January 15, 2013).

EPA promulgated designations for the 1997 Annual $PM_{2.5}$ NAAQS on January 5, 2005 (70 FR 944), and April 14, 2005 (70 FR 19844). The Charlotte Area was designated unclassifiable/attainment for the 1997 Annual $PM_{2.5}$ standards. As mentioned above, EPA revised the Annual $PM_{2.5}$ NAAQS in December 2012. EPA completed designations for the 2012 Annual $PM_{2.5}$ NAAQS for most areas on December 14, 2015, and designated counties in the Charlotte Area as unclassifiable/attainment. *See* 80 FR 2206 (January 15, 2015).

[10] The safety margin is the difference between the attainment level of emissions in the base year from all source categories (point, area, on-road and nonroad) and the projected level of emissions in future years from all source categories.

[11] The Charlotte Area is located within a NO_X-limited region. A NO_X-limited region is one in which the concentration of ozone is limited by the amount of NO_X emissions. NO_X and VOC are precursors to the formation of ozone in the atmosphere. In a NO_X-limited area, high prevailing concentrations of VOC from naturally-occurring sources are present in the atmosphere to contribute to ozone formation. Consequently, reduction of manmade, or anthropogenic, sources of VOC emissions generally do not result in reduced ozone formation. Instead, reductions of NO_X emissions provide a more effective ozone reduction strategy because reduced emissions of manmade NO_X emissions limit the amount of NO_X available in the atmosphere for ozone formation. *See, e.g., The State of the Southern Oxidants Study (SOS) Policy Relevant Findings in Ozone and $PM_{2.5}$ Pollution Research 1995–2003 (June 30, 2004), http://www.ncsu.edu/sos/pubs/sos3/State_of_SOS_3.pdf.*

[12] The Enochville monitor shut down after the 2014 monitoring season. There was not enough data at the location to calculate a 3-year average design value for 2012–2014.

In 2013, the Charlotte Area $PM_{2.5}$ design values were 9.8 μg/m³ for the Annual $PM_{2.5}$ NAAQS and 22 μg/m³ for the 24-hour $PM_{2.5}$ NAAQS. North Carolina's MOVES2014 modeling predicted slight reductions of direct $PM_{2.5}$ emissions (0.23 percent reduction in 2015 and a 0.61 percent reduction in 2026) after changing the model inputs to reflect the proposed use of 9.0 psi RVP fuel in Gaston and Mecklenburg Counties. As discussed above, the MOVES2014 modeling also predicted small increases in NO_X and VOC emissions due to the proposed RVP relaxation. However, EPA believes that any resulting increase in ambient $PM_{2.5}$ concentrations resulting from these changes would not cause interference with the $PM_{2.5}$ NAAQS because the NO_X and VOC mobile emission increases would be small in relation to the current total emissions and because ambient $PM_{2.5}$ concentrations in the southeastern U.S. tend to be impacted more significantly by direct $PM_{2.5}$ and SO_2 emissions than by NO_X and anthropogenic VOC emissions.[13] As discussed below, the MOVES2014 model did not predict any impact on SO_2 emissions due to RVP relaxation in Gaston and Mecklenburg Counties. Given the current $PM_{2.5}$ concentrations in the Charlotte Area and the results of North Carolina's emissions analysis, EPA has preliminarily determined that a change to 9.0 psi RVP fuel for Gaston and Mecklenburg Counties would not interfere with maintenance of the 1997 Annual $PM_{2.5}$ NAAQS or the 2006 24-hour $PM_{2.5}$ NAAQS in the Charlotte Area.[14]

d. Noninterference Analysis for the 2010 NO_2 NAAQS

On February 17, 2012, EPA designated all counties in North Carolina as unclassifiable/attainment for the 2010 NO_2 NAAQS. *See* 77 FR 9532. Based on the technical analysis in North Carolina's April 16, 2015, RVP-related SIP revision, the projected increase in total anthropogenic NO_X emissions associated with the change to 9.0 psi RVP fuel for Gaston and Mecklenburg Counties is approximately 0.11 tpd in 2015 and 0.01 tpd in 2026. Given the current unclassifiable/attainment designation and the results of North Carolina's emissions analysis, EPA has preliminarily determined that a change to 9.0 psi RVP fuel for Gaston and Mecklenburg Counties would not interfere with maintenance of the 2010 NO_2 NAAQS in the Charlotte Area.

e. Noninterference Analysis for the CO NAAQS

In November 6, 1991, Mecklenburg County was classified as ''not classified'' for the 1971 8-hour CO NAAQS of 9 ppm. *See* 56 FR 56694. Mecklenburg County was redesignated to attainment for the 8-hour CO NAAQS on August 2, 1995. *See* 60 FR 39258. On August 31, 2011, EPA retained the 8-hour standard and 1-hour standard. *See* 76 FR 54294. Gaston and Mecklenburg Counties remain in attainment for the 1971 and 2011 1-hour and 8-hour CO NAAQS.

North Carolina's MOVES2014 modeling projected an increase in total on-road mobile source CO emissions of approximately 2.78 tpd in 2015 and 1.44 tpd in 2026 (0.71 percent and 0.60 percent of estimated total on-road mobile source emissions in those years, respectively) after changing the model inputs to reflect the proposed use of 9.0 psi RVP fuel in Gaston and Mecklenburg Counties. The 2012 and 2013 ambient monitoring data showed maximum 8-hour concentration of 1.2 ppm for the 8-hour CO. Additionally, 2012 and 2013 ambient monitoring data showed maximum 1-hour CO concentrations of 2.3 and 1.7 ppm, respectively, well below the 35 ppm 1-hour CO NAAQS. Given the current unclassifiable/attainment designation, ambient monitoring data, and the results of North Carolina's emissions analysis, EPA has preliminarily determined that a change to 9.0 psi RVP fuel for Gaston and Mecklenburg Counties would not interfere with maintenance of the 1971 1-hour and 8-hour CO NAAQS in the Charlotte Area.

f. Noninterference Analysis for the SO_2 NAAQS

On June 22, 2010, EPA revised the 1-hour SO_2 NAAQS to 75 parts per billion (ppb) which became effective on August 23, 2010. *See* 75 FR 35520. On August 5, 2013, EPA designated nonattainment only in areas with violating 2009–2011 monitoring data. EPA did not designate any county in North Carolina for the 2010 1-hour SO_2 NAAQS as part of the initial designation. *See* 78 FR 47191. On March 2, 2015, a Consent Decree was issued by the United States District Court for the Northern District of California stipulating the time and method for designating the remaining areas in the Country.[15]

North Carolina's MOVES2014 modeling did not predict any change in SO_2 emissions due to RVP relaxation. The Charlotte Area had a design value of 10 ppb, about 13 percent of the SO_2 NAAQS. Additionally, 3 percent of total SO_2 is derived from on-road, nonroad and area sources combined and the remaining 97 percent from point sources.[16] For these reasons, EPA has preliminarily determined that a change to 9.0 psi RVP fuel for Gaston and Mecklenburg Counties would not interfere with maintenance of the 2012 SO_2 NAAQS in the Charlotte Area.

VI. Proposed Action

EPA is proposing to approve the State of North Carolina's noninterference demonstration, submitted on April 16, 2015, in support of the State's request that EPA change the Federal RVP requirements for Gaston and Mecklenburg Counties from 7.8 psi to 9.0 psi. Specifically, EPA is proposing to find that this change in the RVP requirements for Gaston and Mecklenburg Counties will not interfere with attainment or maintenance of any NAAQS or with any other applicable requirement of the CAA. North Carolina's April 16, 2015, SIP revision also updates its maintenance plan and the associated MVEBs related to the State's redesignation request for the North Carolina portion of the 2008 Charlotte 8-hour Ozone Area to reflect emissions changes for the requested change to the Federal RVP requirements. EPA is proposing to approve those changes to update the maintenance plan and the MVEBs. As previously mentioned, final action on North Carolina's noninterference demonstration is contingent upon EPA approving the State's redesignation request and maintenance plan for the North Carolina portion of Charlotte 2008 8-hour Ozone Area.

EPA has preliminarily determined that North Carolina's April 16, 2015, RVP-related SIP revision is consistent with the applicable provisions of the

[13] The main precursors for $PM_{2.5}$ are NO_X, SO_2, VOC and ammonia. There have been a number of studies in the Southeast which have indicated that SO_2 is the primary driver of $PM_{2.5}$ formation in the Southeast. *See, e.g., Journal of Environmental Engineering- Quantifying the sources of ozone, fine particulate matter, and regional haze in the Southeastern United States* (June 24, 2009), *http://www.journals.elsevier.com/journal-of-environmental-management.*

[14] EPA has also preliminarily determined that a change to 9.0 psi RVP fuel in the Charlotte Area would not interfere with maintenance of the Annual PM_{10} NAAQS of 150 μg/m³ given the results of North Carolina's emissions analysis and the fact that the Area is currently attaining the PM_{10} standard. Because $PM_{2.5}$ is a component of PM_{10}, this preliminary determination is further supported by the downward trend in $PM_{2.5}$ identified above.

[15] Copy of the Consent Decree- *http://www.epa.gov/so2designations/pdfs/201503FinalCourtOrder.pdf.*

[16] ''Redesignation Demonstration and Maintenance Plan for the Hickory (Catawba County) and Greensboro/Winston-Salem/High Point (Davidson and Guilford Counties) Fine Particulate Matter Nonattainment Areas'', submitted to the EPA on December 18, 2009, Figure 4–2, p. 4–4).

CAA. EPA is not proposing action today to remove the Federal 7.8 psi RVP requirement for Gaston and Mecklenburg Counties. Any such proposal would occur in a separate and subsequent rulemaking.

VII. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, October 7, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

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

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

Dated: May 12, 2015.

Heather McTeer Toney

Regional Administrator, Region 4.

[FR Doc. 2015–12348 Filed 5–20–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R04–OAR–2014–0870; FRL–9928–14–Region 4]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Tennessee; Redesignation of the Knoxville 2008 8-Hour Ozone Nonattainment Area to Attainment

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: On November 14, 2014, the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), Air Pollution Control Division, submitted a request for the Environmental Protection Agency (EPA) to redesignate the Knoxville, Tennessee 8-hour ozone nonattainment area (hereafter referred to as the ''Knoxville Area'' or ''Area'') to attainment for the 2008 8-hour ozone National Ambient Air Quality Standards (NAAQS) and to approve a State Implementation Plan (SIP) revision containing a maintenance plan and a base year emissions inventory for the Area. The Knoxville Area includes a portion of Anderson County as well as Blount and Knox Counties in their entireties. EPA is proposing to approve the base year emissions inventory for the 2008 8-hour ozone NAAQS for the Knoxville Area; to determine that the Knoxville Area is attaining the 2008 8-hour ozone NAAQS; to approve the State's plan for maintaining attainment of the 2008 8-hour ozone standard in the Area, including the motor vehicle emission budgets (MVEBs) for nitrogen oxides (NO_X) and volatile organic compounds (VOC) for the years 2011 and 2026 for the Area, into the SIP; and to redesignate the Area to attainment for the 2008 8-hour ozone NAAQS. EPA is also notifying the public of the status of EPA's adequacy determination for the Knoxville Area MVEBs.

DATES: Comments must be received on or before June 22, 2015.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2014–0870, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: R4-ARMS@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* ''EPA–R04–OAR–2014–0870,'' Air Regulatory Management Section (formerly the Regulatory Development Section), Air Planning and Implementation Branch (formerly the Air Planning Branch), Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Ms. Lynorae Benjamin, Chief, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2014–0870. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which

means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jane Spann or Tiereny Bell of the Air Regulatory Management Section, in the Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Ms. Spann may be reached by phone at (404) 562–9029 or via electronic mail at *spann.jane@epa.gov.* Ms. Bell may be reached by phone at (404) 562–9088 or via electronic mail at *bell.tiereny@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. What are the actions EPA is proposing to take?

EPA is proposing to take four separate but related actions, one of which involves multiple elements: (1) To approve the base year inventory for the 2008 8-hour ozone NAAQS for the Knoxville Area into the Tennessee SIP; (2) to determine that the Knoxville Area is attaining the 2008 8-hour ozone NAAQS; (3) to approve Tennessee's plan for maintaining the 2008 8-hour ozone NAAQS (maintenance plan), including the associated MVEBs, into the SIP; and (4) to redesignate the Knoxville Area to attainment for the 2008 8-hour ozone NAAQS. EPA is also notifying the public of the status of EPA's adequacy determination for the Knoxville Area MVEBs. These actions are summarized below and described in greater detail throughout this notice of proposed rulemaking.

Based on the 2008 8-hour ozone nonattainment designation for the Knoxville Area, Tennessee was required to develop a nonattainment SIP revision addressing certain CAA requirements. Specifically, pursuant to CAA section 182(a)(3)(B) and section 182(a)(1), the Knoxville Area was required to submit a SIP revision addressing emissions statements and emissions inventory requirements, respectively. EPA approved the emissions statements requirements for the Area into the SIP in a separate action. *See* 80 FR 11974 (March 5, 2015). Today, EPA is proposing to determine that the base year emissions inventory, as submitted in the State's November 14, 2014, SIP revision, meets the requirements of sections 110 and 182(a)(1) of the CAA and proposing to approve this emissions inventory into the SIP.

EPA is also making the preliminarily determination that the Knoxville Area is attaining the 2008 8-hour ozone NAAQS based on recent air quality data and proposing to approve Tennessee's 2008 ozone NAAQS maintenance plan for the Knoxville Area as meeting the requirements of section 175A of the CAA (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed to keep the Knoxville Area in attainment of the 2008 8-hour ozone NAAQS through 2026. Additionally, EPA is proposing to approve the 2011 and 2026 NO_X and VOC MVEBs that are included as part of Tennessee's 2008 ozone NAAQS maintenance plan for the Knoxville Area.

EPA is also notifying the public of the status of EPA's adequacy process for the NO_X and VOC MVEBs for the years 2011 and 2026 for the Knoxville Area. The public comment period for Adequacy began on December 4, 2014, with EPA's posting of the availability of this submittal on EPA's Adequacy Web site (*http://www.tn.gov/environment/ppo/docs/air/knoxville-redesignation-request-2014.pdf*). The Adequacy comment period for these MVEBs closed on January 5, 2015. No comments, adverse or otherwise, were received during EPA's adequacy process for the MVEBs associated with Tennessee's 2008 8-hour ozone maintenance plan. Please see section VII of this proposed rulemaking for further explanation of this process and for more details on the MVEBs.

In summary, today's notice of proposed rulemaking is in response to Tennessee's November 14, 2014, redesignation request and associated SIP submittal that address the specific issues summarized above and the necessary elements described in section 107(d)(3)(E) of the CAA for redesignation of the Knoxville Area to attainment for the 2008 8-hour ozone NAAQS. More detail regarding the rationale for EPA's proposed actions is discussed below.

II. What is the background for EPA's proposed actions?

On March 12, 2008, EPA promulgated a revised 8-hour ozone NAAQS of 0.075 parts per million (ppm). *See* 73 FR 16436 (March 27, 2008). Under EPA's regulations at 40 CFR part 50, the 2008 8-hour ozone NAAQS is attained when the 3-year average of the annual fourth highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.075 ppm. *See* 40 CFR 50.15. Ambient air quality monitoring data for the 3-year period must meet a data completeness requirement. The ambient air quality monitoring data

completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined in Appendix I of part 50.

Upon promulgation of a new or revised NAAQS, the CAA requires EPA to designate as nonattainment any area that is violating the NAAQS, based on the three most recent years of ambient air quality data at the conclusion of the designation process. The Knoxville Area was designated nonattainment for the 2008 8-hour ozone NAAQS on May 21, 2012 (effective July 20, 2012) using 2009–2011 ambient air quality data. *See* 77 FR 30088 (May 21, 2012). At the time of designation, the Knoxville Area was classified as a marginal nonattainment area for the 2008 8-hour ozone NAAQS. In the final implementation rule for the 2008 8-hour ozone NAAQS (SIP Implementation Rule),[1] EPA established ozone nonattainment area attainment dates based on Table 1 of section 181(a) of the CAA. This established an attainment date three years after the July 20, 2012, effective date for areas classified as marginal areas for the 2008 8-hour ozone nonattainment designations. Therefore, the Knoxville Area's attainment date is July 20, 2015.

III. What are the criteria for redesignation?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA allows for redesignation providing that: (1) The Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k); (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable federal air pollutant control regulations and other permanent and enforceable reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and (5) the state containing such area has met all requirements applicable to the area for purposes of redesignation under section 110 and part D of the CAA.

On April 16, 1992, EPA provided guidance on redesignation in the General Preamble for the Implementation of title I of the CAA Amendments of 1990 (57 FR 13498), and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

1. ''Ozone and Carbon Monoxide Design Value Calculations,'' Memorandum from Bill Laxton, Director, Technical Support Division, June 18, 1990;
2. ''Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;
3. ''Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;
4. ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (hereafter referred to as the ''Calcagni Memorandum'');
5. ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines,'' Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;
6. ''Technical Support Documents (TSDs) for Redesignation of Ozone and Carbon Monoxide (CO) Nonattainment Areas,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;
7. ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992,'' Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;
8. ''Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,'' Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993;
9. ''Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and
10. ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

IV. Why is EPA proposing these actions?

On November 14, 2014, the State of Tennessee, through TDEC, requested that EPA redesignate the Knoxville Area to attainment for the 2008 8-hour ozone NAAQS. EPA's evaluation indicates that the Knoxville Area has attained the 2008 8-hour ozone NAAQS and that the Knoxville Area meets the requirements for redesignation set forth in section 107(d)(3)(E), including the maintenance plan requirements under section 175A of the CAA and associated MVEBs. Also, based on Tennessee's November 14, 2014, submittal, EPA is also proposing to approve the base year emissions inventory, included in Tennessee's November 14, 2014, submittal, into the SIP. Approval of the base year inventory is a prerequisite to redesignating an ozone nonattainment area to attainment.

V. What is EPA's analysis of the redesignation request and November 14, 2014, sip submission?

As stated above, in accordance with the CAA, EPA proposes in today's action to: (1) Approve the 2008 8-hour ozone base year emissions inventory for the Knoxville Area into the Tennessee SIP; (2) determine that the Knoxville Area is attaining the 2008 8-hour ozone NAAQS; (3) approve the Knoxville Area's 2008 8-hour ozone NAAQS maintenance plan, including the associated sub-area MVEBs, into the Tennessee SIP; and (4) redesignate the Knoxville Area to attainment for the 2008 8-hour ozone NAAQS. Approval of the 2008 8-hour ozone base year inventory is a required prerequisite action before the Area can be redesignated to attainment. The five redesignation criteria provided under CAA section 107(d)(3)(E) are discussed in greater detail for the Area following the discussion below on the Knoxville emissions inventory.

A. Emission Inventory

Section 182(a)(1) of the CAA requires states to submit a comprehensive, accurate, and current inventory of actual emissions from all sources of the relevant pollutant or pollutants in each ozone nonattainment area. The section 182(a)(1) base year inventory is defined in the SIP Requirements Rule as ''a comprehensive, accurate, current

[1] This rule, entitled Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements and published at 80 FR 12264 (March 6, 2015), addresses a range of nonattainment area SIP requirements for the 2008 ozone NAAQS, including requirements pertaining to attainment demonstrations, reasonable further progress (RFP), reasonably available control technology (RACT), reasonably available control measures (RACM), major new source review (NSR), emission inventories, and the timing of SIP submissions and of compliance with emission control measures in the SIP. This rule also addresses the revocation of the 1997 ozone NAAQS and the anti-backsliding requirements that apply when the 1997 ozone NAAQS are revoked.

inventory of actual emissions from sources of VOC and NO_X emitted within the boundaries of the nonattainment area as required by CAA section 182(a)(1).'' *See* 40 CFR 51.1100(bb). The inventory year must be selected consistent with the baseline year for the RFP plan as required by 40 CFR 51.1110(b),[2] and the inventory must include actual ozone season day emissions as defined in 40 CFR 51.1100(cc)[3] and contain data elements consistent with the detail required by 40 CFR part 51, subpart A. *See* 40 CFR 51.1115(a), (c), (e). In addition, the point source emissions included in the inventory must be reported according to the point source emissions thresholds of the Air Emissions Reporting Requirements (AERR) in 40 CFR part 51, subpart A. 40 CFR 51.1115(d).

Knoxville selected 2011 as the base year for the section 182(a)(1) emissions inventory which is the year corresponding with the first triennial inventory under 40 CFR part 51, subpart A. This base year is one of the three years of ambient data used to determine attainment and therefore represents emissions associated with attainment conditions. The emissions inventory is based on data developed and submitted by TDEC and Knox County Division of Air Quality Management to TDEC to EPA's 2011 National Emissions Inventory (NEI), and it contains data elements consistent with the detail required by 40 CFR part 51, subpart A.[4]

Knoxville's emissions inventory for its portion of the Area provides 2011 emissions data for NO_X and VOCs for the following general source categories: Stationary point, area, non-road mobile, and on-road mobile. A detailed discussion of the inventory development is located in Attachment A, Emission Inventory, in Tennessee's November 14, 2014, SIP submittal which is provided in the docket for this action. The table below provides a summary of the emissions inventory.

TABLE 1—2011 POINT, AREA, NON-ROAD MOBILE, AND ON-ROAD MOBILE SOURCES EMISSIONS FOR THE KNOXVILLE AREA

[Tons per typical summer day]

County	Point		Area		Non-road mobile		On-road mobile	
	NO_X	VOC	NO_X	VOC	NO_X	VOC	NO_X	VOC
Anderson (partial)	6.15	0.2	0.93	5.56	0.23	0.31	1.05	0.70
Blount	0.53	3.67	2.38	41.16	1.53	2.15	6.65	4.60
Knox	3.29	1.11	3.26	40.12	6.61	5.02	33.92	14.42
Total Emissions	9.97	4.98	6.57	86.93	8.37	7.47	41.62	19.71

The emissions inventory includes all anthropogenic VOC and NO_X sources for all of Blount and Knox Counties, as well as the portion of Anderson County included in the Area. NO_X and VOC emissions were calculated for a typical summer July day, taking into account the seasonal adjustment factor for summer operations. The inventory contains point source emissions data for facilities located within the Blount and Knox Counties as well as the portion of Anderson County included in the Area based on Geographic Information Systems (GIS) mapping. For Blount and Knox County, the emissions for the entire county are provided. More detail on the inventory emissions for individual sources categories is provided below and in the Attachment A to Tennessee's November 14, 2014, SIP submittal.

Point sources are large, stationary, identifiable sources of emissions that release pollutants into the atmosphere. The inventory contains point source emissions data for facilities located within the Blount and Knox Counties as well as the portion of Anderson County included in the Area based on GIS mapping. Each facility was required to update the previous Emission Database Layout (EDL) file with information for the requested year and return the updated EDL to the TDEC emission inventory mailbox. For this submittal, point source emissions were obtained from EDL for facilities in the nonattainment counties. The point source emissions inventory for Blount and Knox County as well as the portion of Anderson County included in the Area is located in the docket for today's action.

Area sources are small emission stationary sources which, due to their large number, collectively have significant emissions (*e.g.,* dry cleaners, service stations). Emissions for these sources were estimated by multiplying an emission factor by such indicators of collective emissions activity as production, number of employees, or population. These emissions were estimated at the county level. Tennessee developed its inventory using EPA Nonpoint files located on EPA's CHIEF Emission Inventory Web site for the 2011 NEI and subtracted available activity data for area sources that may have a point source contribution to eliminate double counting. Tennessee developed its inventory according to the current EPA emissions inventory guidance for area sources.[5]

On-road mobile sources include vehicles used on roads for transportation of passengers or freight. Tennessee developed its on-road emissions inventory using EPA's Motor Vehicle Emissions Simulator (MOVES) model for each ozone nonattainment

[2] 40 CFR 51.1110(b) states that ''at the time of designation for the 2008 ozone NAAQS the baseline emissions inventory shall be the emissions inventory for the most recent calendar year for which a complete triennial inventory is required to be submitted to EPA under the provisions of subpart A of this part. States may use an alternative baseline emissions inventory provided the state demonstrates why it is appropriate to use the alternative baseline year, and provided that the year selected is between the years 2008 to 2012.''

[3] ''Ozone season day emissions'' is defined as ''an average day's emissions for a typical ozone season work weekday. The state shall select, subject to EPA approval, the particular month(s) in the ozone season and the day(s) in the work week to be represented, considering the conditions assumed in the development of RFP plans and/or emissions budgets for transportation conformity.'' *See* 40 CFR 51.1100(cc).

[4] Data downloaded from the EPA EIS from the 2011 NEI was subjected to quality assurance procedures described under *quality assurance details* under *2011 NEI Version 1 Documentation* located at *http://www.epa.gov/ttn/chief/net/2011inventory.html#inventorydoc.* The quality assurance and quality control procedures and measures associated with this data are outlined in the State's EPA-approved Emission Inventory Quality Assurance Project Plan.

[5] This guidance includes: *Procedures for the Preparation of Emission Inventories of Carbon Monoxide and Precursors of Ozone, Vol. 1,* EPA–450/4–91–016 (May 1991) and *Emissions Inventory Improvement Program (EIIP) Technical Report, Vol. 3, Area Sources* (Revised January 2001, updated April 2001).

county.[6] County level on-road modeling was conducted using county-specific vehicle population and other local data. Tennessee developed its inventory according to the current EPA emissions inventory guidance for on-road mobile sources using MOVES version 2014.[7]

Non-road mobile sources include vehicles, engines, and equipment used for construction, agriculture, recreation, and other purposes that do not use roadways (*e.g.,* lawn mowers, construction equipment, railroad locomotives, and aircraft). Tennessee calculated emissions for most of the non-road mobile sources using EPA's NONROAD2008a model[8] and developed its non-road mobile source inventory according to the current EPA emissions inventory guidance for non-road mobile sources.[9]

For the reasons discussed above, EPA has preliminarily determined that Tennessee's emissions inventory meets the requirements under CAA section 182(a)(1) and the SIP Requirements Rule for the 2008 8-hour ozone NAAQS. Approval of Tennessee's redesignation request and associated maintenance plan is contingent upon EPA's final approval of the base year emission inventory for the 2008 8-hour ozone NAAQS.

B. Redesignation Request and Maintenance Demonstration

The five redesignation criteria provided under CAA section 107(d)(3)(E) are discussed in greater detail for the Knoxville Area in the following paragraphs of this section.

Criteria (1)—The Knoxville Area has Attained the 2008 8-Hour Ozone NAAQS

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the area has attained the applicable NAAQS (CAA section 107(d)(3)(E)(i)). For ozone, an area may be considered to be attaining the 2008 8-hour ozone NAAQS if it meets the 2008 8-hour ozone NAAQS, as determined in accordance with 40 CFR 50.15 and Appendix I of part 50, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain the NAAQS, the 3-year average of the fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area over each year must not exceed 0.075 ppm. Based on the data handling and reporting convention described in 40 CFR part 50, Appendix I, the NAAQS are attained if the design value is 0.075 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58 and recorded in the EPA Air Quality System (AQS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

In this action, EPA is preliminarily determining that the Knoxville Area is attaining the 2008 8-hour ozone NAAQS. EPA reviewed the available ozone monitoring data from monitoring stations in the Knoxville Area for the 2008 8-hour ozone NAAQS for 2011–2013. These data have been quality-assured, are recorded in Aerometric Information Retrieval System (AIRS–AQS), and indicate that the Area is attaining the 2008 8-hour ozone NAAQS. The fourth-highest 8-hour ozone values at each monitor for 2011, 2012, and 2013, and the 3-year averages for 2011–2013 (*i.e.,* design values), are summarized in Table 1, below.

TABLE 2—DESIGN VALUE CONCENTRATIONS FOR THE KNOXVILLE AREA

Location	County	Monitor ID	4th Highest values (ppm)			3-Year design values (ppm)
			2011	2012	2013	2011–2013
Freels Bend Study Area	Anderson	470010101–1	0.074	0.073	0.060	0.069
Look Rock GSMNP	Blount	470090101–1	0.083	0.075	0.064	0.074
Cades Cove GSMNP		470090102–1	0.068	0.064	0.059	0.063
9315 Rutledge Pike	Knox	470930021–1	0.071	0.073	0.057	0.067
4625 Mildred Drive		470931020–1	0.072	0.078	0.061	0.070

The 3-year design value for 2011–2013 is 0.074 ppm,[10] which meets the NAAQS. This data has been certified and quality-assured. In today's action, EPA is proposing to determine that the Area is attaining the 2008 8-hour ozone NAAQS. EPA will not take final action to approve the redesignation if the 3-year design value exceeds the NAAQS after proposal. Preliminary 2014 data indicates that this Area will continue to attain the 2008 8-hour ozone NAAQS.[11] As discussed in more detail below, the State of Tennessee has committed to continue monitoring in this Area in accordance with 40 CFR part 58.

Criteria (2)—Tennessee has a Fully Approved SIP Under Section 110(k) for the Knoxville Area; and Criteria (5)—Tennessee has met all Applicable Requirements Under Section 110 and Part D of Title I of the CAA

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the state has met all applicable requirements under section 110 and part D of title I of the CAA (CAA section 107(d)(3)(E)(v)) and that the state has a fully approved SIP under section 110(k) for the area (CAA section 107(d)(3)(E)(ii)). EPA proposes to find that Tennessee has met all applicable SIP requirements for the Knoxville Area under section 110 of the CAA (general SIP requirements) for purposes of redesignation. Additionally, EPA proposes to find that the Tennessee SIP satisfies the criterion that it meets

[6] Tennessee used *MOVES to Prepare Emission Inventories in State Implementation Plans and Transportation Conformity: Technical Guidance for MOVES2010, 2010a and 2010b,* EPA–420–12–028 (April 2012).

[7] This guidance includes: *Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations,* EPA–454/R–05–001 (August 2005, updated November 2005); *Policy Guidance on the Use of MOVES2010 for State Implementation Plan Development, Transportation Conformity, and Other Purposes,* EPA–420–B–09–046 (December 2009); and *Technical Guidance on the Use of MOVES2010 for Emission Inventory Preparation in State Implementation Plans and Transportation Conformity,* EPA–420–B–10–023 (April 2010).

[8] For consistency with the National Emissions Inventory (NEI), Tennessee included emissions data for locomotive, and aircraft by county. ALM emissions for 2011 were primarily based on EPA's 2011 NEI.

[9] This guidance includes: *Procedures for Emission Inventory Preparation, Volume IV: Mobile Sources,* EPA–450/4–81–026d (July 1991).

[10] The monitor with the highest 3-year design value is considered the design value for the Area.

[11] Preliminary 2014 data for the Knoxville Area is available at *www.epa.gov/airdata.*

applicable SIP requirements for purposes of redesignation under part D of title I of the CAA (requirements specific to 2008 8-hour ozone nonattainment areas) in accordance with section 107(d)(3)(E)(v). Further, EPA proposes to determine that the SIP is fully approved with respect to all requirements applicable for purposes of redesignation in accordance with section 107(d)(3)(E)(ii). In making these proposed determinations, EPA ascertained which requirements are applicable to the Area and, if applicable, that they are fully approved under section 110(k). SIPs must be fully approved only with respect to requirements that were applicable prior to submittal of the complete redesignation request.

a. The Knoxville Area Has Met All Applicable Requirements Under Section 110 and Part D of the CAA

General SIP requirements. Section 110(a)(2) of title I of the CAA delineates the general requirements for a SIP, which include enforceable emissions limitations and other control measures, means, or techniques; provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality; and programs to enforce the limitations. General SIP elements and requirements are delineated in section 110(a)(2) of title I, part A of the CAA. These requirements include, but are not limited to, the following: submittal of a SIP that has been adopted by the state after reasonable public notice and hearing; provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality; implementation of a source permit program; provisions for the implementation of part C requirements (Prevention of Significant Deterioration (PSD)) and provisions for the implementation of part D requirements (NSR permit programs); provisions for air pollution modeling; and provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address the interstate transport of air pollutants. The section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area's designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, EPA does not believe that the CAA's interstate transport requirements should be construed to be applicable requirements for purposes of redesignation.

In addition, EPA believes other section 110 elements that are neither connected with nonattainment plan submissions nor linked with an area's attainment status are applicable requirements for purposes of redesignation. The area will still be subject to these requirements after the area is redesignated. The section 110 and part D requirements which are linked with a particular area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. This approach is consistent with EPA's existing policy on applicability (*i.e.,* for redesignations) of conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. *See* Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996), (62 FR 24826, May 7, 2008); Cleveland-Akron-Loraine, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking at (60 FR 62748, December 7, 1995). *See also* the discussion on this issue in the Cincinnati, Ohio, redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh, Pennsylvania, redesignation (66 FR 50399, October 19, 2001).

Title I, Part D, applicable SIP requirements. Section 172(c) of the CAA sets forth the basic requirements of attainment plans for nonattainment areas that are required to submit them pursuant to section 172(b). Subpart 2 of part D, which includes section 182 of the CAA, establishes specific requirements for ozone nonattainment areas depending on the area's nonattainment classification. As provided in Subpart 2, a marginal ozone nonattainment area, such as the Knoxville Area, must submit an emissions inventory that complies with section 172(c)(3), but the specific requirements of section 182(a) apply in lieu of the demonstration of attainment (and contingency measures) required by section 172(c). *See* 42 U.S.C. 7511a(a). A thorough discussion of the requirements contained in sections 172(c) and 182 can be found in the General Preamble for Implementation of Title I (57 FR 13498).

Section 182(a) Requirements. Section 182(a)(1) requires states to submit a comprehensive, accurate, and current inventory of actual emissions from sources of VOC and NOx emitted within the boundaries of the ozone nonattainment area. Tennessee provided an emissions inventory for the Knoxville Area to EPA in a November 14, 2014 SIP submission. Specifically, Tennessee addressed this requirement by submitting a 2011 base year emissions inventory for the Knoxville Area. EPA is proposing approval of Tennessee's 2011 base year inventory in this action (see Section V.A. above). Tennessee's section 182(a)(1) inventory must be incorporated into the SIP before EPA can take final action to approve the State's redesignation request for the Knoxville Area.

Under section 182(a)(2)(A), states with ozone nonattainment areas that were designated prior to the enactment of the 1990 CAA amendments were required to submit, within six months of classification, all rules and corrections to existing VOC RACT rules that were required under section 172(b)(3) of the CAA (and related guidance) prior to the 1990 CAA amendments. The Knoxville Area is not subject to the section 182(a)(2) RACT ''fix up'' because it was designated as nonattainment after the enactment of the 1990 CAA amendments.

Section 182(a)(2)(B) requires each state with a marginal ozone nonattainment area that implemented, or was required to implement, an inspection and maintenance (I/M) program prior to the 1990 CAA amendments to submit a SIP revision providing for an I/M program no less stringent than that required prior to the 1990 amendments or already in the SIP at the time of the amendments, whichever is more stringent. The Knoxville Area is not subject to the section 182(a)(2)(B) because it was designated as nonattainment after the enactment of the 1990 CAA amendments and did not have an I/M program in place prior to those amendments.

Regarding the permitting and offset requirements of section 182(a)(2)(C) and section 182(a)(4), Tennessee currently has a fully-approved part D NSR program in place. However, EPA has determined that areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR, because PSD requirements

will apply after redesignation. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.'' Tennessee's PSD program will become applicable in the Knoxville Area upon redesignation to attainment.

Section 182(a)(3) requires states to submit periodic inventories and emissions statements. Section 182(a)(3)(A) requires states to submit a periodic inventory every three years. As discussed below in the section of this notice titled Criteria (4)(e), *Verification of Continued Attainment,* the State will continue to update its emissions inventory at least once every three years. Under section 182(a)(3)(B), each state with an ozone nonattainment area must submit a SIP revision requiring emissions statements to be submitted to the state by sources within that nonattainment area. EPA approved Tennessee's emissions statements requirement on March 5, 2015 (80 FR 11887).

Section 176 Conformity Requirements: Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects that are developed, funded or approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity) as well as to all other federally supported or funded projects (general conformity). State transportation conformity SIP revisions must be consistent with federal conformity regulations relating to consultation, enforcement and enforceability that EPA promulgated pursuant to its authority under the CAA.

EPA interprets the conformity SIP requirements [12] as not applying for purposes of evaluating a redesignation request under section 107(d) because state conformity rules are still required after redesignation and federal conformity rules apply where state rules have not been approved. *See Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001) (upholding this interpretation); *see also* 60 FR 62748 (December 7, 1995) (redesignation of Tampa, Florida). Nonetheless, Tennessee has an approved conformity SIP for the Knoxville Area. *See* 78 FR 29027 (May 17, 2013). Thus, the Knoxville Area has satisfied all applicable requirements for purposes of redesignation under section 110 and part D of title I of the CAA.

b. The Knoxville Area Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA

EPA has fully approved the applicable Tennessee SIP for the Knoxville Area under section 110(k) of the CAA for all requirements applicable for purposes of redesignation. EPA may rely on prior SIP approvals in approving a redesignation request (*see* Calcagni Memorandum at p. 3; *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F.3d 984, 989–90 (6th Cir. 1998); *Wall,* 265 F.3d 426) plus any additional measures it may approve in conjunction with a redesignation action (*see* 68 FR 25426 (May 12, 2003) and citations therein). Tennessee has adopted and submitted, and EPA has approved at various times, provisions addressing the various SIP elements applicable for the ozone NAAQS. *See* 78 FR 14450 (March 16, 2013).

As indicated above, EPA believes that the section 110 elements that are neither connected with nonattainment plan submissions nor linked to an area's nonattainment status are not applicable requirements for purposes of redesignation. With the exception of the emissions inventory requirement, which is addressed in this action, EPA has approved all part D requirements applicable for purposes of this redesignation.

Criteria (3)—The Air Quality Improvement in the Knoxville Area Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the Sip and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the air quality improvement in the area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP and applicable federal air pollution control regulations and other permanent and enforceable reductions (CAA section 107(d)(3)(E)(iii)). EPA has preliminarily determined that Tennessee has demonstrated that the observed air quality improvement in its portion of the Knoxville Area is due to permanent and enforceable reductions in emissions resulting from federal measures and from state measures adopted into the SIP. EPA does not have any information to suggest that the decrease in ozone concentrations in the Knoxville Area is due to unusually favorable meteorological conditions.

State and Federal measures enacted in recent years have resulted in permanent emission reductions. Most of these emission reductions are enforceable through regulations. A few non-regulatory measures also result in emission reductions. The state and local measures that have been implemented to date and relied upon by Tennessee to demonstrate attainment and/or maintenance in the Knoxville Area include the Statewide Motor Vehicle Anti-Tampering Rule and Stage I Gasoline Vapor Recovery. These measures are approved in the federally-approved SIP and thus are permanent and enforceable. The Federal measures that have been implemented include the following:

Tier 2 Vehicle Standards. Implementation began in 2004 and requires all passenger vehicles in any manufacturer's fleet to meet an average standard of 0.07 grams of NO_X per mile. Additionally, in January 2006 the sulfur content of gasoline was required to be on average 30 ppm which assists in lowering the NO_X emissions.[13]

Heavy-duty gasoline and diesel highway vehicle standards and Ultra Low-Sulfur Diesel Rule. EPA issued this rule on January 18, 2001 (66 FR 5002). This rule includes standards limiting the sulfur content of diesel fuel, which began to take effect in 2004. A second phase took effect in 2007, which further reduced the highway diesel fuel sulfur content to 15 ppm, leading to additional reductions in combustion NO_X and VOC emissions. This rule is expected to achieve a 95 percent reduction in NO_X emissions from diesel trucks and buses.

Nonroad spark-ignition engines and recreational engines standards. The nonroad spark-ignition and recreational engine standards, effective in July 2003, regulate NO_X, hydrocarbons, and carbon monoxide from groups of previously unregulated nonroad engines. These engine standards apply to large spark-ignition engines (*e.g.,* forklifts and airport ground service equipment),

[12] CAA section 176(c)(4)(E) requires states to submit revisions to their SIPs to reflect certain federal criteria and procedures for determining transportation conformity. Transportation conformity SIPs are different from the MVEBs that are established in control strategy SIPs and maintenance plans.

[13] Tennessee also identified Tier 3 Motor Vehicle Emissions and Fuel Standards as a federal measure. EPA issued this rule in April 28, 2014 (79 FR 23414), which applies to light duty passengers cars and trucks. EPA promulgated this rule to reduce air pollution from new passenger cars and trucks beginning in 2017. Tier 3 emission standards will lower sulfur content of gasoline and lower the emissions standards.

recreational vehicles (*e.g.,* off-highway motorcycles and all-terrain-vehicles), and recreational marine diesel engines sold in the United States and imported after the effective date of these standards. When all of the nonroad spark-ignition and recreational engine standards are fully implemented, an overall 72 percent reduction in hydrocarbons, 80 percent reduction in NO_X, and 56 percent reduction in carbon monoxide emissions are expected by 2020. These controls reduce ambient concentrations of ozone, carbon monoxide, and fine particulate matter.

Mercury and Air Toxics Standards (MATS). On February 16, 2012, EPA promulgated maximum achievable control technology regulations for coal- and oil-fired EGUs, intended to reduce hazardous air pollutants emissions from EGUs. Although the MATS rule is not targeted at NO_X emissions, it is expected to result in additional NO_X reductions due to the retirement of older coal-fired units.

Tennessee Valley Authority (TVA) Consent Decree/Federal Facilities Compliance Agreement. On April 14, 2011, TVA entered into a consent decree with Tennessee, Alabama, Kentucky, and North Carolina to resolve allegations of CAA violations at TVA's coal-fired power plants. The relief obtained in this consent decree was also secured in a Federal Facilities Compliance Agreement (FFCA) between EPA and TVA. The consent decree and FFCA establish system-wide caps on NO_X and SO_2emissions at TVA's coal-fired facilities, declining to permanent levels of 52,000 tons of NO_X in 2018 and 110,000 tons of SO_2 in 2019, and require TVA to meet specific control requirements.[14]

NO_X SIP Call. On October 27, 1998 (63 FR 57356), EPA issued the NO_X SIP Call requiring the District of Columbia and 22 states to reduce emissions of NO_X, a precursor to ozone pollution, and providing a mechanism (the NO_X Budget Trading Program) that states could use to achieve those reductions. Affected states were required to comply with Phase I of the SIP Call beginning in 2004 and Phase II beginning in 2007. By the end of 2008, ozone season emissions from sources subject to the NO_X SIP Call dropped by 62 percent from 2000 emissions levels. All NO_X SIP Call states have SIPs that currently satisfy their obligations under the NO_X SIP Call; the NO_X SIP Call reduction requirements are being met; and EPA will continue to enforce the requirements of the NO_X SIP Call. Emission reductions resulting from regulations developed in response to the NO_X SIP Call are therefore permanent and enforceable for the purposes of today's action.

CAIR/CSAPR. CAIR created regional cap-and-trade programs to reduce SO_2 and NO_X emissions in 27 eastern states, including Tennessee. *See* 70 FR 25162 (May 12, 2005). EPA approved Tennessee's CAIR regulations into the Tennessee SIP on November 25, 2009. *See* 74 FR 61535. In 2009, the CAIR ozone season NO_X trading program superseded the NO_X Budget Trading Program, although the emission reduction obligations of the NO_X SIP Call were not rescinded. *See* 40 CFR 51.121(r) and 51.123(aa). In 2008, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) initially vacated CAIR, *North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008), but ultimately remanded the rule to EPA without vacatur to preserve the environmental benefits provided by CAIR, *North Carolina* v. *EPA,* 550 F.3d 1176, 1178 (D.C. Cir. 2008). On August 8, 2011 (76 FR 48208), acting on the D.C. Circuit's remand, EPA promulgated CSAPR to address interstate transport of emissions and resulting secondary air pollutants and to replace CAIR. CSAPR requires substantial reductions of SO_2 and NO_X emissions from electric generating units (EGUs) in 28 states in the Eastern United States.

Implementation of CSAPR was scheduled to begin on January 1, 2012, when CSAPR's cap-and-trade programs would have superseded the CAIR cap and trade programs. Numerous parties filed petitions for review of CSAPR, and on December 30, 2011, the D.C. Circuit issued an order staying CSAPR pending resolution of the petitions and directing EPA to continue to administer CAIR. *EME Homer City Generation, L.P.* v. *EPA,* No. 11–1302 (D.C. Cir. Dec. 30, 2011), Order at 2.

On August 21, 2012, the D.C. Circuit issued its ruling, vacating and remanding CSAPR to EPA and once again ordering continued implementation of CAIR. *EME Homer City Generation, L.P.* v. *EPA,* 696 F.3d 7, 38 (D.C. Cir. 2012). The D.C. Circuit subsequently denied EPA's petition for rehearing en banc. *EME Homer City Generation, L.P.* v. *EPA,* No. 11–1302, 2013 WL 656247 (D.C. Cir. Jan. 24, 2013), at *1. EPA and other parties then petitioned the Supreme Court for a writ of certiorari, and the Supreme Court granted the petitions on June 24, 2013. *EPA* v. *EME Homer City Generation, L.P.,* 133 S. Ct. 2857 (2013).

On April 29, 2014, the Supreme Court vacated and reversed the D.C. Circuit Court's decision regarding CSAPR, and remanded that decision to the D.C. Circuit Court to resolve remaining issues in accordance with its ruling. *EPA* v. *EME Homer City Generation, L.P.,* 134 S. Ct. 1584 (2014). EPA moved to have the stay of CSAPR lifted in light of the Supreme Court decision. *EME Homer City Generation, L.P.* v. *EPA,* Case No. 11–1302, Document No. 1499505 (D.C. Cir. filed June 26, 2014). In its motion, EPA asked the D.C. Circuit to toll CSAPR's compliance deadlines by three years so that the Phase 1 emissions budgets apply in 2015 and 2016 (instead of 2012 and 2013), and the Phase 2 emissions budgets apply in 2017 and beyond (instead of 2014 and beyond). On October 23, 2014, the D.C. Circuit granted EPA's motion and lifted the stay of CSAPR which was imposed on December 30, 2011. *EME Homer City Generation, L.P.* v. *EPA,* No. 11–1302 (D.C. Cir. Oct. 23, 2014), Order at 3. On December 3, 2014, EPA issued an interim final rule to clarify how EPA will implement CSAPR consistent with the D.C. Circuit Court's order granting EPA's motion requesting lifting the stay and tolling the rule's deadlines. *See* 79 FR 71663 (December 3, 2014) (interim final rulemaking). Consistent with that rule, EPA began implementing CSAPR on January 1, 2015. EPA expects that the implementation of CSAPR will preserve the reductions achieved by CAIR and result in additional SO_2 and NO_X emission reductions throughout the maintenance period.

As mentioned above, the State measures that have been implemented include the following:

Statewide Motor Vehicle Anti-Tampering Rule. Tennessee promulgated a statewide motor vehicle anti-tampering rule in 2005 to reduce air pollution caused by tampering with a motor vehicle's emissions control system. The rule defines tampering as modifying, removing, or rendering inoperative any air pollution emission control device which results in an increase in emissions beyond established federal motor vehicle standards. EPA approved this rule into the Tennessee SIP on August 26, 2005

[14] The Bull Run facility in Anderson County is the only source in the Knoxville Area that is covered by the consent decree/FFCA. While Tennessee notes in its submission that selective catalytic reduction (SCR) was required per the consent decree/FFCA to be operational at unit 1 for Bull Run in 2011, EPA has reviewed data for this unit and it appears that controls were put in place on the Bull Run facility prior to the nonattainment designation for the Knoxville Area for the 2008 8-hour ozone NAAQS. These controls continue to operate. Specifically, according to the data reported to EPA's Clean Air Markets Division, the SCR was installed and began operating on May 12, 2004. It appears that the SCR was only used during the ozone season between 2004 and 2008, and from 2009 to the present, began operating the full year.

(70 FR 50199); therefore it is both state and federally enforceable.

Stage I Gasoline Vapor Recovery. Tennessee promulgated rules for Stage I Gasoline Vapor Recovery for several counties throughout Tennessee, including Anderson, Blount, Jefferson, Knox, Loudon Counties in the Knoxville Area. Gasoline dispensing stations in these counties that were contributing sources on December 29, 2004, were required to comply by March 1, 2006. EPA approved these rules into the Tennessee SIP on August 26, 2005 (70 FR 50199).

Criteria (4)—The Knoxville Area Has a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the area has a fully approved maintenance plan pursuant to section 175A of the CAA (CAA section 107(d)(3)(E)(iv)). In conjunction with its request to redesignate the Knoxville Area to attainment for the 2008 8-hour ozone NAAQS, TDEC submitted a SIP revision to provide for the maintenance of the 2008 8-hour ozone NAAQS for at least 10 years after the effective date of redesignation to attainment. EPA has made the preliminary determination that this maintenance plan meets the requirements for approval under section 175A of the CAA.

a. What is required in a maintenance plan?

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan which demonstrates that attainment will continue to be maintained for the remainder of the 20-year period following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures as EPA deems necessary to assure prompt correction of any future 2008 8-hour ozone violations. The Calcagni Memorandum provides further guidance on the content of a maintenance plan, explaining that a maintenance plan should address five requirements: The attainment emissions inventory, maintenance demonstration, monitoring, verification of continued attainment, and a contingency plan. As is discussed more fully below, EPA proposes to find that Tennessee's maintenance plan includes all the necessary components and is thus proposing to approve it as a revision to the Tennessee SIP.

b. Attainment Emissions Inventory

EPA is proposing to determine that the Knoxville Area has attained the 2008 8-hour ozone NAAQS based on monitoring data for the 3-year period from 2011–2013. Tennessee selected 2011 as the base year (*i.e.,* attainment emissions inventory year) for developing a comprehensive emissions inventory for NO_X and VOC, for which projected emissions could be developed for 2014, 2017, 2020, 2023 and 2026. The attainment inventory identifies a level of emissions in the Area that is sufficient to attain the 2008 8-hour ozone NAAQS. Tennessee began development of the attainment inventory by first generating a baseline emissions inventory for the Knoxville Area.

The attainment year emissions were projected to future years separately using different methods by source categories, including: Point sources; area sources; on-road mobile sources; non-road mobile sources including commercial marine vessels, locomotives and air craft (MLA); and non-road mobile sources excluding MLA. The emissions were projected for 2014, 2017, 2020, 2023 and 2026 using 2011 emissions and growth factors developed from the methodology from SESARM Metro4, Inc. Growth factors were developed using the U.S. Energy Information Administration's 2014 Annual Energy Outlook (AEO2014) energy consumption and production forecasts.

Tennessee's 2011 emissions inventory, prepared by TDEC, was used as a source of base year emissions for Blount and Knox Counties, as well as the part of Anderson County included in the Area. NO_X and VOC emissions were calculated for a typical summer July day, taking in to account the seasonal adjustment factor for summer operations of facilities. Future-year emissions were projected for 2014, 2017, 2020, 2023, and 2026. Growth factors were developed using the methodology in the SESARM Metro4, Inc. document prepared by AMEC Environment & Infrastructure, Inc., titled ''Development of the 2018 Projection Point Source Emission Inventory for the SESARM Region,'' February 11, 2014. Point source units were categorized as electric generating units (EGU) or non-EGU sources. Data obtained from the U.S. Energy Information Administration on either fuel use projections or industrial output projections were used to develop the growth factors used to generate the emissions inventory.

Nonpoint sources captured in the inventory include stationary sources whose emissions levels of NO_X, SO_2, and particulate matter are each less than 25 tons per year. Emissions from nonpoint sources in 2011 were obtained from NEI2011 ozone season daily emissions for area sources were calculated using the SMOKE temporal profiles as described for non-EGU point sources.

The 2011 NO_X and VOC emissions for the Knoxville Area, as well as the emissions for other years, were developed consistent with EPA guidance and are summarized in Tables 3 through 5 of the following subsection discussing the maintenance demonstration.

c. Maintenance Demonstration

The November 14, 2014, final SIP revision includes a maintenance plan for the Knoxville Area. The maintenance plan:

(i). Shows compliance with and maintenance of the 8-hour ozone standard by providing information to support the demonstration that current and future emissions of NO_X and VOC remain at or below 2011 emissions levels.

(ii). Uses 2011 as the attainment year and includes future emissions inventory projections and national growth factors for 2014, 2017, 2020, 2023, and 2026.

(iii). Identifies an ''out year'' at least 10 years after the time necessary for EPA to review and approve the maintenance plan. Per 40 CFR part 93, NO_X and VOC MVEBs were established for the last year (2026) of the maintenance plan (see section VI below). Through the interagency consultation process, it was also decided that MVEBs would be adopted for the year 2011.

(iv). Provides actual (2011) and projected emissions inventories, in tons per day (tpd), for the Knoxville Area, as shown in Tables 3 and 4, below.

TABLE 3—ACTUAL AND PROJECTED ANNUAL NO_X EMISSIONS (tpd) FOR THE KNOXVILLE AREA

Sector	2011	2014	2017	2020	2023	2026
Point	9.97	10.55	11.05	11.70	12.28	12.90
Area	6.56	6.67	6.53	6.53	6.65	6.72
On-road	41.62	35.13	28.63	22.14	15.65	9.15
Non-road (excluding MLA)	8.37	5.43	4.43	3.78	3.38	3.15
Non-road (MLA)	4.06	3.79	3.70	3.81	4.19	4.92
Total	70.6	61.6	54.3	48.0	42.2	36.8

Note: Emissions are provided for Blount and Knox Counties and a portion of Anderson County MLA—Commercial Marine Vessels, Locomotive, and Aircraft.

TABLE 4—ACTUAL AND PROJECTED ANNUAL VOC EMISSIONS (tpd) FOR THE KNOXVILLE AREA

Sector	2011	2014	2017	2020	2023	2026
Point	4.98	5.42	6.09	6.48	7.14	7.75
Area	86.93	84.81	84.61	84.94	85.28	85.64
On-road	19.71	17.17	14.63	12.08	9.54	7.00
Non-road (excluding MLA)	7.47	5.33	4.64	4.26	4.19	4.19
Non-road (MLA)	0.31	0.32	0.36	0.44	0.55	0.74
Total	119.40	113.05	110.33	108.20	106.70	105.32

Note: Emissions are provided for Blount and Knox Counties and a portion of Anderson County MLA—Commercial Marine Vessels, Locomotives, and Aircraft.

In situations where local emissions are the primary contributor to nonattainment, such as the Knoxville Area, if the future projected emissions in the nonattainment area remain at or below the baseline emissions in the nonattainment area, then the ambient air quality standard should not be exceeded in the future. Tennessee has projected emissions as described previously and determined that emissions in the Knoxville Area will remain below those in the attainment year inventory for the duration of the maintenance plan.

As discussed in section VI of this proposed rulemaking, a safety margin is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS. Tennessee selected 2011 as the attainment emissions inventory year for the Knoxville Area and calculated a safety margin for 2026. The State has decided to allocate a portion of this 2026 safety margin to the 2026 MVEB for the Knoxville Area. Specifically, Tennessee has decided to allocate 8.53 tpd to the 2026 NO_X MVEB and 3.49 tpd to the 2026 VOC MVEB. After allocation of the available safety margin, the remaining safety margin was calculated as 25.30 tpd for NO_X and 10.59 tpd for VOC. The MVEB to be used for transportation conformity proposes is discussed in section VI. This allocation and the resulting available safety margin for the Knoxville Area are discussed further in section VI of this proposed rulemaking.

d. Monitoring Network

There are currently three monitors measuring ozone in the Knoxville Area. The State of Tennessee, through TDEC, has committed to continue operation of the monitors in Knoxville Area in compliance with 40 CFR part 58 and have thus addressed the requirement for monitoring. EPA approved the ozone portion of Tennessee's 2012 annual ambient air monitoring network plan on June 15, 2012.

e. Verification of Continued Attainment

The State of Tennessee, through TDEC, has the legal authority to enforce and implement the requirements of the maintenance plan for the Knoxville Area. This includes the authority to adopt, implement, and enforce any subsequent emissions control contingency measures determined to be necessary to correct future ozone attainment problems.

Verification of continued attainment is accomplished through operation of the ambient ozone monitoring network and the periodic updates of the Area's emissions inventory. As discussed above, TDEC will continue to operate the current monitors located in the Knoxville Area. There are no plans to discontinue operation, relocate, or otherwise change the existing ambient monitoring network. Tennessee will continue to update its emissions inventory at least once every three years.

The Consolidated Emissions Reporting Rule (CERR) was promulgated by EPA on June 10, 2002. The CERR was replaced by the Annual Emissions Reporting Requirements (AERR) rule on December 17, 2008. The most recent triennial inventory for Tennessee was compiled for 2011. The larger point sources of air pollution will continue to submit data on their emissions on an annual basis as required by the AERR. Emissions from the rest of the point sources, the nonpoint source portion, and the on-road and nonroad mobile sources continue to be quantified on a three-year cycle. The inventory will be updated and maintained on a three-year cycle. As required by the AERR, the next overall emissions inventory will be compiled for 2014.

f. Contingency Measures in the Maintenance Plan

Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation, and a time limit for action by the state. A state should also identify specific indicators to be used to determine when the contingency measures need to be implemented. The maintenance plan must include a requirement that a state

will implement all measures with respect to control of the pollutant that were contained in the SIP before redesignation of the area to attainment in accordance with section 175A(d).

The contingency plan included in Tennessee's SIP revision includes a triggering mechanism to determine when contingency measures are needed and a process of developing and implementing appropriate control measures. The State of Tennessee will use actual ambient monitoring data and emissions inventory data as the indicators to determine whether a trigger has been activated and whether contingency measures should be implemented.

Tennessee has identified a primary trigger (Tier I) that will be activated when any quality-assured/quality controlled 8-hour ozone monitoring reading exceeds 0.075 ppm at an ambient monitoring station located in the Knoxville Area or if the periodic emission inventory updates reveal excessive or unanticipated growth greater than 10 percent in emissions of NO_X or VOC over the attainment or intermediate emissions inventories for the Knoxville Area (as determined by the triennial emission reporting required by AERR). The State of Tennessee, in conjunction with the Knox County Department of Air Quality Management (DAQM), will conduct an evaluation as expeditiously as practicable to determine what additional measures will be necessary to attain or maintain the 8-hour ozone standard. If it is determined that additional emission reductions are necessary, Tennessee and Knox County DAQM, will adopt and implement any required measures in accordance with the schedule and procedure for adoption and implementation of contingency measures.

The ozone trigger concentrations described above apply to each monitor in the maintenance area. TDEC will evaluate a Tier I condition, if it occurs, as expeditiously as practicable to determine the cause(s) of the ambient ozone or emissions inventory increase and to determine if a Tier II condition (see below) is likely to occur.

A secondary trigger (Tier II) is activated when any violation of the 2008 8-hour ozone NAAQS at any of the ambient monitoring stations in the Knoxville Area is recorded, based on quality-assured monitoring data. In the event that a Tier II trigger is activated, Tennessee and Knox County DAQM will conduct a comprehensive study to determine the cause(s) of the ambient ozone increase and will implement any required measures as expeditiously as practicable, taking into consideration the ease of implementation and the technical and economic feasibility of selected measures.

Tennessee and Knox County DAQM will, in the event of: (1) A Tier II trigger condition, or (2) a Tier I condition in which Tennessee has determined that a Tier II condition is likely to occur, conduct a comprehensive study to determine what contingency measure(s) are required for the maintenance of the ozone standard. Since the Knoxville Area may be influenced by emissions from outside the maintenance area, the study will attempt to determine whether the trigger condition is due to local emissions, emissions from elsewhere, or a combination of the previous. Selected emission control measures will be subject to public review and the State will seek public input prior to selecting new emission control measures.

The comprehensive study will be completed and submitted to EPA for review as expeditiously as practical, but no later than nine months after the Tier I or Tier II trigger is activated. When Tennessee and Knox County DAQM determines, through the comprehensive study, what contingency measure(s) are required for the maintenance of the ozone standard, appropriate corrective measures will be adopted and implemented within 18 to 24 months after the Tier I or II trigger occurs. The proposed schedule for these actions include:

- Six months to identify appropriate contingency measures;
- Three to six months to initiate stakeholder process; and
- Nine to twelve months to implement the contingency measures.

Section 175A(d) requires that state maintenance plans shall include a requirement that the state will implement all measures with respect to the control of the air pollutant concerned which were contained in the SIP for the area before redesignation of the area to attainment. Currently all such measures are in effect for the Knoxville Area. Contingency measure(s) will be selected from the following types of measures or from any other measure deemed appropriate and effective at the time the selection is made:

- Implementation of diesel retrofit programs, including incentives for performing retrofits.
- Reasonable Available Control Technology (RACT) for NO_X sources in nonattainment counties.
- Programs or incentives to decrease motor vehicle use, including employer-based programs, additional park and ride services, enhanced transit service and encouragement of flexible work hours/compressed work week/telecommuting.
- Trip reduction ordinances.
- Additional emissions reductions on stationary sources.
- Enhanced stationary source inspection to ensure that emissions control equipment is functioning properly.
- Voluntary fuel programs including incentives for alternative fuels.
- Construction of high-occupancy vehicle (HOV) lanes, or restriction of certain roads or lanes for HOV.
- Programs for new construction and major reconstruction of bicycle and pedestrian facilities, including shared use paths, sidewalks and bicycle lanes.
- Expand Air Quality Action Day activities/Clean Air Partners public education outreach.
- Expansion of E-Government services at State and local level.
- Additional Enforcement or outreach on driver observance of reduce speed limits.
- Land use/transportation policies.
- Promotion of non-motorized transportation.
- Promotion or tree-planting standards that favor trees with low VOC biogenic emissions.
- Promotion if energy saving plans for local government.
- Gas can and lawnmower replacement programs.
- Seasonal open burning ban in nonattainment counties.
- Evaluation of anti-idling rules and/or policy.
- Additional controls in upwind areas, if necessary.

EPA has preliminarily concluded that the maintenance plan adequately addresses the five basic components of a maintenance plan: The attainment emissions inventory, maintenance demonstration, monitoring, verification of continued attainment, and a contingency plan. Therefore, the maintenance plan for the Knoxville Area meets the requirements of section 175A of the CAA and is approvable.

VI. What is EPA's analysis of Tennessee's proposed NO_X and VOC MVEBs for the Knoxville Area?

Under section 176(c) of the CAA, new transportation plans, programs, and projects, such as the construction of new highways, must ''conform'' to (*i.e.,* be consistent with) the part of the state's air quality plan that addresses pollution from cars and trucks. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS

or any interim milestones. If a transportation plan does not conform, most new projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP. The regional emissions analysis is one, but not the only, requirement for implementing transportation conformity. Transportation conformity is a requirement for nonattainment and maintenance areas. Maintenance areas are areas that were previously nonattainment for a particular NAAQS but have since been redesignated to attainment with an approved maintenance plan for that NAAQS.

Under the CAA, states are required to submit, at various times, control strategy SIPs and maintenance plans for nonattainment areas. These control strategy SIPs (including RFP and attainment demonstration requirements) and maintenance plans create MVEBs for criteria pollutants and/or their precursors to address pollution from cars and trucks. Per 40 CFR part 93, a MVEB must be established for the last year of the maintenance plan. A state may adopt MVEBs for other years as well. The MVEB is the portion of the total allowable emissions in the maintenance demonstration that is allocated to highway and transit vehicle use and emissions. *See* 40 CFR 93.101. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, Transportation Conformity Rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and how to revise the MVEB.

After interagency consultation with the transportation partners for the Knoxville Area, Tennessee has developed MVEBs for NO_X and VOC for the Knoxville Area. Tennessee is developing these MVEBs, as required, for the last year of its maintenance plan, 2026. Additionally, Tennessee is establishing MVEBs for the year 2011. The 2011 MVEBs reflect the total on-road emissions for 2011. The 2026 MVEBs reflect the total on-road emissions 2026, plus an allocation from the available NO_X and VOC safety margins. Under 40 CFR 93.101, the term ''safety margin'' is the difference between the attainment level (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The safety margin can be allocated to the transportation sector; however, the total emissions must remain below the attainment level. The NO_X and VOC MVEBs and allocation from the safety margin were developed in consultation with the transportation partners and were added to account for uncertainties in population growth, changes in model vehicle miles traveled and new emission factor models. The NO_X and VOC MVEBs for the Knoxville Area are defined in Table 5 below.

TABLE 5—KNOXVILLE AREA NO_X AND VOC MVEBS (TPD)

	2011	2026
NO_X Emissions:		
Base Emissions	41.62	9.15
Safety Margin Allocated to MVEB	n/a	8.53
NO_X Conformity MVEBs	41.62	* 17.69
VOC Emissions:		
Base Emissions	19.71	7.00
Safety Margin Allocated to MVEB	n/a	3.49
VOC Conformity MVEBs	19.71	10.49

* Due to rounding convention.

As mentioned above, Tennessee has chosen to allocate a portion of the available safety margin to the NO_X and VOC MVEBs for the Knoxville Area. This allocation is 8.53 tpd and 3.49 tpd for NO_X and VOC, respectively. Thus, the remaining safety margins for 2026 are 25.30 tpd and 10.59 tpd NO_X and VOC, respectively.

Through this rulemaking, EPA is proposing to approve the MVEBs for NO_X and VOC for 2011 and 2026 for the Knoxville Area because EPA has preliminarily determined that the Area maintains the 2008 8-hour ozone NAAQS with the emissions at the levels of the budgets. Once the MVEBs for the Knoxville Area are approved or found adequate (whichever is completed first), they must be used for future conformity determinations. After thorough review, EPA has preliminarily determined that the budgets meet the adequacy criteria, as outlined in 40 CFR 93.118(e)(4), and is proposing to approve the budgets because they are consistent with maintenance of the 2008 8-hour ozone NAAQS through 2026.

VII. What is the status of EPA's adequacy determination for the proposed NO_X and VOC MVEBs for the Knoxville Area?

When reviewing submitted ''control strategy'' SIPs or maintenance plans containing MVEBs, EPA may affirmatively find the MVEB contained therein adequate for use in determining transportation conformity. Once EPA affirmatively finds the submitted MVEB is adequate for transportation conformity purposes, that MVEB must be used by state and federal agencies in determining whether proposed transportation projects conform to the SIP as required by section 176(c) of the CAA.

EPA's substantive criteria for determining adequacy of a MVEB are set out in 40 CFR 93.118(e)(4). The process for determining adequacy consists of three basic steps: Public notification of a SIP submission, a public comment period, and EPA's adequacy determination. This process for determining the adequacy of submitted MVEBs for transportation conformity purposes was initially outlined in EPA's May 14, 1999, guidance, ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.'' EPA adopted regulations to codify the adequacy process in the Transportation Conformity Rule Amendments for the ''New 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change,'' on July 1, 2004 (69 FR 40004). Additional information on the adequacy process for transportation conformity purposes is available in the proposed rule entitled, ''Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes,'' 68 FR 38974, 38984 (June 30, 2003).

As discussed earlier, Tennessee's maintenance plan includes NO_X and VOC MVEBs for the Knoxville Area for 2026, the last year of the maintenance plan, and for 2011. EPA reviewed the NO_X and VOC MVEBs through the adequacy process. Tennessee's November 14, 2015, SIP submission, including the Knoxville Area NO_X and VOC MVEBs, was open for public comment on EPA's adequacy Web site on December 4, 2014, found at: *http://www.epa.gov/otaq/stateresources/transconf/currsips.htm#knx-tn.* The EPA public comment period on adequacy for the MVEBs for 2011 and 2026 for the Knoxville Area closed on January 5, 2015. No comments, adverse or otherwise, were received during EPA's adequacy process for the MVEBs associated with Tennessee's maintenance plan.

EPA intends to make its determination on the adequacy of the 2011 and 2026 MVEBs for the Knoxville Area for transportation conformity purposes in the near future by completing the adequacy process that was started on December 4, 2014. After EPA finds the 2011 and 2026 MVEBs adequate or approves them, the new MVEBs for NO_X and VOC must be used for future transportation conformity determinations. For required regional emissions analysis years for 2026 and beyond, the applicable budgets will be the new 2026 MVEBs established in the maintenance plan, as defined in section VI of this proposed rulemaking. The 2011 MVEBs will be used for any analysis year prior to 2026.

VIII. What is the effect of EPA's proposed actions?

EPA's proposed actions establish the basis upon which EPA may take final action on the issues being proposed for approval today. Approval of Tennessee's redesignation request would change the legal designation of Blount and Knox Counties and the portion of Anderson County included in the Knoxville Area, found at 40 CFR part 81, from nonattainment to attainment for the 2008 8-hour ozone NAAQS. Approval of Tennessee's associated SIP revision would also incorporate a plan for maintaining the 2008 8-hour ozone NAAQS in the Knoxville Area through 2026 and a section 182(a)(1) base year emissions inventory into the Tennessee SIP. The maintenance plan establishes NO_X and VOC MVEBs for 2011 and 2026 for the Knoxville Area and includes contingency measures to remedy any future violations of the 2008 8-hour ozone NAAQS and procedures for evaluation of potential violations. The NO_X MVEB for 2011 is 41.62 tpd, and for 2026 is 17.69 tpd. The VOC MVEB is 19.71 for 2011 and 10.49 tpd for 2026. Additionally, EPA is notifying the public of the status of EPA's adequacy determination for the newly-established NO_X and VOC MVEBs for 2026 for the Knoxville Area.

IX. Proposed Actions

EPA is now proposing to take four separate but related actions regarding the Knoxville Area's redesignation and maintenance of the 2008 8-hour ozone NAAQS. First, EPA is proposing to approve Tennessee's section 182(a)(1) base year emissions inventory for the 2008 8-hour ozone standard for the Knoxville Area into the SIP. Approval of the base year inventory is a prerequisite for EPA to redesignate the Area from nonattainment to attainment.

Second, EPA is proposing to determine that the Knoxville Area is attaining the 2008 8-hour ozone NAAQS based on complete, quality-assured and certified monitoring data for the 2011–2013 monitoring period. Preliminary 2012–2014 data in AQS indicates that the Area is continuing to attain the 2008 8-hour ozone NAAQS.

Third, EPA is proposing to approve the maintenance plan for the Knoxville Area, including the NO_X and VOC MVEBs for 2011 and 2026, into the Tennessee SIP (under CAA section 175A). The maintenance plan demonstrates that the Area will continue to maintain the 2008 8-hour ozone NAAQS, and the budgets meet all of the adequacy criteria contained in 40 CFR 93.118(e)(4) and (5). Further, as part of today's action, EPA is describing the status of its adequacy determination for the NO_X and VOC MVEBs for 2011 and 2026 in accordance with 40 CFR 93.118(f)(1). Within 24 months from the publication date of EPA's adequacy determination for the MVEBs or the effective date for the final rule for this action, whichever is earlier, the transportation partners will need to demonstrate conformity to the new NO_X and VOC MVEBs pursuant to 40 CFR 93.104(e).

Finally, EPA is proposing to determine that Tennessee has met the criteria under CAA section 107(d)(3)(E) for the Knoxville Area for redesignation from nonattainment to attainment for the 2008 8-hour ozone NAAQS. On this basis, EPA is proposing to approve Tennessee's redesignation request for the 2008 8-hour ozone NAAQS for the Knoxville Area. If finalized, approval of the redesignation request would change the official designation of Blount and Knox Counties and the portion of Anderson County in the Knoxville Area for the 2008 8-hour ozone NAAQS from nonattainment to attainment, as found at 40 CFR part 81.

X. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, these proposed actions merely propose to approve state law as meeting federal requirements and do not impose additional requirements beyond those imposed by state law. For that reason, these proposed actions:

- Are not a significant regulatory actions subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- are not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because

application of those requirements would be inconsistent with the CAA; and

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

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

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Environmental protection, Air pollution control.

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

Dated: May 13, 2015.

Heather McTeer Toney,

Regional Administrator, Region 4.

[FR Doc. 2015–12347 Filed 5–20–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R04–OAR–2015–0275; FRL–9928–11–Region 4]

Approval and Promulgation of Implementation Plans and Designation of Areas; North Carolina; Redesignation of the Charlotte-Rock Hill, 2008 8-Hour Ozone Nonattainment Area to Attainment

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: On April 16, 2015, the State of North Carolina, through the North Carolina Department of Environment and Natural Resources, Department of Air Quality (NC DAQ), submitted a request for the Environmental Protection Agency (EPA) to redesignate the portion of North Carolina that is within the bi-state Charlotte-Rock Hill, North Carolina-South Carolina 8-hour ozone nonattainment area (hereafter referred to as the ''bi-state Charlotte Area,'' or ''Area'') to attainment for the 2008 8-hour ozone National Ambient Air Quality Standards (NAAQS) and to approve a State Implementation Plan (SIP) revision containing a maintenance plan for the Area. EPA is proposing to determine that the bi-State Charlotte Area is attaining the 2008 8-hour ozone NAAQS; to approve the State's plan for maintaining attainment of the 2008 8-hour ozone standard in the Area, including the sub-area motor vehicle emission budgets (MVEBs) for nitrogen oxides (NO_X) and volatile organic compounds (VOC) for the years 2014 and 2026 for North Carolina portion of the Area, into the SIP; and to redesignate the North Carolina portion of the Area to attainment for the 2008 8-hour ozone NAAQS. EPA is also notifying the public of the status of EPA's adequacy determination for the sub-area MVEBs for the North Carolina portion of the bi-state Charlotte Area.

DATES: Comments must be received on or before June 11, 2015.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2015–0275, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: R4-ARMS@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* ''EPA–R04–OAR–2015–0275,'' Air Regulatory Management Section (formerly the Regulatory Development Section), Air Planning and Implementation Branch (formerly the Air Planning Branch), Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Ms. Lynorae Benjamin, Chief, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2015–0275. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman of the Air Regulatory Management Section, Air Planning and

Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Mr. Lakeman may be reached by phone at (404) 562–9043 or via electronic mail at *lakeman.sean@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. What are the actions EPA is proposing to take?

EPA is proposing to take the following three separate but related actions, one of which involves multiple elements: (1) To determine that the bi-Charlotte Area is attaining the 2008 8-hour ozone NAAQS; (2) to approve North Carolina's plan for maintaining the 2008 8-hour ozone NAAQS (maintenance plan), including the associated sub-area MVEBs for the North Carolina portion of the bi-state Charlotte Area, into the SIP; and (3) to redesignate the North Carolina portion of the bi-state Charlotte Area to attainment for the 2008 8-hour ozone NAAQS. EPA is also notifying the public of the status of EPA's adequacy determination for the sub-area MVEBs for the North Carolina portion of the bi-state Charlotte Area. The bi-state Charlotte Area consists of Mecklenburg County in its entirety and portions of Cabarrus, Gaston, Iredell, Lincoln, Rowan and Union Counties, North Carolina; and a portion of York County, South Carolina. On April 17, 2015, the State of South Carolina, through the South Carolina Department of Health and Control (SC DHEC), provided a redesignation request and maintenance plan for its portion of the bi-state Charlotte Area. EPA will address South Carolina's request and maintenance plan in a separate action. These proposed actions are summarized below and described in greater detail throughout this notice of proposed rulemaking.

EPA is also making the preliminarily determination that the bi-state Charlotte Area is attaining the 2008 8-hour ozone NAAQS based on recent air quality data and proposing to approve North Carolina's maintenance plan for its portion of the bi-state Charlotte Area as meeting the requirements of section 175A (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed to keep the bi-state Charlotte Area in attainment of the 2008 8-hour ozone NAAQS through 2026. The maintenance plan includes 2014 and 2026 sub-area MVEBs for NO_X and VOC for the North Carolina portion of the bi-state Charlotte Area for transportation conformity purposes. EPA is proposing to approve these sub-area MVEBs and incorporate them into the North Carolina SIP.

EPA also proposes to determine that the North Carolina portion of the bi-state Charlotte Area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. Accordingly, in this action, EPA is proposing to approve a request to change the legal designation of Mecklenburg County in its entirety and the following portions of:

- Cabarrus County (Central Cabarrus Township, Concord Township, Georgeville Township, Harrisburg Township, Kannapolis Township, Midland Township, Mount Pleasant Township, New Gilead Township, Odell Township, Poplar Tent Township, Rimertown Township),
- Gaston County (Crowders Mountain Township, Dallas Township, Gastonia Township, Riverbend Township, South Point Township),
- Iredell County (Davidson Township, Coddle Creek Township),
- Lincoln County (Catawba Springs Township, Ironton Township, Lincolnton Township),
- Rowan County (Atwell Township, China Grove Township, Franklin Township, Gold Hill Township, Litaker Township, Locke Township, Providence Township, Salisbury Township, Steele Township, Unity Township), and
- Union County (Goose Creek Township, Marshville Township, Monroe Township, Sandy Ridge Township, Vance Township), in North Carolina from nonattainment to attainment for the 2008 8-hour ozone NAAQS.

EPA is also notifying the public of the status of EPA's adequacy process for the 2014 and 2026 NO_X and VOC sub-area MVEBs for the North Carolina portion of the bi-state Charlotte Area. The Adequacy comment period began on March 17, 2015, with EPA's posting of the availability of North Carolina's submissions on EPA's Adequacy Web site (*http://www.epa.gov/otaq/stateresources/transconf/currsips.htm#north-carolina*). The Adequacy comment period for these sub-area MVEBs closed on April 16, 2015. No comments, adverse or otherwise, were received through the Adequacy process. Please see section VII of this proposed rulemaking for further explanation of this process and for more details on the sub-area MVEBs.

In summary, this notice of proposed rulemaking is in response to North Carolina's April 16, 2015, redesignation request and associated SIP submission that address the specific issues summarized above and the necessary elements described in section 107(d)(3)(E) of the CAA for redesignation of the North Carolina portion of the bi-state Charlotte Area to attainment for the 2008 8-hour ozone NAAQS.

II. What is the background for EPA's proposed actions?

On March 12, 2008, EPA promulgated a revised 8-hour ozone NAAQS of 0.075 parts per million (ppm). *See* 73 FR 16436 (March 27, 2008). Under EPA's regulations at 40 CFR part 50, the 2008 8-hour ozone NAAQS is attained when the 3-year average of the annual fourth highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.075 ppm. *See* 40 CFR 50.15. Ambient air quality monitoring data for the 3-year period must meet a data completeness requirement. The ambient air quality monitoring data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined in Appendix I of part 50.

Upon promulgation of a new or revised NAAQS, the CAA requires EPA to designate as nonattainment any area that is violating the NAAQS, based on the three most recent years of complete, quality assured, and certified ambient air quality data at the conclusion of the designation process. The bi-state Charlotte Area was designated nonattainment for the 2008 8-hour ozone NAAQS on May 21, 2012 (effective July 20, 2012) using 2009–2011 ambient air quality data. *See* 77 FR 30088 (May 21, 2012). At the time of designation, the bi-state Charlotte Area was classified as a marginal nonattainment area for the 2008 8-hour ozone NAAQS. In the final implementation rule for the 2008 8-hour ozone NAAQS (SIP Implementation

Rule),[1] EPA established ozone nonattainment area attainment dates based on Table 1 of section 181(a) of the CAA. This established an attainment date three years after the July 20, 2012, effective date for areas classified as marginal areas for the 2008 8-hour ozone nonattainment designations. Therefore, the bi-state Charlotte Area's attainment date is July 20, 2015.

III. What are the criteria for redesignation?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA allows for redesignation providing that: (1) The Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k); (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and, (5) the state containing such area has met all requirements applicable to the area for purposes of redesignation under section 110 and part D of the CAA.

On April 16, 1992, EPA provided guidance on redesignation in the General Preamble for the Implementation of title I of the CAA Amendments of 1990 (57 FR 13498), and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

1. ''Ozone and Carbon Monoxide Design Value Calculations,'' Memorandum from Bill Laxton, Director, Technical Support Division, June 18, 1990;
2. ''Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas,'' Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;
3. ''Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,'' Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;
4. ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (hereafter referred to as the ''Calcagni Memorandum'');
5. ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines,'' Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;
6. ''Technical Support Documents (TSDs) for Redesignation of Ozone and Carbon Monoxide (CO) Nonattainment Areas,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;
7. ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992,'' Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;
8. ''Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,'' Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993;
9. ''Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and
10. ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

IV. Why is EPA proposing these actions?

On April 16, 2015, the State of North Carolina, through NC DAQ, requested that EPA redesignate the North Carolina portion of the bi-state Charlotte Area to attainment for the 2008 8-hour ozone NAAQS. EPA's evaluation indicates that the entire bi-state Charlotte Area has attained the 2008 8-hour ozone NAAQS, and that the North Carolina portion of the bi-state Charlotte Area meets the requirements for redesignation as set forth in section 107(d)(3)(E), including the maintenance plan requirements under section 175A of the CAA. As a result, EPA is proposing to take the three related actions summarized in section I of this document.

V. What is EPA's analysis of the request?

As stated above, in accordance with the CAA, EPA proposes in this action to: (1) Determine that the bi-state Charlotte Area is attaining the 2008 8-hour ozone NAAQS; (2) approve the North Carolina portion of the bi-state Charlotte Area's 2008 8-hour ozone NAAQS maintenance plan, including the associated sub-area MVEBs, into the North Carolina SIP; and (3) redesignate the North Carolina portion of the bi-state Charlotte Area to attainment for the 2008 8-hour ozone NAAQS. The five redesignation criteria provided under CAA section 107(d)(3)(E) are discussed in greater detail for the Area in the following paragraphs of this section.

Criteria (1)—The Bi-State Charlotte Area Has Attained the 2008 8-Hour Ozone NAAQS

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the area has attained the applicable NAAQS (CAA section 107(d)(3)(E)(i)). For ozone, an area may be considered to be attaining the 2008 8-hour ozone NAAQS if it meets the 2008 8-hour ozone NAAQS, as determined in accordance with 40 CFR 50.15 and Appendix I of part 50, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain the NAAQS, the 3-year average of the fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area over each year must not exceed 0.075 ppm. Based on the data handling and reporting convention described in 40 CFR part 50, Appendix I, the NAAQS are attained if the design value is 0.075 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58 and recorded in the EPA Air Quality System (AQS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

In this action, EPA is preliminarily determining that the bi-state Charlotte Area is attaining the 2008 8-hour ozone NAAQS. EPA reviewed ozone monitoring data from monitoring stations in the bi-state Charlotte Area for the 2008 8-hour ozone NAAQS for 2012–2014. These data have been quality-assured, are recorded in Aerometric Information Retrieval System (AIRS–AQS), and indicate that

[1] This rule, entitled Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements and published at 80 FR 12264 (March 6, 2015), addresses a range of nonattainment area SIP requirements for the 2008 ozone NAAQS, including requirements pertaining to attainment demonstrations, reasonable further progress (RFP), reasonably available control technology (RACT), reasonably available control measures (RACM), major new source review (NSR), emission inventories, and the timing of SIP submissions and of compliance with emission control measures in the SIP. This rule also addresses the revocation of the 1997 ozone NAAQS and the anti-backsliding requirements that apply when the 1997 ozone NAAQS are revoked.

the Area is attaining the 2008 8-hour ozone NAAQS. The fourth-highest 8-hour ozone values at each monitor for 2012, 2013, 2014, and the 3-year averages of these values (*i.e.,* design values), are summarized in Table 1, below.

TABLE 1—2012–2014 DESIGN VALUE CONCENTRATIONS FOR THE BI-STATE CHARLOTTE AREA

[Parts per million]

Location	County	Monitor ID	4th Highest 8-hour ozone value (ppm)			3-Year design values (ppm)
			2012	2013	2014	2012–2014
Lincoln County Replacing Iron Station	Lincoln	37–109–0004	0.076	0.064	0.064	0.068
Garinger High School	Mecklenburg	37–119–0041	0.080	0.067	0.065	0.070
Westinghouse Blvd	Mecklenburg	37–119–1005	0.073	0.062	0.063	0.066
29 N at Mecklenburg Cab Co	Mecklenburg	37–119–1009	0.085	0.066	0.068	0.073
Rockwell	Rowan	37–159–0021	0.080	0.062	0.064	0.068
Enochville School*	Rowan	37–159–0022	0.077	0.063	.....	.....
Monroe Middle School	Union	37–179–0003	0.075	0.062	0.067	0.068

* Monitoring data for 2014 is not available because the monitor was shut down in 2014.

The 3-year design value for 2012–2014 for the bi-state Charlotte Area is 0.073 ppm,[2] which meets the NAAQS. In this action, EPA is proposing to determine that the bi-state Charlotte Area is attaining the 2008 8-hour ozone NAAQS. EPA will not take final action to approve the redesignation if the 3-year design value exceeds the NAAQS prior to EPA finalizing the redesignation. As discussed in more detail below, the State of North Carolina has committed to continue monitoring in this Area in accordance with 40 CFR part 58.

Criteria (2)—North Carolina Has a Fully Approved SIP Under Section 110(k) for the North Carolina Portion of the Charlotte Area; and Criteria (5)—North Carolina Has Met All Applicable Requirements Under Section 110 and Part D of Title I of the CAA

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the state has met all applicable requirements under section 110 and part D of title I of the CAA (CAA section 107(d)(3)(E)(v)) and that the state has a fully approved SIP under section 110(k) for the area (CAA section 107(d)(3)(E)(ii)). EPA proposes to find that North Carolina has met all applicable SIP requirements for the North Carolina portion of the Area under section 110 of the CAA (general SIP requirements) for purposes of redesignation. Additionally, EPA proposes to find that the North Carolina SIP satisfies the criterion that it meets applicable SIP requirements for purposes of redesignation under part D of title I of the CAA in accordance with section 107(d)(3)(E)(v). Further, EPA proposes to determine that the SIP is fully approved with respect to all requirements applicable for purposes of redesignation in accordance with section 107(d)(3)(E)(ii). In making these determinations, EPA ascertained which requirements are applicable to the Area and, if applicable, that they are fully approved under section 110(k). SIPs must be fully approved only with respect to requirements that were applicable prior to submittal of the complete redesignation request.

a. The North Carolina Portion of the Bi-State Charlotte Area Has Met All Applicable Requirements Under Section 110 and Part D of the CAA

General SIP requirements. General SIP elements and requirements are delineated in section 110(a)(2) of title I, part A of the CAA. These requirements include, but are not limited to, the following: Submittal of a SIP that has been adopted by the state after reasonable public notice and hearing; provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality; implementation of a source permit program; provisions for the implementation of part C requirements (Prevention of Significant Deterioration (PSD)) and provisions for the implementation of part D requirements (NSR permit programs); provisions for air pollution modeling; and provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address the interstate transport of air pollutants. The section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area's designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, EPA does not believe that the CAA's interstate transport requirements should be construed to be applicable requirements for purposes of redesignation.

In addition, EPA believes other section 110 elements that are neither connected with nonattainment plan submissions nor linked with an area's attainment status are applicable requirements for purposes of redesignation. The area will still be subject to these requirements after the area is redesignated. The section 110 and part D requirements which are linked with a particular area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. This approach is consistent with EPA's existing policy on applicability (*i.e.,* for redesignations) of conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. *See* Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996), (62 FR 24826, May 7, 2008); Cleveland-Akron-Loraine, Ohio, final rulemaking (61 FR 20458, May 7,

[2] The monitor with the highest 3-year design value is considered the design value for the Area.

1996); and Tampa, Florida, final rulemaking at (60 FR 62748, December 7, 1995). *See also* the discussion on this issue in the Cincinnati, Ohio, redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh, Pennsylvania, redesignation (66 FR 50399, October 19, 2001).

Title I, Part D, applicable SIP requirements. Section 172(c) of the CAA sets forth the basic requirements of attainment plans for nonattainment areas that are required to submit them pursuant to section 172(b). Subpart 2 of part D, which includes section 182 of the CAA, establishes specific requirements for ozone nonattainment areas depending on the area's nonattainment classification. As provided in Subpart 2, a marginal ozone nonattainment area, such as the bi-state Charlotte Area, must submit an emissions inventory that complies with section 172(c)(3), but the specific requirements of section 182(a) apply in lieu of the demonstration of attainment (and contingency measures) required by section 172(c). 42 U.S.C. 7511a(a). A thorough discussion of the requirements contained in sections 172(c) and 182 can be found in the General Preamble for Implementation of Title I (57 FR 13498).

Section 182(a) Requirements. Section 182(a)(1) requires states to submit a comprehensive, accurate, and current inventory of actual emissions from sources of VOC and NO_X emitted within the boundaries of the ozone nonattainment area. North Carolina provided an emissions inventory for the bi-state Charlotte Area to EPA in a July 7, 2014 SIP submission. On April 21, 2015, EPA published a direct final rule to approve this emissions inventory into the SIP.[3] *See* 80 FR 22107 (direct final rule) and 80 FR 22147 (associated proposed rule). North Carolina's section 182(a)(1) inventory must be incorporated into the SIP before EPA can take final action to approve the State's redesignation request for the bi-state Charlotte Area.

Under section 182(a)(2)(A), states with ozone nonattainment areas that were designated prior to the enactment of the 1990 CAA amendments were required to submit, within six months of classification, all rules and corrections to existing VOC RACT rules that were required under section 172(b)(3) of the CAA (and related guidance) prior to the 1990 CAA amendments. On June 23, 1994, EPA determined that North Carolina met the section 182(a)(2) RACT ''fix up'' requirements. *See, e.g.,* 59 FR 32363.

Section 182(a)(2)(B) requires each state with a marginal ozone nonattainment area that implemented, or was required to implement, an inspection and maintenance (I/M) program prior to the 1990 CAA amendments to submit a SIP revision providing for an I/M program no less stringent than that required prior to the 1990 amendments or already in the SIP at the time of the amendments, whichever is more stringent. On June 2, 1995, EPA determined that North Carolina met requirements of section 182(a)(2)(B). *See* 60 FR 28720.

Regarding the permitting and offset requirements of section 182(a)(2)(C) and section 182(a)(4), North Carolina currently has a fully-approved part D NSR program in place. However, EPA has determined that areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR, because PSD requirements will apply after redesignation. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.'' North Carolina's PSD program will become applicable in the bi-state Charlotte Area upon redesignation to attainment.

Section 182(a)(3) requires states to submit periodic inventories and emissions statements. Section 182(a)(3)(A) requires states to submit a periodic inventory every three years. As discussed below in the section of this document titled Criteria (4)(e), *Verification of Continued Attainment,* the State will continue to update its emissions inventory at least once every three years. Under section 182(a)(3)(B), each state with an ozone nonattainment area must submit a SIP revision requiring emissions statements to be submitted to the state by sources within that nonattainment area. North Carolina provided a SIP revision to EPA on July 7, 2014, addressing the section 182(a)(3)(B) emissions statements requirement, and on April 21, 2015, EPA published a direct final rule to approve this SIP revision.[4] *See* 80 FR 22107 (direct final rule) and 80 FR 22147 (associated proposed rule). North Carolina's emissions statements must be incorporated into the SIP before EPA can take final action to approve the State's redesignation request for the bi-state Charlotte Area.

Section 176 Conformity Requirements. Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs, and projects that are developed, funded, or approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity) as well as to all other federally supported or funded projects (general conformity). State transportation conformity SIP revisions must be consistent with Federal conformity regulations relating to consultation, enforcement, and enforceability that EPA promulgated pursuant to its authority under the CAA.

EPA interprets the conformity SIP requirements[5] as not applying for purposes of evaluating a redesignation request under section 107(d) because state conformity rules are still required after redesignation and Federal conformity rules apply where state rules have not been approved. *See Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001) (upholding this interpretation); *see also* 60 FR 62748 (December 7, 1995) (redesignation of Tampa, Florida). Nonetheless, North Carolina has an approved conformity SIP for the Charlotte Area. *See* 78 FR 73266 (February 24, 2014). Thus, the North Carolina portion of the bi-state Charlotte Area has satisfied all applicable requirements for purposes of redesignation under section 110 and part D of title I of the CAA.

b. The North Carolina Portion of the Bi-State Charlotte Area Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA

EPA has fully approved the applicable North Carolina SIP for the bi-state

[3] This direct final rule is effective June 22, 2015, without further notice, unless EPA receives adverse comment by May 21, 2015. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that this rule will not take effect. The associated proposed rule will remain in effect.

[4] This direct final rule is effective June 22, 2015, without further notice, unless EPA receives adverse comment by May 21, 2015. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that this rule will not take effect. The associated proposed rule will remain in effect.

[5] CAA section 176(c)(4)(E) requires states to submit revisions to their SIPs to reflect certain Federal criteria and procedures for determining transportation conformity. Transportation conformity SIPs are different from the MVEBs that are established in control strategy SIPs and maintenance plans.

Charlotte Area under section 110(k) of the CAA for all requirements applicable for purposes of redesignation. EPA may rely on prior SIP approvals in approving a redesignation request (*see* Calcagni Memorandum at p. 3; *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F.3d 984, 989–90 (6th Cir. 1998); *Wall,* 265 F.3d 426) plus any additional measures it may approve in conjunction with a redesignation action (*see* 68 FR 25426 (May 12, 2003) and citations therein). North Carolina has adopted and submitted, and EPA has fully approved at various times, provisions addressing the various SIP elements applicable for the ozone NAAQS. *See* 77 FR 5703 (February 6, 2012).

As indicated above, EPA believes that the section 110 elements that are neither connected with nonattainment plan submissions nor linked to an area's nonattainment status are not applicable requirements for purposes of redesignation. EPA has approved all part D requirements applicable for purposes of this redesignation. As noted above, this action to propose approval of North Carolina's redesignation request for the North Carolina portion of the bi-state Charlotte Area is contingent upon EPA taking final action to approve the July, 7, 2014, emissions inventory and emissions statements SIP revision, which was published as direct final and proposed rules on April 21, 2015. *See* 80 FR 22107 and 80 FR 22147.

Criteria (3)—The Air Quality Improvement in the Bi-State Charlotte Area Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the air quality improvement in the area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, applicable Federal air pollution control regulations, and other permanent and enforceable reductions (CAA section 107(d)(3)(E)(iii)). EPA has preliminarily determined that North Carolina has demonstrated that the observed air quality improvement in the bi-state Charlotte Area is due to permanent and enforceable reductions in emissions resulting from Federal measures and from state measures adopted into the SIP. EPA does not have any information to suggest that the decrease in ozone concentrations in the bi-state Charlotte Area is due to unusually favorable meteorological conditions.

State and Federal measures enacted in recent years have resulted in permanent emission reductions. Most of these emission reductions are enforceable through regulations. A few non-regulatory measures also result in emission reductions. The state and local measures that have been implemented to date and relied upon by North Carolina to demonstrate attainment and/or maintenance include the Clean Air Bill I/M program and North Carolina's Clean Smokestacks Act. These measures are approved in the federally-approved SIP and thus are permanent and enforceable. The Federal measures that have been implemented include the following:

Tier 2 vehicle and fuel standards. Implementation began in 2004 and requires all passenger vehicles in any manufacturer's fleet to meet an average standard of 0.07 grams of NO_X per mile. Additionally, in January 2006 the sulfur content of gasoline was required to be on average 30 ppm which assists in lowering the NO_X emissions. Most gasoline sold in North Carolina prior to January 2006 had a sulfur content of about 300 ppm.[6]

Large non-road diesel engines rule. This rule was promulgated in 2004, and is being phased in between 2008 through 2014. This rule will also reduce the sulfur content in the nonroad diesel fuel. When fully implemented, this rule will reduce NO_X, VOC, particulate matter, and carbon monoxide. These emission reductions are federally enforceable. EPA issued this rule in June 2004, which applies to diesel engines used in industries, such as construction, agriculture, and mining. It is estimated that compliance with this rule will cut NO_X emissions from non-road diesel engines by up to 90 percent nationwide. The non-road diesel rule was fully implemented by 2010.

Heavy-duty gasoline and diesel highway vehicle standards. EPA issued this rule in January 2001 (66 FR 5002). This rule includes standards limiting the sulfur content of diesel fuel, which went into effect in 2004. A second phase took effect in 2007, which further reduced the highway diesel fuel sulfur content to 15 ppm, leading to additional reductions in combustion NO_X and VOC emissions. This rule is expected to achieve a 95 percent reduction in NO_X emissions from diesel trucks and buses.

Medium and heavy duty vehicle fuel consumption and GHG standards. These standards require on-road vehicles to achieve a 7 percent to 20 percent reduction in CO_2 emissions and fuel consumption by 2018. The decrease in fuel consumption will result in a 7 percent to 20 percent decrease in NO_X emissions.

Nonroad spark-ignition engines and recreational engines standards. The nonroad spark-ignition and recreational engine standards, effective in July 2003, regulate NO_X, hydrocarbons, and carbon monoxide from groups of previously unregulated nonroad engines. These engine standards apply to large spark-ignition engines (*e.g.,* forklifts and airport ground service equipment), recreational vehicles (*e.g.,* off-highway motorcycles and all-terrain-vehicles), and recreational marine diesel engines sold in the United States and imported after the effective date of these standards. When all of the nonroad spark-ignition and recreational engine standards are fully implemented, an overall 72 percent reduction in hydrocarbons, 80 percent reduction in NO_X, and 56 percent reduction in carbon monoxide emissions are expected by 2020. These controls reduce ambient concentrations of ozone, carbon monoxide, and fine particulate matter.

National Program for greenhouse gas (GHG) emissions and Fuel Economy Standards. The federal GHG and fuel economy standards apply to light-duty cars and trucks in model years 2012–2016 (phase 1) and 2017–2025 (phase 2). The final standards are projected to result in an average industry fleet-wide level of 163 grams/mile of carbon dioxide (CO_2) which is equivalent to 54.5 miles per gallon (mpg) if achieved exclusively through fuel economy improvements. The fuel economy standards result in less fuel being consumed, and therefore less NO_X emissions released.

Tennessee Valley Authority (TVA) Consent Decree/Federal Facilities Compliance Agreement. On April 14, 2011, TVA entered into a consent decree with Tennessee, Alabama, Kentucky, and North Carolina to resolve allegations of CAA violations at TVA's coal-fired power plants. The relief obtained in this consent decree was also secured in a Federal Facilities Compliance Agreement (FFCA) between EPA and TVA. The consent decree and FFCA establish system-wide caps on NO_X and SO_2 emissions at TVA's coal-fired facilities, declining to permanent levels of 52,000 tons of NO_X in 2018 and

[6] North Carolina also identified Tier 3 Motor Vehicle Emissions and Fuel Standards as a federal measure. EPA issued this rule in April 28, 2014, which applies to light duty passenger cars and trucks. EPA promulgated this rule to reduce air pollution from new passenger cars and trucks beginning in 2017. Tier 3 emission standards will lower sulfur content of gasoline and lower the emissions standards.

110,000 tons of SO_2 in 2019, and require TVA to meet specific control requirements.[7]

Reciprocating Internal Combustion Engine (RICE) National Emissions Standards for Hazardous Air Pollutants (NESHAP).[8] The RICE NESHAP is expected to result in a small decrease in VOC emissions. RICE owners and operators had to comply with the NESHAP by May 3, 2013.

Utility Mercury Air Toxics Standards (MATS) and New Source Performance Standards (NSPS). On February 16, 2012, EPA promulgated maximum achievable control technology regulations for coal- and oil-fired EGUs, intended to reduce hazardous air pollutants emissions from EGUs. Although the MATS rule is not targeted at NO_X emissions, it is expected to result in additional NO_X reductions due to the retirement of older coal-fired units.

NO_X SIP Call. On October 27, 1998 (63 FR 57356), EPA issued the NO_X SIP Call requiring the District of Columbia and 22 states to reduce emissions of NO_X, a precursor to ozone pollution, and providing a mechanism (the NO_X Budget Trading Program) that states could use to achieve those reductions. Affected states were required to comply with Phase I of the SIP Call beginning in 2004 and Phase II beginning in 2007. By the end of 2008, ozone season emissions from sources subject to the NO_X SIP Call dropped by 62 percent from 2000 emissions levels. All NO_X SIP Call states have SIPs that currently satisfy their obligations under the NO_X SIP Call; the NO_X SIP Call reduction requirements are being met; and EPA will continue to enforce the requirements of the NO_X SIP Call. Emission reductions resulting from regulations developed in response to the NO_X SIP Call are therefore permanent and enforceable for the purposes of this action. There are four facilities located within the North Carolina portion of the Area that are subject to the NO_X SIP Call. These facilities are located in Gaston, Lincoln, and Rowan Counties. Two coal-fired power plants (Buck and Riverbend) were retired on April 1, 2013, which resulted in additional emissions reductions. There is also a facility west of the Area, Cliffside, located in Cleveland County, and a facility north of the Area, Marshall, located in Catawba County which are also subject to the NO_X SIP Call.

CAIR/CSAPR. CAIR created regional cap-and-trade programs to reduce SO_2 and NO_X emissions in 27 eastern states, including North Carolina. *See* 70 FR 25162 (May 12, 2005). EPA approved North Carolina's CAIR regulations into the North Carolina SIP on October 5, 2007. *See* 72 FR 56914. In 2009, the CAIR ozone season NO_X trading program superseded the NO_X Budget Trading Program, although the emission reduction obligations of the NO_X SIP Call were not rescinded. *See* 40 CFR 51.121(r) and 51.123(aa). In 2008, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) initially vacated CAIR, *North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008), but ultimately remanded the rule to EPA without vacatur to preserve the environmental benefits provided by CAIR, *North Carolina* v. *EPA,* 550 F.3d 1176, 1178 (D.C. Cir. 2008). On August 8, 2011 (76 FR 48208), acting on the D.C. Circuit's remand, EPA promulgated CSAPR to address interstate transport of emissions and resulting secondary air pollutants and to replace CAIR. CSAPR requires substantial reductions of SO_2 and NO_X emissions from electric generating units (EGUs) in 28 states in the Eastern United States.

Implementation of CSAPR was scheduled to begin on January 1, 2012, when CSAPR's cap-and-trade programs would have superseded the CAIR cap and trade programs. Numerous parties filed petitions for review of CSAPR, and on December 30, 2011, the D.C. Circuit Court issued an order staying CSAPR pending resolution of the petitions and directing EPA to continue to administer CAIR. *EME Homer City Generation, L.P.* v. *EPA,* No. 11–1302 (D.C. Cir. Dec. 30, 2011), Order at 2.

On August 21, 2012, the D.C. Circuit issued its ruling, vacating and remanding CSAPR to EPA and once again ordering continued implementation of CAIR. *EME Homer City Generation, L.P.* v. *EPA,* 696 F.3d 7, 38 (D.C. Cir. 2012). The D.C. Circuit subsequently denied EPA's petition for rehearing en banc. *EME Homer City Generation, L.P.* v. *EPA,* No. 11–1302, 2013 WL 656247 (D.C. Cir. Jan. 24, 2013), at *1. EPA and other parties then petitioned the Supreme Court for a writ of certiorari, and the Supreme Court granted the petitions on June 24, 2013. *EPA* v. *EME Homer City Generation, L.P.,* 133 S. Ct. 2857 (2013).

On April 29, 2014, the Supreme Court vacated and reversed the D.C. Circuit's decision regarding CSAPR, and remanded that decision to the D.C. Circuit Court to resolve remaining issues in accordance with its ruling. *EPA* v. *EME Homer City Generation, L.P.,* 134 S. Ct. 1584 (2014). EPA moved to have the stay of CSAPR lifted in light of the Supreme Court decision. *EME Homer City Generation, L.P.* v. *EPA,* Case No. 11–1302, Document No. 1499505 (D.C. Cir. filed June 26, 2014). In its motion, EPA asked the D.C. Circuit to toll CSAPR's compliance deadlines by three years so that the Phase 1 emissions budgets apply in 2015 and 2016 (instead of 2012 and 2013), and the Phase 2 emissions budgets apply in 2017 and beyond (instead of 2014 and beyond). On October 23, 2014, the D.C. Circuit granted EPA's motion and lifted the stay of CSAPR which was imposed on December 30, 2011. *EME Homer City Generation, L.P.* v. *EPA,* No. 11–1302 (D.C. Cir. Oct. 23, 2014), Order at 3. On December 3, 2014, EPA issued an interim final rule to clarify how EPA will implement CSAPR consistent with the D.C. Circuit Court's order granting EPA's motion requesting lifting the stay and tolling the rule's deadlines. *See* 79 FR 71663 (December 3, 2014) (interim final rulemaking). Consistent with that rule, EPA began implementing CSAPR on January 1, 2015. EPA expects that the implementation of CSAPR will preserve the reductions achieved by CAIR and result in additional SO_2 and NO_X emission reductions throughout the maintenance period.

As mentioned above, the State measures that have been implemented include the following:

Vehicle Emissions Inspection and Maintenance (I/M) Program. In 1999, the North Carolina State Legislation passed the Clean Air Bill that expanded the on-road vehicle I/M program from 9 to 48 counties. It was phased-in in the Charlotte nonattainment area from July 1, 2002, through January 1, 2004. This program reduces NO_X, VOC, and CO emissions. The I/M program was submitted to EPA for adoption into the SIP in August 2002 and was federally approved in October 2002. Therefore, these emission reductions are both state and federally enforceable.

On February 5, 2015, EPA approved a change to North Carolina's I/M rules triggered by a state law which exempted plug-in vehicles and the three newest model year vehicles with less than 70,000 miles on their odometers from emission inspection in all areas in North

[7] EPA notes that there are no sources covered by the consent decree/FFCA in North Carolina. Although the bi-state Charlotte Area may get residual benefits from the implementation of consent decree/FFCA, EPA does not believe these measures are needed for the bi-state Charlotte Area to attain or maintain the 2008 8-hour ozone NAAQS.

[8] North Carolina also identified the NESHAP for industrial, commercial and institutional boilers as a federal measure. This NESHAP is also expected to result in a small decrease in VOC emissions. Boilers must comply with the NESHAP by January 31, 2016, for all states except North Carolina which has a compliance date in May 2019.

Carolina where I/M is required. In North Carolina's section 110(l) demonstration, the State showed that the change in the compliance rate from 95 percent to 96 percent more than compensates for the NO_X and VOC emissions increase. EPA-approved change to the I/M rules was effective March 9, 2015, and are state and federally enforceable.

Clean Smokestacks Act. This state law requires coal-fired power plants to reduce annual NO_X emissions by 77 percent by 2009, and to reduce annual SO_2 emissions by 49 percent by 2009 and 73 percent by 2013. This law set a NO_X emissions cap of 56,000 tons/year for 2009 and SO_2 emissions caps of 250,000 tons/year and 130,000 tons/year for 2009 and 2013, respectively. The public utilities cannot meet these emission caps by purchasing emission credits. EPA approved the statewide emissions caps as part of the North Carolina SIP on September 26, 2011. In 2013, the power plants subject to this law had combined NO_X emissions of 38,857 tons per year, well below the 56,000 tons per year cap. The emissions cap has been met in all subsequent years as well and is enforceable at both the federal and state level.

Criteria (4)—The North Carolina Portion of the Area Has a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the area has a fully approved maintenance plan pursuant to section 175A of the CAA (CAA section 107(d)(3)(E)(iv)). In conjunction with its request to redesignate the North Carolina portion of the bi-state Charlotte Area to attainment for the 2008 8-hour ozone NAAQS, NC DAQ submitted a SIP revision to provide for the maintenance of the 2008 8-hour ozone NAAQS for at least 10 years after the effective date of redesignation to attainment. EPA believes that this maintenance plan meets the requirements for approval under section 175A of the CAA.

a. What is required in a maintenance plan?

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan demonstrating that attainment will continue to be maintained for the 10 years following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures as EPA deems necessary to assure prompt correction of any future 2008 8-hour ozone violations. The Calcagni Memorandum provides further guidance on the content of a maintenance plan, explaining that a maintenance plan should address five requirements: The attainment emissions inventory, maintenance demonstration, monitoring, verification of continued attainment, and a contingency plan. As is discussed more fully below, EPA has preliminarily determined that North Carolina's maintenance plan includes all the necessary components and is thus proposing to approve it as a revision to the North Carolina SIP.

b. Attainment Emissions Inventory

EPA is proposing to determine that the bi-state Charlotte Area has attained the 2008 8-hour ozone NAAQS based on quality-assured monitoring data for the 3-year period from 2012–2014. North Carolina selected 2014 as the base year (*i.e.,* attainment emissions inventory year) for developing a comprehensive emissions inventory for NO_X and VOC, for which projected emissions could be developed for 2015, 2018, 2022, and 2026. The attainment inventory identifies a level of emissions in the Area that is sufficient to attain the 2008 8-hour ozone NAAQS. North Carolina began development of the attainment inventory by first generating a baseline emissions inventory for the State's portion of the bi-state Charlotte Area. The projected summer day emission inventories have been estimated using projected rates of growth in population, traffic, economic activity, and other parameters. Naturally occurring emissions (*i.e.,* biogenic emissions) are not included in the emissions inventory comparison, as these emissions are outside the State's control. In addition to comparing the final year of the plan (2026) to the base year (2014), North Carolina compared interim years to the baseline to demonstrate that these years are also expected to show continued maintenance of the 2008 8-hour ozone standard.

The emissions inventory is composed of four major types of sources: Point, area, on-road mobile, and non-road mobile. The complete descriptions of how the inventories were developed are discussed in the Appendix B of the April 16, 2015, submittal, which can be found in the docket for this action. Point source emissions are tabulated from data collected by direct on-site measurements of emissions or from mass balance calculations utilizing emission factors from EPA's AP–42 or stack test results. For each projected year's inventory, point sources are adjusted by growth factors based on Standard Industrial Classification codes generated using growth patterns obtained from County Business Patterns. For the electric generating utility sources, the estimated projected future year emissions were based on information provided by the utility company. For the sources that report to the EPA's Clean Air Markets Division, the actual 2014 average July day emissions were used. For the other Title V sources, the latest data available (2013) was used to represent 2014 base year emissions. For sources emitting less than 25 tons per year and subject to the emissions statement requirements, the most recently reported data (2013) was used to represent 2014 base year emissions. For the small sources that only report emissions every 5 years, the most recently reported data (2013) was used to represent 2014 base year emission, since emissions from these sources do not vary much from year to year. Rail yard and airport emissions reported were obtained from the EPA's 2011 National Emission Inventory.

For area sources, emissions are estimated by multiplying an emission factor by some known indicator of collective activity such as production, number of employees, or population. For each projected year's inventory, area source emissions are changed by population growth, projected production growth, or estimated employment growth.

The non-road mobile sources emissions are calculated using EPA's NONROAD2008a model, with the exception of the railroad locomotives which were estimated by taking activity and multiplying by an emission factor. For each projected year's inventory, the emissions are estimated using EPA's NONROAD2008a model with activity input such as projected landing and takeoff data for aircraft.

For on-road mobile sources, EPA's Motor Vehicle Emission Simulator (MOVES2014) mobile model is run to generate emissions. The MOVES2014 model includes the road class vehicle miles traveled (VMT) as an input file and can directly output the estimated emissions. For each projected year's inventory, the on-road mobile sources emissions are calculated by running the MOVES mobile model for the future year with the projected VMT to generate emissions that take into consideration expected Federal tailpipe standards, fleet turnover, and new fuels.

The 2014 NO_X and VOC emissions for the North Carolina portion of the bi-state Charlotte Area, as well as the emissions for other years, were developed consistent with EPA guidance and are summarized in Tables 2 through 4 of the following subsection discussing the maintenance demonstration. *See* Appendix B of the April 16, 2015, submission for more detailed information on the emissions inventory.

c. Maintenance Demonstration

The maintenance plan associated with the redesignation request includes a maintenance demonstration that:

(i) Shows compliance with and maintenance of the 2008 8-hour ozone NAAQS by providing information to support the demonstration that current and future emissions of NO_X and VOC remain at or below 2014 emissions levels.

(ii) Uses 2014 as the attainment year and includes future emissions inventory projections for 2015, 2018, 2022, and 2026.

(iii) Identifies an ''out year'' at least 10 years after the time necessary for EPA to review and approve the maintenance plan. Per 40 CFR part 93, NO_X and VOC MVEBs were established for the last year (2026) of the maintenance plan (see section VII below). Additionally, NC DAQ opted to establish sub-area MVEBs for an interim year (2014).

(iv) Provides actual (2014) and projected emissions inventories, in tons per day (tpd), for the North Carolina portion of the bi-state Charlotte Area, as shown in Tables 2 through 4, below.

TABLE 2—ACTUAL AND PROJECTED ANNUAL NO_X EMISSIONS (tpd) FOR THE NORTH CAROLINA PORTION OF THE BI-STATE CHARLOTTE AREA

Sector	2014	2015	2018	2022	2026
Point	32.38	34.47	29.28	36.33	26.75
Area	11.40	11.28	11.28	11.31	11.28
Non-road	26.26	24.35	19.79	16.07	14.03
On-road	60.15	53.97	33.92	22.94	15.47
Total	130.18	124.07	94.27	86.65	67.53

TABLE 3—ACTUAL AND PROJECTED ANNUAL VOC EMISSIONS (tpd) FOR THE NORTH CAROLINA PORTION OF THE BI-STATE CHARLOTTE AREA

Sector	2014	2015	2018	2022	2026
Point	12.03	12.42	13.62	14.36	15.33
Area	47.88	48.26	49.39	50.87	52.28
Non-road	18.89	18.17	17.08	17.04	17.55
On-road	34.32	31.82	23.94	19.16	14.98
Total	113.12	110.67	104.03	101.43	100.14

TABLE 4—EMISSION ESTIMATES FOR THE NORTH CAROLINA PORTION OF THE BI-STATE CHARLOTTE AREA

Year	VOC (tpd)	NO_X (tpd)
2014	113.12	130.18
2015	110.67	124.07
2018	104.03	94.27
2022	101.43	86.65
2026	100.14	67.53
Difference from 2014 to 2026	−12.98	−62.65

In situations where local emissions are the primary contributor to nonattainment, such as the bi-state Charlotte Area, if the future projected emissions in the nonattainment area remain at or below the baseline emissions in the nonattainment area, then the ambient air quality standard should not be exceeded in the future. North Carolina has projected emissions as described previously and determined that emissions in the North Carolina portion of the bi-state Charlotte Area will remain below those in the attainment year inventory for the duration of the maintenance plan.

As discussed in section VI of this proposed rulemaking, a safety margin is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS. North Carolina selected 2014 as the attainment emissions inventory year for the North Carolina portion of the bi-state Charlotte Area. North Carolina calculated safety margins in its submittal for years 2015, 2018, 2022, and 2026. Because the initial sub-area MVEB year of 2014 is also the base year for the maintenance plan inventory, there is no safety margin, therefore, no adjustments were made to the sub-area MVEBs for 2014. The State has allocated a portion of the 2026 safety margin to the 2026 sub-area MVEBs for the bi-state Charlotte Area.

TABLE 5—SAFETY MARGINS FOR THE NORTH CAROLINA PORTION OF THE BI-STATE CHARLOTTE AREA

Year	VOC (tpd)	NO_X (tpd)
2015	−2.45	−6.11
2018	−9.09	−35.91
2022	−11.69	−43.53
2026	−12.98	−62.65

The State has decided to allocate a portion of the 2026 safety margin to the 2026 sub-area MVEBs to allow for unanticipated growth in VMT, changes and uncertainty in vehicle mix assumptions, etc., that will influence the emission estimations. NC DAQ developed and implemented a five-step approach for determining a factor to use to calculate the amount of safety margin to apply to the sub-area MVEBs. Based on this approach, NC DAQ has allocated 2.93 tpd (2650 kg/day) to the 2026 NO_X MVEB and 2.83 tpd (2,569 kg/day) to the 2026 VOC MVEB. After allocation of the available safety margin, the remaining safety margin was calculated

as 59.72 tpd for NO_X and 10.15 tpd for VOC. This allocation and the resulting available safety margin for the North Carolina portion of the bi-state Charlotte Area are discussed further in section VI of this proposed rulemaking along with the sub-area MVEBs to be used for transportation conformity proposes.

d. Monitoring Network

There are currently seven monitors measuring ozone in the North Carolina portion of the bi-state Charlotte Area. NC DAQ operates four of the monitors in the Area, whereas the Mecklenburg County Air Quality (MCAQ) Office operates three of the monitors in Mecklenburg County. The State of North Carolina, through NC DAQ, has committed to continue operation of all monitors in the North Carolina portion of the bi-state Charlotte Area in compliance with 40 CFR part 58 and have thus addressed the requirement for monitoring. EPA approved North Carolina's monitoring plan on November 25, 2013.

e. Verification of Continued Attainment

The State of North Carolina, through NC DAQ, has the legal authority to enforce and implement the maintenance plan for the North Carolina portion of the Area. This includes the authority to adopt, implement, and enforce any subsequent emissions control contingency measures determined to be necessary to correct future ozone attainment problems.

Large stationary sources are required to submit an emissions inventory annually to NC DAQ or MCAQ. NC DAQ commits to review these emissions inventories to determine if any unexpected growth in NO_X emissions in the Area may endanger the maintenance of the 2008 8-hour ozone NAAQS. Additionally, as new VMT data are provided by the North Carolina Department of Transportation (NC DOT), NC DAQ commits to review these data and determine if any unexpected growth in VMT may endanger the maintenance of the 2008 8-hour ozone NAAQS.

Additionally, under the Consolidated Emissions Reporting Rule (CERR) and Air Emissions Reporting Requirements (AERR), NC DAQ is required to develop a comprehensive, annual, statewide emissions inventory every three years that is due twelve to eighteen months after the completion of the inventory year. The AERR inventory years match the base year and final year of the inventory for the maintenance plan, and are within one or two years of the interim inventory years of the maintenance plan. Therefore, NC DAQ commits to compare the CERR and AERR inventories as they are developed with the maintenance plan to determine if additional steps are necessary for continued maintenance of the 2008 8-hour ozone NAAQS in this Area.

f. Contingency Measures in the Maintenance Plan

Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation, and a time limit for action by the state. A state should also identify specific indicators to be used to determine when the contingency measures need to be implemented. The maintenance plan must include a requirement that a state will implement all measures with respect to control of the pollutant that were contained in the SIP before redesignation of the area to attainment in accordance with section 175A(d).

In the April 16, 2015, submittal, North Carolina affirms that all programs instituted by the State and EPA will remain enforceable and that sources are prohibited from reducing emissions controls following the redesignation of the Area. The contingency plan included in the submittal includes a triggering mechanism to determine when contingency measures are needed and a process of developing and implementing appropriate control measures. The primary trigger of the contingency plan will be a violation of the 2008 8-hour ozone NAAQS (*i.e.,* when the three-year average of the 4th highest values is equal to or greater than 0.076 ppm at a monitor in the Area). The trigger date will be 60 days from the date that the State observes a 4th highest value that, when averaged with the two previous ozone seasons' fourth highest values, would result in a three-year average equal to or greater than 0.076 ppm.

The secondary trigger will apply where no actual violation of the 2008 8-hour ozone NAAQS has occurred, but where the State finds monitored ozone levels indicating that an actual ozone NAAQS violation may be imminent. A pattern will be deemed to exist when there are two consecutive ozone seasons in which the 4th highest values are 0.076 ppm or greater at a single monitor within the Area. The trigger date will be 60 days from the date that the State observes a 4th highest value of 0.076 ppm or greater at a monitor for which the previous season had a 4th highest value of 0.076 ppm or greater.

Once the primary or secondary trigger is activated, the Planning Section of the NC DAQ, in consultation with SC DHEC and MCAQ, shall commence analyses including trajectory analyses of high ozone days and an emissions inventory assessment to determine those emission control measures that will be required for attaining or maintaining the 2008 8-hour ozone NAAQS. By May 1 of the year following the ozone season in which the primary or secondary trigger has been activated, North Carolina will complete sufficient analyses to begin adoption of necessary rules for ensuring attainment and maintenance of the 2008 8-hour ozone NAAQS. The rules would become State effective by the following January 1, unless legislative review is required.

At least one of the following contingency measures will be adopted and implemented upon a primary triggering event:

- NO_X Reasonably Available Control Technology on stationary sources with a potential to emit less than 100 tons per year in the North Carolina portion of the Charlotte nonattainment area;
- diesel inspection and maintenance program;
- implementation of diesel retrofit programs, including incentives for performing retrofits;
- additional controls in upwind areas.

The NC DAQ commits to implement within 24 months of a primary or secondary trigger,[9] at least one of the control measures listed above or other contingency measures that may be determined to be more appropriate based on the analyses performed.

North Carolina has also developed a tertiary trigger that will be a first alert as to a potential air quality problem on the horizon. This trigger will be activated when a monitor in the Area has a 4th highest value of 0.076 ppm or greater, starting the first year after the maintenance plan has been approved. The trigger date will be 60 days from the date that the State observes a 4th highest value of 0.076 ppm or greater at any monitor.

Once the tertiary trigger is activated, the Planning Section of the NC DAQ, in consultation with the SC DHEC and

[9] On May 4, 2015, Sheila Holman, Director of NC DENR's Division of Air Quality sent an email to Lynorae Benjamin, Chief of the Region 4 EPA's Air Regulatory Management Section to confirm that the State will address and correct any violation of the 2008 8-Hour Ozone NAAQS as expeditiously as practicable and within 18–24 months from a trigger activation. A copy of this clarification email is in the docket for this rulemaking.

MCAQ, shall commence analyses including meteorological evaluation, trajectory analyses of high ozone days, and emissions inventory assessment to understand why a 4th highest exceedance of the standard has occurred. Once the analyses are completed, the NC DAQ will work with SC DHEC, MCAQ and the local air awareness program to develop an outreach plan identifying any additional voluntary measures that can be implemented. If the 4th highest exceedance occurs early in the season, the NC DAQ will work with entities identified in the outreach plan to determine if the measures can be implemented during the current season; otherwise, NC DAQ will work with SC DHEC, MCAQ, and the local air awareness coordinator to implement the plan for the following ozone season.

EPA has concluded that the maintenance plan adequately addresses the five basic components of a maintenance plan: The attainment emissions inventory, maintenance demonstration, monitoring, verification of continued attainment, and a contingency plan. Therefore, the maintenance plan SIP revision submitted by North Carolina for the State's portion of the Area meets the requirements of section 175A of the CAA and is approvable.

VI. What is EPA's analysis of North Carolina's proposed NO_X and VOC sub-area MVEBs for the North Carolina portion of the area?

Under section 176(c) of the CAA, new transportation plans, programs, and projects, such as the construction of new highways, must ''conform'' to (*i.e.,* be consistent with) the part of the state's air quality plan that addresses pollution from cars and trucks. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS or any interim milestones. If a transportation plan does not conform, most new projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP. The regional emissions analysis is one, but not the only, requirement for implementing transportation conformity. Transportation conformity is a requirement for nonattainment and maintenance areas. Maintenance areas are areas that were previously nonattainment for a particular NAAQS but have since been redesignated to attainment with an approved maintenance plan for that NAAQS.

Under the CAA, states are required to submit, at various times, control strategy SIPs and maintenance plans for nonattainment areas. These control strategy SIPs (including RFP and attainment demonstration requirements) and maintenance plans create MVEBs (or in this case sub-area MVEBs) for criteria pollutants and/or their precursors to address pollution from cars and trucks. Per 40 CFR part 93, a MVEB must be established for the last year of the maintenance plan. A state may adopt MVEBs for other years as well. The MVEB is the portion of the total allowable emissions in the maintenance demonstration that is allocated to highway and transit vehicle use and emissions. *See* 40 CFR 93.101. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, Transportation Conformity Rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and how to revise the MVEB.

As part of the interagency consultation process on setting sub-area MVEBs, the DAQ held three conference calls with the Charlotte Regional Transportation Planning Organization (CRTPO)—Rocky River Rural Planning Organization (RRRPO), Gaston-Cleveland-Lincoln Metropolitan Planning Organization (GCLMPO), and Cabarrus Rowan Metropolitan Planning Organization (CRMPO) to determine what years to set sub-area MVEBs for the Charlotte maintenance plan. According to the transportation conformity rule, a maintenance plan must establish MVEBs for the last year of the maintenance plan (in this case, 2026). *See* 40 CFR 93.118. The consensus formed during the interagency consultation process was that another MVEB should be set for the Charlotte maintenance plan base year of 2014.

Accordingly, NC DAQ established separate sub-area MVEBs based on the latest Metropolitan Planning Organization jurisdictional boundaries such that sub-area MVEBs are established for the CRMPO (Cabarrus and Rowan Counties), for the CRTPO–RRRPO (Iredell, Mecklenburg and Union Counties), and for the GCLMPO (Gaston and Lincoln Counties) subareas. Although Cleveland County is included in the GCLMPO, it is not included in the Charlotte ozone nonattainment area.

Tables 6 through 8 below provide the NO_X and VOC sub-area MVEBs in kilograms per day (kg/day),[10] for 2014 and 2026.

TABLE 6—CRMPO SUB-AREA MVEBS

[kg/day]

	2014		2026	
	NO_X	VOC	NO_X	VOC
Base Emissions	11,814	7,173	3,124	3,135
Safety Margin Allocated to MVEB	.....	.....	625	627
Conformity MVEB	11,814	7,173	3,749	3,762

[10] The conversion to kilograms used the actual emissions reported in the MOVES model. The conversion was done utilizing the ''CONVERT'' function in an EXCEL spreadsheet. The conversion factor is 907.1847.

TABLE 7—GCLMPO SUB-AREA MVEBS

[kg/day]

	2014		2026	
	NO_X	VOC	NO_X	VOC
Base Emissions	10,079	5,916	2,482	2,278
Safety Margin Allocated to MVEB	.....	.....	510	470
Conformity MVEB	10,079	5,916	2,992	2,748

TABLE 8—CRTPO–RRRPO SUB-AREA MVEBS

[kg/day]

	2014		2026	
	NO_X	VOC	NO_X	VOC
Base Emissions	32,679	18,038	8,426	8,189
Safety Margin Allocated to MVEB	.....	.....	1,515	1,472
Conformity MVEB	32,679	18,038	9,941	9,661

As mentioned above, North Carolina has chosen to allocate a portion of the available 2026 safety margin to the NO_X and VOC sub-area MVEBs for 2026. As discussed in section VI of this proposed rulemaking, a safety margin is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS. As discussed above, North Carolina has selected 2014 as the base year.

Through this rulemaking, EPA is proposing to approve the sub-area MVEBs for NO_X and VOC for 2014 and 2026 for the North Carolina portion of the bi-state Charlotte Area because EPA believes that the Area maintains the 2008 8-hour ozone NAAQS with the emissions at the levels of the budgets. Once the sub-area MVEBs for the North Carolina portion of the bi-state Charlotte Area are approved or found adequate (whichever is completed first), they must be used for future conformity determinations. After thorough review, EPA has preliminary determined that the budgets meet the adequacy criteria, as outlined in 40 CFR 93.118(e)(4), and is proposing to approve the budgets because they are consistent with maintenance of the 2008 8-hour ozone NAAQS through 2026.

VII. What is the status of EPA's adequacy determination for the Proposed NO_X and VOC sub-area MVEBs for 2014 and 2026 for the North Carolina portion of the area?

When reviewing submitted ''control strategy'' SIPs or maintenance plans containing MVEBs, EPA may affirmatively find the MVEB contained therein adequate for use in determining transportation conformity. Once EPA affirmatively finds the submitted MVEB is adequate for transportation conformity purposes, that MVEB must be used by state and Federal agencies in determining whether proposed transportation projects conform to the SIP as required by section 176(c) of the CAA.

EPA's substantive criteria for determining adequacy of a MVEB are set out in 40 CFR 93.118(e)(4). The process for determining adequacy consists of three basic steps: Public notification of a SIP submission, a public comment period, and EPA's adequacy determination. This process for determining the adequacy of submitted MVEBs for transportation conformity purposes was initially outlined in EPA's May 14, 1999, guidance, ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.'' EPA adopted regulations to codify the adequacy process in the Transportation Conformity Rule Amendments for the ''New 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change,'' on July 1, 2004 (69 FR 40004). Additional information on the adequacy process for transportation conformity purposes is available in the proposed rule entitled, ''Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes,'' 68 FR 38974, 38984 (June 30, 2003).

As discussed earlier, North Carolina's maintenance plan includes NO_X and VOC sub-arear MVEBs for the North Carolina portion of the bi-state Charlotte Area for 2014, an interim year of the maintenance plan, and 2026, the last year of the maintenance plan. EPA is reviewing the NO_X and VOC sub-area MVEBs through the adequacy process. The North Carolina bi-state Charlotte Area NO_X and VOC sub-area MVEBs, opened for public comment on EPA's adequacy Web site on March 17, 2015, found at: *http://www.epa.gov/otaq/stateresources/transconf/currsips.htm.* The EPA public comment period on adequacy for the sub-area MVEBs for 2014 and 2026 for the North Carolina portion of the bi-state Charlotte Area closed on April 16, 2015. No comments, adverse or otherwise, were received during EPA's adequacy process for the sub-area MVEBs associated with North Carolina's maintenance plan.

EPA intends to make its determination on the adequacy of the 2014 and 2026 sub-area MVEBs for the North Carolina portion of the bi-state Charlotte Area for transportation conformity purposes in the near future by completing the adequacy process that was started on March 17, 2015. After EPA finds the 2014 and 2026 sub-area MVEBs adequate or approves them, the new sub-area MVEBs for NO_X and VOC must be used for future transportation conformity determinations. For required regional emissions analysis years that involve 2014 through 2026, the applicable 2014 sub-area MVEBs will be used and for 2026 and beyond, the applicable budgets will be the new 2026 sub-area MVEBs established in the maintenance plan, as defined in section VI of this proposed rulemaking.

VIII. What is the effect of EPA's proposed actions?

EPA's proposed actions establish the basis upon which EPA may take final

action on the issues being proposed for approval today. Approval of North Carolina's redesignation request would change the legal designation of Mecklenburg County in its entirety, and the portion of Cabarrus, Gaston, Iredell, Lincoln, Rowan and Union Counties within the North Carolina portion of the bi-state Charlotte Area, as found at 40 CFR part 81, from nonattainment to attainment for the 2008 8-hour ozone NAAQS. Approval of North Carolina's associated SIP revision would also incorporate a plan for maintaining the 2008 8-hour ozone NAAQS in the bi-state Charlotte Area through 2026 into the SIP. This maintenance plan includes contingency measures to remedy any future violations of the 2008 8-hour ozone NAAQS and procedures for evaluation of potential violations. The maintenance plan also establishes NO_X and VOC sub-area MVEBs for 2014 and 2026 for the North Carolina portion of the bi-state Charlotte Area. The sub-area MVEBs are listed in Tables 6 through 8 in Section VI. Additionally, EPA is notifying the public of the status of EPA's adequacy determination for the newly-established NO_X and VOC sub-area MVEBs for 2014 and 2026 for the North Carolina portion of the bi-state Charlotte Area.

IX. Proposed Actions

EPA is taking three separate but related actions regarding the redesignation and maintenance of the 2008 8-hour ozone NAAQS for the North Carolina portion of the bi-state Charlotte Area.

EPA proposes to determine that the Charlotte Area has attained the 2008 8-hour ozone standard by the July 20, 2015, required attainment date. EPA is proposing to determine that the entire bi-state Charlotte Area is attaining the 2008 8-hour ozone NAAQS, based on complete, quality-assured, and certified monitoring data for the 2012–2014 monitoring period. EPA is also proposing to approve the maintenance plan for the North Carolina portion of the Area, including the NO_X and VOC sub-area MVEBs for 2014 and 2026, into the North Carolina SIP (under CAA section 175A). The maintenance plan demonstrates that the Area will continue to maintain the 2008 8-hour ozone NAAQS and that the budgets meet all of the adequacy criteria contained in 40 CFR 93.118(e)(4) and (5). Further, as part of this action, EPA is describing the status of its adequacy determination for the NO_X and VOC sub-area MVEBs for 2014 and 2026 in accordance with 40 CFR 93.118(f)(1). Within 24 months from the effective date of EPA's adequacy determination for the MVEBs or the publication date for the final rule for this action, whichever is earlier, the transportation partners will need to demonstrate conformity to the new NO_X and VOC sub-area MVEBs pursuant to 40 CFR 93.104(e).

Additionally, EPA is proposing to determine that the North Carolina portion of the bi-state Charlotte Area has met the criteria under CAA section 107(d)(3)(E) for redesignation from nonattainment to attainment for the 2008 8-hour ozone NAAQS. On this basis, EPA is proposing to approve North Carolina's redesignation request for the North Carolina portion of the bi-state Charlotte Area. If finalized, approval of the redesignation request would change the official designation of Mecklenburg County in its entirety, and a portion of Cabarrus, Gaston, Iredell, Lincoln, Rowan and Union Counties in North Carolina, as found at 40 CFR part 81, from nonattainment to attainment for the 2008 8-hour ozone NAAQS.

X. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, these proposed actions merely propose to approve state law as meeting Federal requirements and do not impose additional requirements beyond those imposed by state law. For this reason, these proposed actions:

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

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

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Environmental protection, Air pollution control.

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

Dated: May 13, 2015.

Heather McTeer Toney,

Regional Administrator, Region 4.

[FR Doc. 2015–12352 Filed 5–20–15; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 192

[Docket No. PHMSA–2014–0098]

RIN 2137–AE93

Pipeline Safety: Plastic Pipe Rule

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

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: PHMSA is proposing to amend the natural and other gas pipeline safety regulations (49 CFR part 192) to address regulatory requirements involving plastic piping systems used in gas services. These proposed amendments are intended to correct errors, address inconsistencies, and respond to petitions for rulemaking. The requirements in several subject matter areas are affected, including incorporation of tracking and traceability provisions; design factor for polyethylene (PE) pipe; more stringent mechanical fitting requirements; updated and additional regulations for risers; expanded use of Polyamide-11 (PA–11) thermoplastic pipe; incorporation of newer Polyamide-12 (PA–12) thermoplastic pipe; and incorporation of updated and additional standards for fittings.

DATES: Submit comments on or before July 31, 2015.

ADDRESSES: Comments should reference Docket No. PHMSA–2014–0098 and may be submitted in the following ways:

- *E-Gov Web site: http://www.regulations.gov.* This Web site allows the public to enter comments on any **Federal Register** notice issued by any agency. Follow the instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System: U.S. Department of Transportation, Docket Operations, M–30, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* DOT Docket Management System, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: If you submit your comments by mail, please submit two copies. To receive confirmation that PHMSA received your comments, include a self-addressed stamped postcard.

Note: Comments are posted without changes or edits to *http://www.regulations.gov,* including any personal information provided. There is a privacy statement published on *http://www.regulations.gov.*

Privacy Act Statement

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT:

General Information: Cameron Satterthwaite, Transportation Specialist, by telephone at 202–366–1319, or by electronic mail at *cameron.satterthwaite@dot.gov.*

Technical Questions: Max Kieba, General Engineer, by telephone at 202–493–0595, or by electronic mail at *max.kieba@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The use and availability of plastic pipe have changed over the years with technological innovations in the products and best practices used in plastic pipe installations. Progress in the design and manufacture of plastic pipe and components has resulted in materials with higher strength characteristics. Manufacturers are instituting new practices related to traceability. Operators are incorporating best practices. Together, these measures have the potential to improve with pipeline safety and integrity. Some of these strides have been highlighted in petitions that are detailed below. The pipeline safety regulations have not stayed current with some of these products; this rulemaking is an effort to propose a number of revisions to incorporate these changes in the interest of pipeline safety.

PHMSA has received several rulemaking petitions involving plastic pipe. Copies of these petitions have been placed in the docket (PHMSA–2014–0098) for this rulemaking in addition to the docket that may have been initially established for the petition. This proposed rule will address the following petitions:

- American Gas Association (AGA)—(Docket No. PHMSA 2010–0011)—Petition to increase design factor 0.32 to 0.4 and incorporate updated ASTM D2513 (standard for Polyethylene (PE) pipe).
- Evonik Industries (Evonik) and UBE Industries (UBE)—(Docket No. PHMSA 2010–0009)—Petition to allow use of Polyamide (PA–12) pipe.
- Arkema—(Docket No. PHMSA 2013–0227)—Petition to allow use of Polyamide (PA–11) pipe at higher pressures.
- Gas Piping Technology Committee (GPTC)—Petition to allow above-ground, encased plastic pipe for regulator and metering stations.

While there has been much progress, both Federal and State inspectors, have noticed some issues related to the installation of plastic pipe that should be addressed in the pipeline safety regulations. In an effort to address these issues, respond to petitions and update the regulations with respect to the products and practices used in plastic pipe system without compromising safety, PHMSA is proposing revisions to the Federal Pipeline Safety Regulations (PSR) in 49 CFR part 192. This focus will limit these proposals to plastic pipelines in gas service and subsequently to new, repaired, and replaced pipes. These issues are addressed and detailed below as follows:

A. Tracking and Traceability
B. Design Factor for PE
C. Expanded use of PA–11
D. Incorporation of PA–12
E. Risers
F. Fittings
G. Plastic Pipe Installation
  G.1.—Installation by Trenchless Excavation (§§ 192.3, 192.329, and 192.376)
  G.2.—Joining Plastic Pipe (§ 192.281)
  G.3.—Qualifying Joining Procedures (§ 192.283)
  G.4.—Qualifying Persons To Make Joints (§ 192.285)
  G.5.—Bends (§ 192.313)
  G.6.—Installation of Plastic Pipe (§ 192.321)
  G.7.—Service Lines; General Requirements for Connections to Main Piping (§ 192.367)
  G.8.—Equipment Maintenance; Plastic Pipe Joining (§ 192.756)
H. Repairs
  H.1.—Repair of Plastic Pipe—Gouges (§ 192.311)
  H.2.—Leak Repair Clamps (§ 192.720)
I. General Provisions
  I.1.—Incorporation by Reference (§ 192.7)
  I.2.—Plastic Pipe Material (§ 192.59)
  I.3.—Plastic Pipe Storage and Handling (§ 192.67)
  I.4.—Gathering Lines (§ 192.9)
  I.5.—Merger of Sections 192.121 and 192.123
  I.6.—General Design Requirements for Components (§ 192.143)
  I.7.—General Design Requirements for Valves (§ 192.145)

I.8.—General Design Requirements for Standard Fittings (§ 192.149)
I.9.—Test Requirements for Plastic Pipelines (§ 192.513)

A. Traceability and Tracking

In many cases, the lack of adequate traceability for plastic pipe (*i.e.,* appropriate markings that help identify the location of manufacture, lot information, size, material, pressure rating, temperature rating and, as appropriate, type, grade, and model, etc., of the pipe and components) and tracking of pipe location (*i.e.,* a means of identifying the location of pipe and components within the pipeline) prevents operators from having enough information to identify systemic issues related to incidents involving plastic pipe. Further, the lack of this information makes it difficult for operators and regulators to determine whether plastic pipe or component failures are related to a certain type or vintage of material, specific product defect or design, heat/lot of the product, or whether it was produced by a certain manufacturer at a certain time.

In addition, the issue can result in excessive pipe excavations due to an inability to locate the affected sections of pipe or fittings when responding to plastic pipe or component manufacturer recalls. In 2001, the National Association of Pipeline Safety Representatives (NAPSR), a non-profit organization of State pipeline safety personnel that promotes pipeline safety in the United States and its territories, also noted this issue in its RESOLUTION NO. 2001–2–SR–2–01 (Resolution SR–2–01). In its Resolution, NAPSR referred to accident investigations where insufficient data regarding the pipe material (*i.e.,* date of manufacture and other relevant information) had proven to be an obstacle in determining the cause or origin of an incident. NAPSR also recognized that existing pipe, fittings, and components often do not maintain their markings for a sufficient period of time to provide useful tracking and traceability information. Therefore, NAPSR requested that PHMSA revise § 192.63 (''Marking of Materials'') to require the marking of all pipe and components to ensure identification for a period of 50 years or the life of the pipeline. NAPSR also expressed the view that the marking of plastic pipe, fittings, and components will benefit the industry and public by allowing the identification of problems and proactively mitigating future problems through such identification.

In an effort to address the concerns mentioned above and to address the resolution from NAPSR, PHMSA proposes new requirements for tracking and traceability of plastic pipe and components that extend beyond marking alone. To set the framework for tracking and traceability, PHMSA proposes to revise § 192.3 by adding definitions for ''traceability information'' and ''tracking information.'' It is PHMSA's intent that all operators have methods to identify the location of pipe, the person who joined the pipe, and components within the pipeline (*i.e.,* tracking). PHMSA also proposes that operators be required to identify and document the location of pipe manufacture, production, lot information, size, material, pressure rating, temperature rating, and, as appropriate, other information such as type, grade, and model (*i.e.,* traceability). In order to facilitate compliance, PHMSA proposes to revise § 192.63 to require operators to adopt the tracking and traceability requirements in ASTM F2897–11a, ''Standard Specification for Tracking and Traceability Encoding System of Natural Gas Distribution Components (Pipe, Tubing, Fittings, Valves, and Appurtenances)'' (Standard). Note that the Standard only specifies requirements for information that marks pipe and components with a 16-digit code to help identify characteristics such as manufacturer, material type, lot code, etc. While the Standard gives some examples of the types of markings, such as barcodes, 2D-Data matrix, or a more conventional print line, it does not provide the actual means of marking or affixing the code to the components, the means of reading and transferring the data or codes, and the durability of the markings.

In response to the 2001 NAPSR Resolution, PHMSA also proposes to clarify § 192.63 by expressly providing that specification and traceability markings on plastic pipe be legible, visible, and permanent in accordance with the pipe's listed specification. The proposed revisions in § 192.63 also reference the recordkeeping requirements for these markings in §§ 192.321(k) and 192.375(d). Section 192.321 applies to the installation of plastic pipe used for transmission lines and mains, and § 192.375 contains requirements for plastic service lines.

PHMSA further proposes to add a new paragraph (k) to § 192.321 and a new paragraph (d) to § 192.375 to require operators to maintain tracking and traceability information (as defined in § 192.3) records for the life of the pipeline. PHMSA believes this performance-based approach will allow for the use of other methods and technologies. For instance, during construction or repair, operators may choose to use a Global Positioning System (GPS) in combination with a barcode reader to help mark the location or identify other features of the pipe or component. Other operators without the means to purchase such equipment may choose to collect and store the information manually or electronically. The purpose of these proposed revisions is to enable operators to accurately locate and quickly identify the installed pipe and components in their systems when handling recalls and conducting failure investigations. The revisions also support the requirements in the distribution integrity management programs for capturing and retaining certain information on new pipelines for the life of the lines (§ 192.1007(a)(5)). In addition, the proposed requirement would also support the current plastic pipe-joiner qualification requirements in § 192.285.

B. Design Factor of PE

PHMSA received petitions from the American Gas Association (AGA) and the Gas Piping Technology Committee (GPTC) to increase the design factor for PE pipe from 0.32 to 0.40 in § 192.121. The allowable design pressure for plastic is based on a number of factors, including the stress rating of the material (interpolated from a Hydrostatic Design Basis (HDB) rating), wall thickness and diameter or standard dimension ratio (SDR), and design factor. The allowable design factor is currently 0.32 for plastics. The exception to this design factor limitation applies to Polyamide-11 pipe (PA–11) produced after January 23, 2009, meeting certain conditions, which would allow the design factor to increase to 0.40. The petitions to allow for a 0.40 design factor for PE pipe are based on research and technical justifications performed by the Gas Technology Institute (GTI) and include certain limitations by type of material and wall thickness. Since design pressure for plastic pipe is based on a number of variables, including design factor and wall thickness, an increase in design factor would allow for the use of PE pipe with smaller wall thicknesses while limited to the allowable pressures determined in § 192.121 if the pipe is made from higher quality material and meets other limitations mentioned in the petitions. Furthermore, a design factor of 0.40 is already allowed in § 192.121 for PA–11 pipe with certain limitations. Upon review, PHMSA proposes to adopt this provision into the PSR. The details of the proposal are

specified below under ''G. *Plastic Pipe Installation.''*

C. Expanded Use of PA–11

Polyamide-11, also referred to as Nylon 11, is a relatively newer type of plastic material with a different structure (nylon- or amide-based) compared to other common plastic materials in use such as Polyethylene (ethylene-based). Similar to PE materials with different types, names, or material designation codes such as PE3408 and PE4710, Polyamides or Nylon materials have different types such as PA–6 or Nylon 6, or relatively newer types discussed in this rulemaking like PA–11 or PA–12, with material designation codes such as PA32312 or PA32316. There are a number of differences amongst the kinds of plastics and pros and cons for each, but, at a high level, Polyamides such as PA–11 have a higher strength or hydrostatic design basis (HDB) rating compared to PE materials. The HDB is a reflection of a plastic pipe's ability to resist internal pressure over long periods of time. The Hydrostatic Stress Board of the Plastics Pipe Institute (PPI) recommends and lists a HDB for a plastic pipe material based on testing of the material using the industry accepted test methods published by ASTM International. As a result of a higher HDB rating, materials like PA–11 can typically be designed and operated at higher pressures. On December 24, 2008 (73 FR 79005), PHMSA issued a final rule to allow the use of a new thermoplastic pipe made from Polyamide-11 (PA–11) with certain limitations for pressure (up to 200 psig), diameter (up to 4-inch nominal pipe size), and an SDR of 11 and below (*i.e.,* thicker wall pipe). This final rule was in response to a petition from Arkema, a manufacturer of PA–11 pipe. On November 11, 2013, Arkema, the sole current producer of PA–11, sent a petition (Docket No. PHMSA–2013–0262) to PHMSA to allow PA–11 to be used for pressures up to 250 psig and pipe diameters up to 6-inch nominal pipe size, with limitations on wall thickness depending on diameter. Arkema is also petitioning PHMSA to allow for arithmetic interpolation in the allowable pressure equation for PA–11 pipe by removing the note in § 192.121 that currently does not allow arithmetic interpolation for PA–11 pipe. Arkema further petitioned PHMSA to incorporate the following standards related to PA–11:

- ASTM F2945–12a, Standard Specification for (PA–11) Gas Pressure Pipe, Tubing and Fittings;
- ASTM/ANSI F2600–09, Standard Specification for Electrofusion Type PA–11 Fittings for Outside Diameter Controlled PA–11 Pipe and Tubing;
- ASTM/ANSI F1973–13, Standard Specification for Factory Assembled Anodeless Risers and Transition Fittings in PE and PA–11 and PA–12 Fuel Gas Distribution Systems;
- ASTM/ANSI F2145–13, Standard Specification for PA–11 and PA–12 Mechanical Fittings for Use on Outside Diameter Controlled PA–11 and PA–12 Pipe and Tubing;
- ASTM/ANSI F1948–12, Standard Specification for Metallic Mechanical Fittings for Use on Outside Diameter Controlled Thermoplastic Gas Distribution Pipe and Tubing; and
- ASME/ANSI B16.40–08, Manually Operated Thermoplastic Gas Shutoffs and Valves in Gas Distribution Systems.

As justification for its petition, Arkema points to the many years of testing and evaluation of PA–11 at operating pressures greater than 100 psig on projects under special permit and non-DOT jurisdictional pipelines that date back to 1999. Arkema also references the successful implementation of § 192.123(f), which allows for the use of PA–11 produced after January 23, 2009, at design pressures up to 200 psig under certain conditions. Although Arkema did not reference any projects that utilize PA–11 between 200 and 250 psig, Arkema believes an increase in allowable pressures up to 250 psig is justified through interpolation of a Hydrostatic Design Basis (HDB) of 3,150 psi for PA–11, as listed in Plastics Pipe Institute (PPI) TR4 (previous code limitations were based on an HDB of 2,500 psi for PA–11).

PHMSA agrees with Arkema's rationale of using the interpolation of the HDB listings for PA–11 to substantiate design pressures up to 250 psig. HDB listings are established in accordance with PPI TR–3, ''Policies and Procedures for Developing Hydrostatic Design Basis (HDB), Strength Design Basis (SDB), Pressure Design Basis (PDB) or Minimum Required Strength (MRS) Ratings for Thermoplastic Piping Materials or Pipe,'' which is incorporated by reference in § 192.7. As detailed in § 192.121, the design pressure (P) can be calculated by the equation $P = (2S/(SDR - 1)) \times (DF)$, where S is the HDB rating, SDR is the standard dimension ratio (the ratio of the average specified outside diameter to wall thickness), and DF is the design factor. If an HDB rating of 2,500 psi (basis for current limitation using previous vintage PA–11 pipe with material designation code PA32312) is used along with an SDR of 11 (a common value for mid-range pipe diameters) and a DF of 0.4 (which is currently allowed for PA–11), the resulting design pressure (P) would equal 200 psi, which is the current maximum allowable design pressure for PA–11 in part 192. If the HDB is changed to 3,150 psi (newer vintage PA–11 pipe with material designation code PA32316), and both the SDR and DF remain the same, the resulting design pressure would equal 252 psi, rounded down to 250 psi for a maximum allowable design pressure. Therefore, PHMSA proposes to revise the PSR to allow PA–11 pipe (PA32316) for pressures up to 250 psi, diameters up to 6 inches, and additional limitations on wall thickness as listed in the petition. PHMSA also proposes to specify that both PA32312 and PA32316 can be used for pressures up to 200 psi. Regarding standards relevant to PA–11 that Arkema petitioned to be incorporated by reference, PHMSA proposes to incorporate them as requested. Incorporating these newer standards specific to PA–11 will also allow PHMSA to phase out older standards incorporated by reference like ASTM D2513–87 and ASTM D2513–99, which covered multiple plastic materials including PA, PE, and others, up until ASTM D2513–09a when it became a PE-only standard. Another rulemaking by PHMSA incorporated ASTM D2513–09a for PE but continued to reference ASTM D2513–87 and ASTM D2513–99 for plastics other than PE while these other product specific standards were being developed. Having multiple versions of the same standard in this interim period has created some confusion.

D. Incorporation of PA–12

On January 6, 2011, PA–12 pipe manufacturers (Evonik and UBE; Petitioners) submitted a petition to amend the PSR to allow the use of PA–12 pipe. Specifically, Evonik and UBE petitioned (Docket No. PHMSA–2010–0009) PHMSA to revise §§ 192.121 and 192.123 to:

- Allow for the use of PA–12 piping systems with a 0.40 design factor;
- Include maximum design pressure limitations for PA–12 piping systems of 250 psig;
- Allow a nominal pipe size of 6-inch diameters or less;
- Allow a minimum wall thickness of at least 0.90 inches, with additional limitations on the wall thickness, depending on diameter;
- Require unplasticized material;
- Limit PA–12 pipe materials to those specified in ASTM F2785; and
- Require PA–12 to comply with the rest of the part 192 requirements related

to joining, pressure testing, and appurtenances, as detailed in §§ 192.281, 192.283, 192.285, and 192.513.

In their petition, Evonik and UBE state that PA–12 material has been tested more than any other pipe material prior to its use and approval. The Petitioners also stated that the results ''amply validated'' the overall strength and durability of the PA–12 material and piping systems against known threats and failure mechanisms. Evonik and UBE noted in their petition that PA–12 has been granted for use under a special permit in the States of Montana and Mississippi. The petitioners also noted the development of a performance-based standard (ASTM F2785–09) for PA–12. The petitioners assert that this standard contains comprehensive performance-based requirements that would ensure the safe long-term performance of PA–12 pipe, tubing, and fittings.

Upon review of the petition, PHMSA proposes to revise the PSR to allow the use of PA–12 pipe at pressures up to 250 psig for pipe up to 6 inches in diameter, and to impose additional limitations on wall thickness as listed in the petition. These limitations would also be consistent with the PA–11 consideration described above. PHMSA also proposes to incorporate by reference ASTM F2785–12, ''Standard Specification for Polyamide 12 Gas Pressure Pipe, Tubing, and Fittings,'' along with other standards applicable to both PA–11 and PA–12 that are described immediately above in the section related to PA–11 considerations and the PA–11 petition.

E. Risers

In general, a pipeline riser is a vertical pipe that connects buried pipe to an aboveground component, such as a meter. In many cases, the riser is a transitional component that attaches a buried plastic pipe to a metal or a metal-encased plastic pipe (anodeless riser), which is connected to a gas meter. While risers are most commonly found connecting service lines to meter sets, risers are also used within distribution mains and transmission systems when entering or exiting small regulator stations or whenever a transition between buried and unburied pipe is necessary.

The PSR do not contain specific design, construction, or installation requirements for risers. In 2014, the GPTC petitioned PHMSA to allow above-ground, encased plastic pipe at the inlet and outlet of regulator and metering stations if (1) the above-ground level part of the plastic pipe is protected against deterioration and external damage; (2) the plastic pipe is not used to support external loads; and (3) the plastic pipe is not allowed to exceed the pipe temperature limits at § 192.123. Therefore, PHMSA proposes specific requirements for the design (§ 192.204) and construction of risers (§§ 192.321(j) and 192.375(a)(2)) associated with plastic pipe. Further, PHMSA proposes to incorporate by reference ASTM F1973, ''Standard Specification for Factory Assembled Anodeless Risers and Transition Fittings in Polyethylene (PE) and Polyamide 11 (PA11) and Polyamide 12 (PA12) Fuel Gas Distribution Systems'' in these new sections. ASTM F1973 addresses various issues such as the removal of burrs on metal components prior to the insertion of plastic pipe and other riser assembly provisions.

F. Fittings

PHMSA and others (*e.g.,* NTSB and certain States) have observed problems with mechanical fittings or joints becoming loose or pipe being pulled out from fittings, leading to leaks and, in certain cases, incidents. Failures can occur when there is inadequate restraint for the potential stresses on the two fitted pipes, when the couplings are incorrectly installed or supported, or when the coupling components (*e.g.,* elastomers) degrade over time. More details on these issues are available in PHMSA Advisory Bulletin ADB–08–02, issued in March 2008, titled ''Pipeline Safety: Issues Related to Mechanical Couplings Used in Natural Gas Distribution Systems.'' Therefore, PHMSA is proposing the incorporation of a requirement to use only mechanical fittings or joints that are designed and tested to provide a seal plus resistance to lateral forces so that a large force on the connection would cause the pipe to yield before the joint does.

More specifically, ASTM D2513, currently incorporated by reference in part 192, provides categorizations for the different mechanical joints, including ''[s]eal plus resistance to a force on the pipe end equal to or greater than that which will cause permanent deformation of the pipe'' (Category 1), seal only (Category 2), and seal plus pipe restraint to account for thermal stresses (Category 3). The Category 1 joint is generally considered the most stringent of the three categories. ASTM D2513 is now a polyethylene-only standard, but other standards being proposed for incorporation in this NPRM and that are applicable to other materials, (*i.e.,* ASTM F1924, ASTM F1948, and ASTM F1973) have Category 1 definitions. The definitions in each of these standards are slightly different in language but are still consistent with each other and the performance language in ASTM D2513. Some of these standards also point back to ASTM D2513 for PE-specific considerations. The regulation, as proposed, would require mechanical fittings, joints, or connections to provide a Category 1 joint as defined in ASTM F1924, ASTM F1948, and ASTM F1973 for the applicable material. In an effort to have consistency in language given the slightly different definitions in the various standards, PHMSA is proposing ''a seal plus resistance to a force on the pipe joint equal to or greater than that which will cause no less than 25% elongation of pipe, or the pipe fails outside the joint area if tested in accordance with the applicable standard.'' These revisions for Category 1 apply in sections such as § 192.281(e) for plastic pipe joining and § 192.367 for service lines and connections to main piping and are described in further detail elsewhere in this document.

In light of the proposed revisions of the PA–11 and PE regulations, and the introduction of PA–12, PHMSA proposes to also consider recently developed standards for incorporation by reference that further enhance pipeline safety in order to address potential safety risks. These proposed standards to be incorporated by reference are listed in ''Section I. *General Provisions*.''

Electrically Isolated Metal Alloy Fittings in Plastic Pipe (Section 192.455)

Section 192.455 details external corrosion control requirements for buried or submerged pipe installed after July 31, 1971. Paragraph (a) currently requires such pipelines to have external protective coatings meeting the requirements of § 192.461 and a cathodic protection system placed in operation within 1 year after construction is completed. However, paragraph (a) contains certain exceptions. One is detailed in paragraph (f) and applies to electrically isolated, metal alloy fittings in plastic pipelines where an operator can show by test, investigation, or experience in the area of application, that adequate corrosion control is provided by the alloy composition, and the fitting is designed to prevent leakage caused by corrosion pitting. For those fittings that do not meet the requirements of paragraph (f), cathodic protection and cathodic protection monitoring is required. PHMSA proposes to add a new paragraph (g) to require such fittings used within plastic pipelines be cathodically protected and monitored in

accordance with §§ 192.455 and 192.465(a).

G. Plastic Pipe Installation

PHMSA is proposing several revisions with regard to the installation of plastic pipe, organized topically as follows:

G.1.—Installation by Trenchless Excavation (Sections 192.3, 192.329 and 192.376)

The PSR do not contain detailed requirements for the installation of plastic pipe by trenchless excavation. PHMSA and the States are aware of a number of incidents related to cross-boring, where plastic pipe installed via trenchless excavation (*e.g.,* directional drilling) has come in contact with or been installed right through another underground utility such as a sewer line. In an effort to improve pipeline and public safety and implement a consistent approach to this method of installation while considering industry best practices in use today, PHMSA proposes to add new §§ 192.329 and 192.376 to detail some basic requirements. These proposals include requiring each operator to ensure that the path of the excavation will provide sufficient clearance for installation and maintenance activities from other underground utilities and structures. Additionally, PHMSA proposes to require plastic pipe and components that are pulled through the ground to incorporate the use of a ''weak link.'' PHMSA is proposing the definition of ''weak link'' in § 192.3. A weak link is used to prevent damage to the pipeline that could be caused by excessive forces during the pulling process.

G.2.—Joining Plastic Pipe (Section 192.281)

Section 192.281 details the requirements for joining plastic pipe. In an effort to reduce confusion and promote safety, PHMSA is proposing several revisions to § 192.281.

Section 192.281(b) contains requirements for solvent cement joints. PHMSA proposes to revise § 192.281(b)(2) to specify that the solvent cement requirements in ASTM D2564–12 apply only to polyvinyl chloride (PVC) pipe. This is a clarifying revision, since PVC is the only material that is allowed by PSR to be joined by solvent cement.

Section 192.281(c) contains requirements for heat-fusion joints. Currently, these requirements refer to only the ''pipe'' that is being joined. PHMSA proposes to clarify paragraph (c) to specify that the joining requirements apply to both the pipe and the components that are joined to the pipe.

Section 192.281(e) contains requirements for mechanical joints but does not clearly list specific standards for the requirements. This has led to some inconsistencies in practices used, or the requirements were incorporated indirectly via another referenced standard and were not always clear. PHMSA proposes to add a new paragraph (e)(3) to require that each fitting used to make a mechanical joint meets a listed specification. With this requirement, PHMSA hopes to make it clearer that fittings and joints must meet a standard specification listed in the code. The standards that would apply are among the ''Other Listed Specifications for Components'' that are being proposed through revisions to Appendix B and described in more detail elsewhere in this document.

G.3.—Qualifying Joining Procedures (Section 192.283)

Section 192.283 details the requirements for qualifying plastic pipe joining procedures. Currently, § 192.283(a) specifies that heat fusion joints for thermoplastic pipe must be tested in accordance with ASTM D2513–99 for plastics other than polyethylene or with ASTM D2513–09a for polyethylene plastic materials. In this proposed rule, PHMSA is proposing to incorporate a newer version of ASTM D2513 for PE-only materials and incorporate standards applicable to other types of thermoplastic pipe (*i.e.,* PA–11, and PA–12). Therefore, PHMSA proposes to revise § 192.283(a) to refer operators to the appropriate listed specification. Listed specifications are detailed in Appendix B to Part 192.

PHMSA also proposes to remove the current § 192.283(d), which allows the use of pipe or fittings manufactured before July 1, 1980, if they are joined in accordance with procedures that the manufacturer certifies will produce a joint as strong as the pipe. As a number of advancements have been made in standards related to pipe and fittings since 1980, the use of newer materials manufactured in accordance with more current standards should be encouraged. Pipe and fittings that are newly installed, repaired, or replaced after the effective date of the rule will be required to meet newer standards. This proposed revision would not preclude the use of pipe or fittings manufactured prior to July 1, 1980, which were already installed prior to the effective date of the rule.

G.4.—Qualifying Persons To Make Joints (Section 192.285)

Section 192.285 details the requirements for qualifying persons to make joints. PHMSA proposes to revise § 192.285 to incorporate several revisions. Section 192.285(a)(2) currently specifies that a person must make a specimen joint that is subjected to the testing detailed in § 192.285(b). PHMSA proposes to remove the testing details in § 192.285(b) and reference ASTM F2620–12 (Standard Practice for Heat Fusion Joining of Polyethylene Pipe and Fittings). PHMSA also proposes to require operators to maintain records detailing the location of each joint and the person who made the joint.

G.5.—Bends (Section 192.313)

Section 192.313 details requirements for bends and elbows, but currently only for steel pipe. To address bends in plastic pipe, PHMSA proposes to add a paragraph (d) to specify that installed plastic pipe may not contain bends that exceed the maximum radius specified by the manufacturer for the diameter of the pipe.

G.6.—Installation of Plastic Pipe (Section 192.321)

Section 192.321 details requirements for the installation of plastic pipe transmission lines and mains. PHMSA is proposing several revisions to this section. Currently, § 192.321(d) specifies that non-encased thermoplastic pipe must have a minimum wall thickness of 0.090 inches, except for pipe with an outside diameter of 0.875 inches or less, which must have a minimum wall thickness of 0.062 inches. PHMSA proposes to require all plastic pipe to have a minimum wall thickness of 0.090 inches.

Section 192.321(f) specifies that plastic pipe being encased must be inserted into the casing pipe in a manner that will protect the plastic, and that the leading edge of the inserted pipe must be closed before insertion. PHMSA proposes to specify that the plastic pipe must be protected from damage at both the entrance and exit of the casing during the installation process.

Section 192.321(h) specifies requirements for plastic pipe installed on bridges. Paragraph (h)(3) contains a reference to § 192.123. Based on the proposed merging of § 192.123 into § 192.121, PHMSA proposes to revise paragraph (h)(3) to replace the currently referenced § 192.123 with § 192.121.

Although part 192 contains some requirements for backfill materials,

there are no explicit requirements for backfill material used in the installation of plastic pipe. PHMSA recognizes that plastic pipe subjected to improper backfill materials or practices could be at risk to damage that could impact pipeline integrity. In line with best practices in use today, PHMSA proposes to add a new paragraph (i) to § 192.321 and a new paragraph (c) to § 192.375 to include specific provisions for backfill material for plastic pipe. These provisions would specify that backfill material not include materials that could be detrimental to the pipe, such as rocks of a size exceeding those established through sound engineering practices. The provisions would also require the ground to be properly compacted underneath, along the sides, and for a predetermined distance above the installed pipe.

PHMSA understands that there are applications that may require plastic mains to terminate aboveground for permanent installations. Currently, § 192.321 does not address plastic mains which terminate above ground. Therefore, PHMSA proposes a new paragraph (j) to allow for the aboveground level termination of plastic mains under certain conditions.

G.7.—Service Lines; General Requirements for Connections to Main Piping (Section 192.367)

Section 192.367(b) specifies requirements for compression–type connections to a main. As described further in the Fittings section above, PHMSA and others (*e.g.,* NTSB and certain States) have observed problems with mechanical fittings or joints becoming loose or pipe being pulled out from fittings, leading to leaks and, in certain cases, incidents. Similar to revisions being proposed in § 192.281(e) related to plastic pipe joining, PHMSA is proposing the incorporation of a requirement that connections are a Category 1 joint per applicable standards for different plastic materials, which is generally considered the most stringent of the three categories. PHMSA proposes to add a new paragraph (b)(3) to require mechanical connections on plastic pipe to be a Category 1 connection as defined by ASTM F1924, ASTM F1948, or ASTM F1973 for the applicable material, providing a seal plus resistance to a force on the pipe joint equal to or greater than that which will cause no less than 25% elongation of pipe, or the pipe fails outside the joint area if tested in accordance with the applicable standard.

G.8.—Equipment Maintenance; Plastic Pipe Joining (Section 192.756)

Due to the difficulty in assessing the quality of field joints, it is very important for operators to use properly calibrated and maintained equipment. Currently, the PSR do not contain detailed minimum provisions for maintaining equipment used in joining plastic pipe. Therefore, PHMSA proposes to add a new § 192.756 to include such requirements. These provisions would require each operator to maintain the applicable equipment, including measuring devices for joining plastic pipe, in accordance with the manufacturers' recommended practices or alternative procedures that have been proven by testing and experience. Operators would also be required to calibrate and test such equipment and devices and maintain records that substantiate these calibrations and tests. The equipment subject to these requirements would include, but not be limited to, fusion equipment, alignment equipment, facing and adaptor equipment, heater plates, and gauging devices. PHMSA proposes that records of all tests and calibrations, except those that might occur through daily verifications and adjustments, be maintained for the life of the pipeline.

H. Repairs

H.1.—Repair of Plastic Pipe (Gouges)

Section 192.311 currently specifies that, for plastic pipe, each imperfection or damage that would impair the serviceability of plastic pipe must be repaired or removed. For consistency with industry best practices, PHMSA proposes to include a requirement for all plastic pipe and or components to be replaced if they have a scratch or gouge exceeding 10 percent of the wall thickness.

H.2.—Leak Repair Clamps

PHMSA and States have observed issues where some operators have used stainless steel band clamps, intended and designed for temporary repairs on plastic pipe used in gas distribution, as a permanent repair solution. While clamps can be an effective temporary solution in certain situations, such as during an incident to stop the release of gas, PHMSA believes that these clamps should be used only as a temporary repair measure until the pipe can be replaced. PHMSA is also aware of at least one manufacturer that has issued a letter saying its repair clamps are intended for temporary repairs only and should be replaced with a more permanent solution. Therefore, PHMSA proposes the incorporation of a new section (§ 192.720) to prohibit the use of leak-repair clamps as a means for permanent repair on gas pipe used in distribution service.

I. General Provisions

PHMSA is proposing a number of general revisions to the PSR as follows:

I.1. Incorporation by Reference (Section 192.7)

Consistent with the proposed amendments in this document, PHMSA proposes to incorporate by reference several standards. The standards are identified as follows:

- ASTM D2513–12ael ''Standard Specification for Polyethylene (PE) Gas Pressure Pipe, Tubing, and Fittings''—This specification covers requirements and test methods for material dimensions and tolerances, hydrostatic burst strength, chemical resistance, and rapid crack resistance of polyethylene pipe, tubing, and fittings for use in fuel gas mains and services for direct burial and reliner applications. The pipe and fittings covered by this specification are intended for use in the distribution of natural gas. Requirements for the qualifying of polyethylene systems for use with liquefied petroleum gas are also covered.
- ASTM F2785–12 ''Standard Specification for Polyamide 12 Gas Pressure Pipe, Tubing, and Fittings''—This specification covers requirements and test methods for the characterization of polyamide 12 pipe, tubing, and fittings for use in fuel gas mains and services for direct burial and reliner applications. The pipe and fittings covered by this specification are intended for use in the distribution of natural gas.
- ASTM F2945–12a ''Standard Specification for Polyamide 11 Gas Pressure Pipe, Tubing, and Fittings'' 11/27/2012.—This specification covers requirements and test methods for the characterization of polyamide 11 pipe, tubing, and fittings for use in fuel gas piping.
- ASTM F2620–12 ''Standard Practice for Heat Fusion Joining of Polyethylene Pipe and Fittings'' 11/01/2013.—This practice describes procedures for making joints with polyethylene (PE) pipe and fittings by means of heat fusion joining in, but not limited to, a field environment. The parameters and procedures are applicable only to joining PE pipe and fittings of related polymer chemistry.
- ASTM D2564–12 ''Standard Specification for Solvent Cements for Poly (Vinyl Chloride) (PVC) Plastic Piping Systems'' 08/01/2012.—This specification covers requirements for

poly (vinyl chloride) (PVC) solvent cements to be used in joining poly (vinyl chloride) piping systems.

• ASTM F2817–10 ''Standard Specification for Poly (Vinyl Chloride) (PVC) Gas Pressure Pipe and Fittings For Maintenance or Repair'' (PVC components only) 08/01/2013—This specification covers requirements for PVC pipe and tubing for use only to maintain or repair existing PVC gas piping.

• ASTM F2897–11a ''Standard Specification for Tracking and Traceability Encoding System of Natural Gas Distribution Components (Pipe, Tubing, Fittings, Valves, and Appurtenances)'' 11/01/2011—This specification defines requirements for the data used in the tracking and traceability base-62 encoding system and the format of the resultant code to characterize various components used in fuel gas piping systems.

• ASTM/ANSI F2600–09 ''Standard Specification for Electrofusion Type Polyamide-11 Fittings for Outside Diameter Controlled Polyamide-11 Pipe and Tubing'' 4/1/2009.—This specification covers polyamide-11 electrofusion fittings for use with outside diameter-controlled polyamide-11 pipe, covered by Specification D2513. Requirements for materials, workmanship, and testing performance are included.

• ASTM F2767–12 ''Specification for Electrofusion Type Polyamide-12 Fittings for Outside Diameter Controlled Polyamide-12 Pipe and Tubing for Gas Distribution'' 10/15/2012.—This specification applies to polyamide-12 electrofusion fittings for use with outside diameter-controlled polyamide-12 pipes, addressed by Specification F2785.

• ASTM/ANSI F2145–13 ''Standard Specification for Polyamide 11 (PA 11) and Polyamide 12 (PA12) Mechanical Fittings for Use on Outside Diameter Controlled Polyamide 11 and Polyamide 12 Pipe and Tubing'' 05/01/2013.—This specification describes requirements and test methods for the qualification of Polyamide 11 (PA 11) bodied mechanical fittings for use with outside diameter controlled PA 11, nominal 2 pipe size (IPS) and smaller complying with Specification D2513. The requirements and test methods for the qualification of Polyamide 12 (PA12) bodied mechanical fittings for use with outside diameter controlled Polyamide 11 (PA11), nominal 2 in pipe size (IPS) and smaller complying with Specification D2513 and outside diameter controlled PA12, nominal 2 in pipe size (IPS) and smaller complying with Specification F2785. In addition, it specifies general requirements of the material from which these fittings are made.

• ASTM/ANSI F1948–12 ''Standard Specification for Metallic Mechanical Fittings for Use on Outside Diameter Controlled Thermoplastic Gas Distribution Pipe and Tubing'' 04/01/2012.—This specification covers requirements and test methods for the qualification of metallic mechanical fittings for use with outside diameter controlled thermoplastic gas distribution pipe and tubing as specified in Specification D2513.

• ASTM F1973–13 ''Standard Specification for Factory Assembled Anodeless Risers and Transition Fittings in Polyethylene (PE) and Polyamide 11 (PA11) and Polyamide 12 (PA12) Fuel Gas Distribution Systems'' 05/01/2013.—This specification covers requirements and test methods for the qualification of factory assembled anodeless risers and transition fittings, for use in polyethylene (PE), in sizes through NPS 8, and Polyamide 11 (PA11) and Polyamide 12 (PA12), in sizes through NPS 6, gas distribution systems.

• ASME/ANSI B 16.40–08 ''Manually Operated Thermoplastic Gas Shutoffs and Valves in Gas Distribution Systems'' 04/30/2008.—This standard covers manually operated thermoplastic valves in nominal valve sizes ½ through 12 intended for use below ground in thermoplastic fuel gas distribution mains and service lines.

• PPI TR–4/2012 ''PPI Listing of Hydrostatic Design Basis (HDB), Hydrostatic Design Stress (HDS), Strength Design Basis (SDB), Pressure Design Basis (PDB) and Minimum Required Strength (MRS) Rating For Thermoplastic Piping Materials or Pipe.''—This report lists thermoplastic piping materials with a Plastics Pipe Institute (PPI) recommended Hydrostatic Design Basis (HDB), Strength Design Basis (SDB), Pressure Design Basis (PDB) or Minimum Required Strength (MRS) rating for thermoplastic piping materials or pipe. These listings have been established in accordance with PPI TR–3.

PHMSA also proposes to update the following standards which are summarized below:

• ASTM F1055–98 (2006) ''Standard Specification for Electrofusion Type Polyethylene Fittings for Outside Diameter Controlled Polyethylene Pipe and Tubing'' This specification covers electrofusion polyethylene fittings for use with outside diameter-controlled polyethylene pipe, covered by Specifications D 2447, D 2513, D 2737, D 3035, and F 714. This specification is a 2006 reaffirmed version of the 1998 version, meaning the technical content of the standard itself hadn't changed but as a matter of process had to be reviewed by the ASTM technical committee to keep it active. It should be noted there is a more current version of the F1055 standard (ASTM F1015–13) but PHMSA has chosen not to propose that version as the name and scope have expanded to include Crosslinked Polyethylene (PEX) Pipe and Tubing, a material not otherwise recognized in the 49 CFR part 192. PHMSA is open to comments on whether or not the latest version should be considered; and

• PPI TR–3/2012 ''Policies and Procedures for Developing Hydrostatic Design Basis (HDB), Hydrostatic Design Stresses (HDS), Pressure Design Basis (PDB), Strength Design Basis (SDB), Minimum Required Strength (MRS) Ratings, and Categorized Required Strength (CRS) for Thermoplastic Piping Materials or Pipe''—This report presents the policies and procedures used by the HSB (Hydrostatic Stress Board) of PPI (Plastics Pipe Institute, Inc.) to develop recommendations of long-term strength ratings for commercial thermoplastic piping materials or pipe. This version is an update to the 2008 version currently incorporated by reference. A more detailed summary of updates to the 2010 version (successor to the 2008 version) is available in the 2012 document itself. Recommendations are published in PPI TR–4.

I.2. Plastic Pipe Material

Section 192.59 specifies requirements for plastic pipe materials. Paragraph (a) details the qualification-for-use requirements for new plastic pipe. PHMSA proposes to add a new paragraph (a)(3) to require new plastic pipe be free from visible defects, a requirement consistent with a similar requirement already in place for used plastic pipe as detailed in paragraph (b)(5). At this time, non-destructive evaluation technologies have not been proven to be reliable and effective for inspecting plastic pipe. Therefore, visual inspection continues to be the primary method for detecting and evaluating defects.

In § 192.59, paragraph (b) details specific qualification requirements for used plastic pipe. Section 192.59(b)(3) specifies that used plastic pipe is qualified for use if it has been used only in natural gas service. PHMSA believes that used plastic pipe should not be limited to ''natural gas'' service but in any ''gas'' service as defined in § 192.3. This is consistent with the applicability provisions in § 192.1, which specifies

that part 192 prescribes minimum safety requirements for the transportation of ''gas.'' Therefore, PHMSA proposes to revise § 192.59(b)(3) to replace ''natural gas'' with ''gas.''

PHMSA is also looking to address some issues surrounding PVC pipe and components used for repair situations. Historically, PVC pipe and components have technically been allowed by code, including for repair, but industry has slowly been phasing out the installation and use of PVC piping, including for repair, in favor of other newer and better-performing plastic materials. PVC components are still used to a larger extent, however, as they are not as susceptible to the same issues of brittle-like cracking as PVC piping. To align with this shift, PHMSA is proposing to add a new § 192.59(e) to explicitly prohibit the use of PVC pipe for new installations after the effective date of the rule, including for repairs. This new requirement would not prevent the use of previously installed PVC pipe, nor would it preclude the use of PVC components for the repair of existing PVC pipe. Requirements for PVC were previously addressed under ASTM D2513–99, but following the change to make ASTM D2513 a PE-only standard, there is now a standalone ASTM standard for PVC. For PVC components used to repair existing PVC pipe, PHMSA is proposing to incorporate ASTM F2817–10, ''Standard Specification for Poly (Vinyl Chloride) (PVC) Gas Pressure Pipe and Fittings For Maintenance or Repair.''

I.3. Plastic Pipe Storage and Handling

Currently, the PSR do not directly address the storage and handling of plastic pipe other than through standards incorporated by reference. In an effort to reduce any confusion regarding the proper storage and handling of plastic pipe, PHMSA proposes a new § 192.67. The proposed new section would require operators to have written procedures for storage and handling that meets the applicable listed specification.

I.4. Gathering Lines

Section 192.9 currently details the requirements applicable to gathering lines. In particular, § 192.9(d) specifies the requirements for Type B regulated onshore gathering lines. Currently, as specified under § 192.9(d)(1), gathering line operators are required to comply with the design, installation, construction, initial inspection, and initial testing requirements in part 192 applicable to transmission lines. This would include plastic pipe requirements such as for design (§ 192.121), joining (§§ 192.281 and 192.283), and installation (§ 192.321). PHMSA believes that this information may not be clear since most transmission lines do not consist of plastic pipe. Therefore, PHMSA proposes to add a new paragraph (d)(7) to specify that such pipelines, if containing plastic pipe or components, must comply with all requirements of part 192 applicable to plastic pipe.

I.5. Merge Sections 192.121 and 192.123

Currently, § 192.121 specifies the calculations for determining the design pressure for plastic pipe, while § 192.123 specifies the design limitations for plastic pipe. In an effort to make the PSR easier to follow and to increase clarity, PHMSA proposes to merge the § 192.123 design limitations into § 192.121. PHMSA also proposes to increase the maximum design factor for PE pipe, increase the design pressure limitations of PA–11 pipe, and add design factor and pressure limitations for the use of PA–12 plastic pipe. These proposals would apply to materials produced after the effective date of the final rule.

I.6. General Design Requirements for Components (Section 192.143)

Section 192.143 contains general design provisions for pipeline components. For clarification purposes, PHMSA proposes the addition of a new paragraph (c) to specify that components used for plastic pipe must be able to withstand operating pressures and anticipated loads in accordance with a listed specification. Currently, § 192.191 specifies design pressure requirements for plastic fittings. With the addition of § 192.143(c), § 192.191 would be redundant; therefore, PHMSA proposes its removal.

I.7. General Design Requirements for Valves (Section 192.145)

Section 192.145 contains general design provisions for pipeline valves. For clarification purposes, PHMSA proposes the addition of a new paragraph (f) to specify that plastic valves must meet a ''listed specification'' as defined in § 192.3. PHMSA also proposes to clarify that plastic valves must not be used in operating conditions that exceed the applicable pressure or temperature ratings detailed in the applicable listed specification, consistent with language in § 192.145(a).

I.8. General Design Requirements for Standard Fittings (Section 192.149)

Section 192.149 contains general design provisions for pipeline fittings. For clarification purposes, PHMSA proposes the addition of a new paragraph (c) to specify that a plastic fitting may only be used if it meets a listed specification.

I.9. Test Requirements for Plastic Pipelines

Section 192.513(c) currently states that the test pressure for plastic pipelines must be at least 150 percent of the maximum operating pressure or 50 psig, whichever is greater, and that the maximum test pressure may not be more than 3 times the pressure determined under § 192.121. Given the other design limitations in the current § 192.123 for PE and PA–11, and the revisions being proposed in this rule for PE, PA–11, and PA–12, PHMSA believes that plastic pipe will potentially be overstressed if tested to 3 times the pressure determined under § 192.121. Therefore, PHMSA proposes to revise § 192.513(c) so that the maximum limit for test pressure is 2.5 times the pressure determined under § 192.121.

II. Availability of Standards Incorporated by Reference

PHMSA currently incorporates by reference into 49 CFR parts 192, 193, and 195 all or parts of more than 60 standards and specifications developed and published by standard developing organizations (SDOs). In general, SDOs update and revise their published standards every 3 to 5 years to reflect modern technology and best technical practices.

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) directs Federal agencies to use voluntary consensus standards in lieu of government-written standards whenever possible. Voluntary consensus standards are standards developed or adopted by voluntary bodies that develop, establish, or coordinate technical standards using agreed-upon procedures. In addition, Office of Management and Budget (OMB) issued OMB Circular A–119 to implement Section 12(d) of Public Law 104–113 relative to the utilization of consensus technical standards by Federal agencies. This circular provides guidance for agencies participating in voluntary consensus standards bodies and describes procedures for satisfying the reporting requirements in Public Law 104–113.

In accordance with the preceding provisions, PHMSA has the responsibility for determining, via petitions or otherwise, which currently referenced standards should be updated, revised, or removed, and which standards should be added to 49 CFR parts 192, 193, and 195. Revisions to

incorporated by reference materials in 49 CFR parts 192, 193, and 195 are handled via the rulemaking process, which allows for the public and regulated entities to provide input. During the rulemaking process, PHMSA must also obtain approval from the Office of the Federal Register to incorporate by reference any new materials.

On January 3, 2012, President Obama signed the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, Public Law 112–90. Section 24 states: ''Beginning 1 year after the date of enactment of this subsection, the Secretary may not issue guidance or a regulation pursuant to this chapter that incorporates by reference any documents or portions thereof unless the documents or portions thereof are made available to the public, free of charge, on an Internet Web site.'' 49 U.S.C. 60102(p).

On August 9, 2013, Public Law 113–30 revised 49 U.S.C. 60102(p) to replace ''1 year'' with ''3 years'' and remove the phrases ''guidance or'' and '',on an Internet Web site.'' This resulted in the current language in 49 U.S.C. 60102(p), which now reads as follows:

''Beginning 3 years after the date of enactment of this subsection, the Secretary may not issue a regulation pursuant to this chapter that incorporates by reference any documents or portions thereof unless the documents or portions thereof are made available to the public, free of charge.''

Further, the Office of the Federal Register issued a November 7, 2014, rulemaking (79 FR 66278) that revised 1 CFR 51.5 to require that agencies detail in the preamble of a proposed rulemaking the ways the materials it proposes to incorporate by reference are reasonably available to interested parties, or how the agency worked to make those materials reasonably available to interested parties. In relation to this proposed rulemaking, PHMSA has contacted each SDO and has requested a hyperlink to a free copy of each standard that has been proposed for incorporation by reference. Access to these standards will be granted until the end of the comment period for this proposed rulemaking. Access to these documents can be found on the PHMSA Web site at the following URL: *http://www.phmsa.dot.gov/pipeline/regs* under ''Standards Incorporated by Reference.''

III. Regulatory Analyses and Notices

Summary/Legal Authority for This Rulemaking

This NPRM is published under the authority of the Federal pipeline safety law (49 U.S.C. 60101 *et seq.*). Section 60102 authorizes the Secretary of Transportation to issue regulations governing design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities. Further, Section 60102(l) of the Federal pipeline safety law states that the Secretary shall, to the extent appropriate and practicable, update incorporated industry standards that have been adopted as a part of the PSR. If adopted as proposed, this NPRM would modify the PSR applicable to plastic pipe.

Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures

This NPRM is not a significant regulatory action under section 3(f) of Executive Order 12866 (58 FR 51735) and therefore was not reviewed by the Office of Management and Budget. This NPRM is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

Executive Orders 12866 and 13563 require agencies to regulate in the ''most cost-effective manner,'' to make a ''reasoned determination that the benefits of the intended regulation justify its costs,'' and to develop regulations that ''impose the least burden on society.'' PHMSA proposes to amend the PSR with regards to plastic pipe to improve compliance with these regulations by updating and adding references to technical standards and providing clarification. PHMSA anticipates that the amendments contained in this NPRM will have economic benefits to the regulated community by increasing the clarity of its regulations and reducing compliance costs. A copy of the regulatory evaluation is available for review in the docket.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities, unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. This proposed rule has been developed in accordance with Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered.

While PHMSA does not collect information on the number of employees or revenues of pipeline operators, it does continuously seek information on the number of small pipeline operators to more fully determine any impacts PHMSA's proposed regulations may have on small entities. This NPRM proposes to require small and large operators to comply with these requirements. A copy of the Initial Regulatory Flexibility Analysis has been placed in the docket.

Executive Order 13175

PHMSA has analyzed this NPRM according to the principles and criteria in Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Because this NPRM does not significantly or uniquely affect the communities of the Indian tribal governments or impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

Paperwork Reduction Act

This NPRM does not impose any new information collection requirements.

Unfunded Mandates Reform Act of 1995

This NPRM does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It would not result in costs of $100 million, adjusted for inflation, or more in any one year to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the NPRM.

National Environmental Policy Act

PHMSA analyzed this proposed rule in accordance with section 102(2)(c) of the National Environmental Policy Act (42 U.S.C. 4332), the Council on Environmental Quality regulations (40 CFR parts 1500–1508), and DOT Order 5610.1C, and has preliminarily determined that this action will not significantly affect the quality of the human environment. A preliminary environmental assessment of this rulemaking is available in the docket, and PHMSA invites comment on environmental impacts of this rule, if any.

Privacy Act Statement

Anyone may search the electronic form of all comments received for any of our dockets. You may review DOT's

complete Privacy Act Statement published in the **Federal Register** on April 11, 2000 (70 FR 19477).

Executive Order 13132

PHMSA has analyzed this NPRM according to Executive Order 13132 (''Federalism''). The NPRM does not have a substantial direct effect on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. This NPRM does not impose substantial direct compliance costs on State and local governments. This NPRM does not preempt State law for intrastate pipelines. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

Executive Order 13211

This NPRM is not a ''significant energy action'' under Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use). It is not likely to have a significant adverse effect on supply, distribution, or energy use. Further, the Office of Information and Regulatory Affairs has not designated this NPRM as a significant energy action.

List of Subjects in 49 CFR Part 192

Incorporation by reference, Pipeline safety, Plastic pipe, Security measures.

In consideration of the foregoing, PHMSA proposes to amend 49 CFR Chapter I as follows:

PART 192—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE: MINIMUM FEDERAL SAFETY STANDARDS

■ 1. The authority citation for part 192 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, 60116, and 60118; and 49 CFR 1.97.

■ 2. Section 192.3 is revised to add the following definitions in appropriate alphabetical order as follows:

§ 192.3 Definitions.

* * * * *

Traceability information means data that is provided within ASTM F2897–11a (incorporated by reference, *see* § 192.7) that indicates within the unique identifier, at a minimum, the location of manufacture, production, lot information, size, material, pressure rating, temperature rating and, as appropriate, type, grade and model of pipe and components.

Tracking information means data that provides for the identification of the location of pipe and components, the date installed, and the person who made the joints in the pipeline system.

* * * * *

Weak Link means a device used when pulling polyethylene pipe, typically through methods such as horizontal directional drilling, to ensure that damage will not occur to the pipeline by exceeding the maximum tensile stresses allowed.

■ 3. Amend § 192.7 as follows:

■ a. Remove paragraphs (d)(11), (d)(12), (d)(13), (d)(15), (j)(1),

■ b. Redesignate paragraphs (c)(3) through (c)(9) as paragraphs (c)(4)–(10) and redesignate paragraph (d)(14) as (d)(12).

■ c. Add paragraphs (c)(3), (d)(11), (d)(13) through (d)(25), (j)(1), and (j)(2) to read as follows.

§ 192.7 What documents are incorporated by reference partly or wholly in this part?

* * * * *

(c) * * *

(3) ASME/ANSI B 16.40–08, ''Manually Operated Thermoplastic Gas Shutoffs and Valves in Gas Distribution Systems,'' (ASME/ANSI B16.40–08), IBR approved for Item I, Appendix B to Part 192.

* * * * *

(d) * * *

(11) ASTM D2513–12ae1, ''Standard Specification for Polyethylene (PE) Gas Pressure Pipe, Tubing, and Fittings,'' (ASTM D2513–12ae1), IBR approved for Item I, Appendix B to Part 192.

* * * * *

(13) ASTM D2564–12, ''Standard Specification for Solvent Cements for Poly(Vinyl Chloride) (PVC) Plastic Piping Systems,'' (ASTM D2564–12), IBR approved for § 192.281(b)(2).

(14) ASTM F1055–98 (2006), ''Standard Specification for Electro fusion Type Polyethylene Fittings for Outside Diameter Controlled Polyethylene Pipe and Tubing,'' (ASTM F1055–98), IBR approved for Item I, Appendix B to Part 192.

(15) ASTM F1924–12, ''Standard Specification for Plastic Mechanical Fittings for Use on Outside Diameter Controlled Polyethylene Gas Distribution Pipe and Tubing,'' (ASTM F1924–12), IBR approved for §§ 192.281(e); 192.367(b)(3); and Item I, Appendix B to Part 192.

(16) ASTM F1948–12, ''Standard Specification for Metallic Mechanical Fittings for Use on Outside Diameter Controlled Thermoplastic Gas Distribution Pipe and Tubing,'' (ASTM F1948–12), IBR approved for §§ 192.281(e); 192.367(b)(3); and Item I, Appendix B to Part 192.

(17) ASTM F1973–13, ''Standard Specification for Factory Assembled Anodeless Risers and Transition Fittings in Polyethylene (PE) and Polyamide 11 (PA 11) and Polyamide 12 (PA 12) Fuel Gas Distribution Systems,'' (ASTM F1973–13), IBR approved for §§ 192.204(b); 192.281(e); 192.367(b)(3); and Item I, Appendix B to Part 192.

(18) ASTM/ANSI F2145–13, ''Standard Specification for Polyamide 11 (PA–11) and Polyamide 12 (PA–12) Mechanical Fittings for Use on Outside Diameter Controlled Polyamide 11 and Polyamide 12 Pipe and Tubing,'' (ASTM/ANSI F2145–13), IBR approved for Item I, Appendix B to Part 192.

(19) ASTM/ANSI F2600–09, ''Standard Specification for Electrofusion Type Polyamide-11 Fittings for Outside Diameter Controlled Polyamide-11 Pipe and Tubing,'' (ASTM/ANSI F2600–09), IBR approved for Item I, Appendix B to Part 192.

(20) ASTM F2620–12, ''Standard Practice for Heat Fusion Joining of Polyethylene Pipe and Fittings,'' (ASTM F2620–12), IBR approved for §§ 192.281(c) and 192.285(b)(2)(i).

(21) ASTM F2767–12, ''Specification for Electrofusion Type Polyamide-12 Fittings for Outside Diameter Controlled Polyamide-12 Pipe and Tubing for Gas Distribution,'' (ASTM F2767–12), IBR approved for Item I, Appendix B to Part 192.

(22) ASTM F2785–12, ''Standard Specification for Polyamide 12 Gas Pressure Pipe, Tubing, and Fittings'' PA–12, (ASTM F2785–12), IBR approved for Item I, Appendix B to Part 192.

(23) ASTM F2817–10, ''Standard Specification for Poly (Vinyl Chloride) (PVC) Gas Pressure Pipe and Fittings For Maintenance or Repair,'' (ASTM F2817–10), IBR approved for Item I, Appendix B to Part 192.

(24) ASTM F2897–11a, ''Standard Specification for Tracking and Traceability Encoding System of Natural Gas Distribution Components (Pipe, Tubing, Fittings, Valves, and Appurtenances),'' (ASTM F2897–11a), IBR approved for §§ 192.3 and 192.63(e).

(25) ASTM F2945–12a ''Standard Specification for Polyamide 11 Gas Pressure Pipe, Tubing, and Fittings,'' PA–11, (ASTM F2945–12a), IBR approved for Item I, Appendix B to Part 192.

* * * * *

(j) * * *

(1) PPI TR–3/2012, ''Policies and Procedures for Developing Hydrostatic Design Basis (HDB), Hydrostatic Design

Stresses (HDS), Pressure Design Basis (PDB), Strength Design Basis (SDB), Minimum Required Strength (MRS) Ratings, and Categorized Required Strength (CRS) for Thermoplastic Piping Materials or Pipe,'' (PPI TR–3/2012), IBR approved for § 192.121.

(2) PPI TR–4/2012, ''PPI Listing of Hydrostatic Design Basis (HDB), Hydrostatic Design Stress (HDS), Strength Design Basis (SDB), Pressure Design Basis (PDB) and Minimum Required Strength (MRS) Rating For Thermoplastic Piping Materials or Pipe,'' (PPI TR–4/2012), IBR approved for § 192.121.

■ 4. In § 192.9, paragraphs (d)(5) and (d)(6) are revised and paragraph (d)(7) is added to read as follows:

§ 192.9 What requirements apply to gathering lines?

* * * * *

(d) * * *

(5) Establish the MAOP of the line under § 192.619;

(6) Install and maintain line markers according to the requirements for transmission lines in § 192.707; and

(7) If the pipeline contains plastic pipe or components, the operator must comply with all applicable requirements of this part for plastic pipe and components.

* * * * *

■ 5. In § 192.59, paragraphs (a)(1), (a)(2), and (b)(3) are revised and paragraphs (a)(3) and (e) are added to read as follows:

§ 192.59 Plastic pipe.

(a) * * *

(1) It is manufactured in accordance with a listed specification;

(2) It is resistant to chemicals with which contact may be anticipated; and

(3) It is free of visible defects.

(b) * * *

(3) It has been used only in gas service;

* * * * *

(e) Except for PVC fittings used for repairs on existing PVC pipelines with materials manufactured in accordance with the listed specification, PVC pipe cannot be used.

■ 6. In § 192.63, paragraph (a) is revised and paragraph (e) is added to read as follows:

§ 192.63 Marking of materials.

(a) Except as provided in paragraph (d) of this section, each valve, fitting, length of pipe, and other component must be marked as prescribed in the specification or standard to which it was manufactured.

* * * * *

(e) Additional requirements for plastic pipe and components.

(1) All markings on plastic pipe prescribed in the listed specification and the requirements of paragraph (e)(2) shall be repeated at intervals not exceeding 2 feet.

(2) Plastic pipe and components manufactured after [INSERT EFFECTIVE DATE OF FINAL RULE], must be marked in accordance with ASTM F2897 (incorporated by reference, see § 192.7) in addition to the listed specification.

(3) All markings on plastic pipelines prescribed in the specification and paragraph (e)(2) shall be legible, visible, and permanent in accordance with the listed specification. Records of markings prescribed in the specification and paragraph (e)(2) shall be maintained for the life the pipeline per the requirements of §§ 192.321(k) and 192.375(d).

■ 7. Section 192.67 is added to read as follows:

§ 192.67 Storage and handling for plastic pipelines.

Each operator must develop and follow written procedures for the storage and handling of plastic pipe and/or associated components that meet the applicable listed specifications.

■ 8. Section 192.121 is revised to read as follows:

§ 192.121 Design of plastic pipe.

(a) *Design formula.* Design formulas for plastic pipe are determined in accordance with either of the following formulas:

$$P = 2S\frac{t}{(D-t)}(DF)$$

$$P = \frac{2S}{(SDR-1)}(DF)$$

P = Design pressure, gage, psi (kPa).

S = For thermoplastic pipe, the HDB is determined in accordance with the listed specification at a temperature equal to 73 °F (23 °C), 100 °F (38 °C), 120 °F (49 °C), or 140 °F (60 °C). In the absence of an HDB established at the specified temperature, the HDB of a higher temperature may be used in determining a design pressure rating at the specified temperature by arithmetic interpolation using the procedure in Part D.2 of PPI TR–3, (incorporated by reference, *see* § 192.7). For reinforced thermosetting plastic pipe, 11,000 psig (75,842 kPa).

t = Specified wall thickness, inches (mm).

D = Specified outside diameter, inches (mm).

SDR = Standard dimension ratio, the ratio of the average specified outside diameter to the minimum specified wall thickness, corresponding to a value from a common numbering system that was derived from the American National Standards Institute (ANSI) preferred number series 10.

DF = Design Factor, a maximum of 0.32 unless otherwise specified for a particular material in this section.

(b) *General requirements for plastic pipe and components.* (1) Except as provided in paragraphs (c) through (f) of this section, the design pressure for plastic pipe may not exceed a gauge pressure of 100 psig (689 kPa) for pipe used in:

(i) Distribution systems; or

(ii) Transmission lines in Class 3 and 4 locations.

(2) Plastic pipe may not be used where operating temperatures of the pipe will be:

(i) Below −20 °F (−29 °C), or −40 °F (−40 °C) if all pipe and pipeline components whose operating temperature will be below −20 °F (−29 °C) have a temperature rating by the manufacturer consistent with that operating temperature; or

(ii) Above the temperature at which the HDB used in the design formula under this section is determined.

(3) Unless specified for a particular material in this section, the wall thickness for plastic pipe may not be less than 0.062 inches (1.57 millimeters).

(4) All plastic pipe must have a listed HDB in accordance with PPI TR–4 (incorporated by reference, *see* § 192.7).

(c) *Polyethylene (PE) pipe requirements.* (1) For PE pipe produced between July 14, 2004, and [INSERT EFFECTIVE DATE OF FINAL RULE], a design pressure of up to 125 psig may be used, provided:

(i) The material designation code is a PE2406 or PE3408.

(ii) The pipe has a nominal size (IPS or CTS) of 12 inches or less (above nominal pipe size of 12 inches, the design pressure is limited to 100 psig); and

(iii) The wall thickness is not less than 0.062 inches (1.57 millimeters).

(2) For PE pipe produced after [INSERT EFFECTIVE DATE OF FINAL RULE], a DF of 0.40 may be used in the design formula, provided:

(i) The design pressure is limited to 125 psig;

(ii) The material designation code is PE2708 or PE4710;

(iii) The pipe has a nominal size (IPS or CTS) of 12 inches or less; and

(iv) The wall thickness for a given outside diameter is not less than that listed in the following table:

Pipe size in inches	Minimum wall thickness in inches	Corresponding DR values
½″ CTS ..	0.090	7

Pipe size in inches	Minimum wall thickness in inches	Corresponding DR values
¾″ CTS ..	0.090	9.7
½″ IPS	0.090	9.3
¾″ IPS	0.095	11
1″ IPS	0.119	11
1¼″ IPS ..	0.151	11
1½″ IPS ..	0.173	11
2″	0.216	11
3″	0.259	13.5
4″	0.265	17
6″	0.315	21
8″	0.411	21
10″	0.512	21
12″	0.607	21

(d) *Polyamide (PA–11) pipe requirements.* (1) For PA–11 pipe produced between January 23, 2009, and [INSERT EFFECTIVE DATE OF FINAL RULE], a DF of 0.40 may be used in the design formula, provided:

(i) The design pressure is limited to 200 psig;

(ii) The material designation code is PA32312 or PA32316;

(iii) The pipe has a nominal size (IPS or CTS) of 4 inches or less; and

(iv) The pipe has a standard dimension ratio of SDR–11 or less (*i.e.,* thicker-wall pipe).

(2) For PA–11 pipe produced on or after [INSERT EFFECTIVE DATE OF FINAL RULE], a DF of 0.40 may be used in the design formula, provided:

(i) The design pressure is limited to 250 psig;

(ii) The material designation code is PA32316;

(iii) The pipe has a nominal size (IPS or CTS) of 6 inches or less; and

(iv) The minimum wall thickness for a given outside diameter is not less than that listed in the following table:

Pipe size (inches)	Minimum wall thickness (inches)	Corresponding DR (values)
1″ IPS	0.119	11
1¼″ IPS ..	0.151	11
1½″ IPS ..	0.173	11
2″	0.216	11
3″	0.259	13.5
4″	0.333	13.5
6″	0.491	13.5

(e) *Polyamide (PA–12) pipe requirements.* For PA–12 pipe produced after [INSERT EFFECTIVE DATE OF FINAL RULE], a DF of 0.40 may be used in the design formula, provided:

(1) The design pressure is limited to 250 psig;

(2) The pipe has a nominal size (IPS or CTS) of 6 inches or less; and

(3) The minimum wall thickness for a given outside diameter is not less than that listed in the following table.

Pipe size (inches)	Minimum wall thickness (inches)	Corresponding SDR (values)
1″ IPS	0.119	11
1¼″ IPS	0.151	11
1½″ IPS	0.173	11
2″	0.216	11
3″	0.259	13.5
4″	0.333	13.5
6″	0.491	13.5

(f) Reinforced thermosetting plastic pipe requirements.

(i) Reinforced thermosetting plastic pipe may not be used at operating temperatures above 150 °F (66 °C).

(ii) The wall thickness for reinforced thermosetting plastic pipe may not be less than that listed in the following table:

Nominal size in inches (millimeters).	Minimum wall thickness inches (millimeters).
2 (51)	0.060 (1.52)
3 (76)	0.060 (1.52)
4 (102)	0.070 (1.78)
6 (152)	0.100 (2.54)

§ 192.123 [Removed and Reserved].

■ 9. Section 192.123 is removed and reserved.

■ 10. In § 192.143, paragraph (c) is added to read as follows:

§ 192.143 General requirements.

* * * * *

(c) Each plastic component of a pipeline must be able to withstand operating pressures and other anticipated loads in accordance with a listed specification.

■ 11. In § 192.145, paragraph (f) is added to read as follows:

§ 192.145 Valves.

* * * * *

(f) Plastic valves must meet the minimum requirements stipulated in a listed specification. A valve may not be used under operating conditions that exceed the applicable pressure and temperature ratings contained in those requirements.

■ 12. In § 192.149, paragraph (c) is added to read as follows:

§ 192.149 Standard fittings.

* * * * *

(c) Plastic fittings must meet a listed specification.

§ 192.191 [Removed and Reserved].

■ 13. Section 192.191 is removed and reserved.

■ 14. Section 192.204 is added to read as follows:

§ 192.204 Risers.

(a) The design shall be tested to ensure safe performance under anticipated external and internal loads acting on the assembly.

(b) Risers shall be designed and tested in accordance with ASTM F1973 (incorporated by reference, *see* § 192.7).

(c) All risers connected to plastic mains and used on regulator stations must be rigid and have a minimum 3 ft. horizontal base leg designed to provide adequate support and resist lateral movement. Riser design shall be tested and accepted in accordance with ASTM F1973 (incorporated by reference, *see* § 192.7).

■ 15. In § 192.281, paragraphs (b)(2),(b)(3), and (c) are revised and paragraphs (e)(3) and (e)(4) are added to read as follows:

§ 192.281 Plastic Pipe.

* * * * *

(b) * * *

(2) The solvent cement must conform to ASTM D2564–12 for PVC (incorporated by reference, *see* § 192.7).

(3) The joint may not be heated or cooled to accelerate the setting of the cement.

(c) *Heat-fusion joints.* Each heat fusion joint on a plastic pipe and/or component must comply with ASTM 2620–12 (incorporated by reference in § 192.7) and the following:

(1) A butt heat-fusion joint must be joined by a device that holds the heater element square to the ends of the pipe and/or component, compresses the heated ends together, and holds the pipe in proper alignment in accordance with the qualified procedures.

(2) A socket heat-fusion joint equal to or less than 1¼-inches must be joined by a device that heats the mating surfaces of the pipe and/or component, uniformly and simultaneously, to establish the same temperature. The device used must be the same device specified in the operator's joining procedure for socket fusion. A socket heat-fusion joint may not be joined on a pipe and/or component greater than 1¼ inches.

(3) An electrofusion joint must be made utilizing the equipment and techniques prescribed by the fitting manufacturer, or utilizing equipment and techniques shown, by testing joints to the requirements of § 192.283(b) to be equivalent to or better than the requirements of the fitting manufacturer.

(4) Heat may not be applied with a torch or other open flame.

* * * * *

(e) * * *

(3) All mechanical fittings must meet a listed specification based upon the pipe material.

(4) All mechanical joints or fittings shall be Category 1 as defined by ASTM F1924, ASTM F1948, or ASTM F1973 (incorporated by reference, *see* § 192.7) for the applicable material, providing a seal plus resistance to a force on the pipe joint equal to or greater than that which will cause no less than 25% elongation of pipe, or the pipe fails outside the joint area if tested in accordance with the applicable standard.

■ 16. Section 192.283 is revised to read as follows:

§ 192.283 Plastic pipe: Qualifying joining procedures.

(a) *Heat fusion, solvent cement, and adhesive joints.* Before any written procedure established under § 192.273(b) is used for making plastic pipe joints by a heat fusion, solvent cement, or adhesive method, the procedure must be qualified by subjecting specimen joints made according to the procedure to the following tests as applicable:

(1) The test requirements of—

(i) In the case of thermoplastic pipe, based upon the pipe material, the Sustained Pressure Test or the Minimum Hydrostatic Burst Test per the listed specification requirements. Additionally, for electrofusion joints, based upon the pipe material, the Tensile Strength Test or the Joint Integrity Test per the listed specification.

(ii) In the case of thermosetting plastic pipe, paragraph 8.5 (Minimum Hydrostatic Burst Pressure) or paragraph 8.9 (Sustained Static Pressure Test) of ASTM D2517 (incorporated by reference, *see* § 192.7).

(2) For procedures intended for lateral pipe connections, subject a specimen joint made from pipe sections joined at right angles according to the procedure to a force on the lateral pipe until failure occurs in the specimen. If failure initiates outside the joint area, the procedure qualifies for use.

(3) For procedures intended for non-lateral pipe connections, perform testing in accordance to a listed specification. If elongation of the test specimen of no more than 25% or failure initiates outside the joint area, the procedure qualifies for use.

(b) Mechanical joints. Before any written procedure established under § 192.273(b) is used for making mechanical plastic pipe joints, the procedure must be qualified in accordance with a listed specification, based upon the pipe material.

(c) A copy of each written procedure being used for joining plastic pipe must be available to the persons making and inspecting joints.

■ 17. In § 192.285, paragraph (b)(2)(i) is revised to read as follows:

§ 192.285 Plastic pipe: Qualifying persons to make joints.

* * * * *

(b) * * *

(2) * * *

(i) Tested under any one of the test methods listed under § 192.283(a) or the inspection and test set forth in accordance with ASTM F2620–12 (incorporated by reference, *see* § 192.7) applicable to the type of joint and material being tested;

* * * * *

■ 18. Section 192.311 is revised to read as follows:

§ 192.311 Repair of plastic pipelines.

(a) Each imperfection or damage that would impair the serviceability of plastic pipe must be repaired or removed.

(b) All scratches or gouges exceeding 10% of wall thickness of pipe and/or components shall be repaired or removed.

■ 19. In § 192.313, a new paragraph (d) added to read as follows:

§ 192.313 Bends and elbows.

* * * * *

(d) Plastic pipe may not be installed containing bends that exceed the maximum radius specified by the manufacturer for the diameter of the pipe being installed.

■ 20. In § 192.321, paragraphs (a), (d), (f), and (h)(3) are revised and paragraphs (i), (j), and (k) are added to read as follows:

§ 192.321 Installation of plastic pipelines.

(a) Plastic pipe must be installed below ground level except as provided by paragraphs (g), (h), and (j) of this section.

* * * * *

(d) Plastic pipe must have a minimum wall thickness of 0.090 inches (2.29 millimeters).

* * * * *

(f) Plastic pipe that is being encased must be inserted into the casing pipe in a manner that will protect the plastic. Plastic pipe that is being encased must be protected from damage at all entrance and all exit points of the casing. The leading end of the plastic must be closed before insertion.

* * * * *

(h) * * *

(3) Not allowed to exceed the pipe temperature limits specified in § 192.121.

(i) Backfill material must:

(1) Not contain materials that could be detrimental to the pipe, such as rocks of a size exceeding those established through sound engineering practices; and

(2) Be properly compacted underneath, along the sides, and for predetermined distance above the pipe.

(j) Plastic mains may terminate above ground level provided they comply with the following:

(1) The aboveground level part of the plastic main is protected against deterioration and external damage.

(2) The plastic main is not used to support external loads.

(3) Installations of risers at regulator stations must meet the design requirements of § 192.204.

(k) Tracking and Traceability. Each operator must maintain records for tracking and traceability information (as defined in § 192.3) for the life of the pipeline.

■ 21. Section 192.329 is added to read as follows:

§ 192.329 Installation of plastic pipelines by trenchless excavation.

Plastic pipelines installed by trenchless excavation must comply with the following:

(a) Each operator shall ensure that the path of the excavation will provide sufficient clearance for installation and maintenance activities from other underground utilities and/or structures.

(b) For each pipeline section, plastic pipe and/or components that are pulled through the ground must have a weak link, as defined by § 192.3, installed to ensure the pipeline will not be damaged

by any excessive forces during the pulling process.

■ 22. In § 192.367, paragraphs (b)(1) and (b)(2) are revised and paragraph (b)(3) is added to read as follows:

§ 192.367 Service lines: General requirements for connections to main piping.

* * * * *

(b) * * *

(1) Be designed and installed to effectively sustain the longitudinal pull-out or thrust forces caused by contraction or expansion of the piping, or by anticipated external or internal loading;

(2) If gaskets are used in connecting the service line to the main connection fitting, have gaskets that are compatible with the kind of gas in the system; and

(3) If used on pipelines comprised of plastic, be a Category 1 connection as defined by ASTM F1924, ASTM F1948, or ASTM F1973 (incorporated by reference, *see* § 192.7) for the applicable material, providing a seal plus resistance to a force on the pipe joint equal to or greater than that which will cause no less than 25% elongation of pipe, or the pipe fails outside the joint area if tested in accordance with the applicable standard.

■ 23. In § 192.375, paragraph (a)(2) is revised and paragraphs (c) and (d) are added to read as follows:

§ 192.375 Service lines: Plastic.

(a) * * *

(2) It may terminate above ground level and outside the building, if—

(i) The aboveground level part of the plastic service line is protected against deterioration and external damage;

(ii) The plastic service line is not used to support external loads; and

(iii) The riser portion of the service line meets the design requirements of § 192.204.

* * * * *

(c) Backfill material must:

(1) Not contain materials that could be detrimental to the pipe, such as rocks of a size exceeding those established through sound engineering practices; and

(2) Be properly compacted underneath, along the sides, and for predetermined distance above the pipe.

(d) Tracking and Traceability. Each operator must maintain records for tracking and traceability information (as defined in § 192.3) for the life of the pipeline.

■ 24. Section 192.376 is added to read as follows:

§ 192.376 Installation of plastic service lines by trenchless excavation.

Plastic service lines installed by trenchless excavation must comply with the following:

(a) Each operator shall ensure that the path of the excavation will provide sufficient clearance for installation and maintenance activities from other underground utilities and/or structures.

(b) For each pipeline section, plastic pipe and/or components that are pulled through the ground must have a weak link, as defined by § 192.3, installed to ensure the pipeline will not be damaged by any excessive forces during the pulling process.

■ 25. In § 192.455, paragraph (g) is added to read as follows:

§ 192.455 External corrosion control: Buried or submerged pipelines installed after July 31, 1971.

* * * * *

(g) Electrically isolated metal alloy fittings in plastic pipelines under this section not meeting the criteria contained in paragraph (f) must be cathodically protected and monitored in accordance with this section and § 192.465(a).

■ 26. In § 192.513, paragraph (c) is revised to read as follows:

§ 192.513 Test requirements for plastic pipelines.

* * * * *

(c) The test pressure must be at least 150 percent of the maximum operating pressure or 50 p.s.i. (345 kPa) gage, whichever is greater. However, the maximum test pressure may not be more than 2.5 times the pressure determined under § 192.121 at a temperature not less than the pipe temperature during the test.

* * * * *

■ 27. Section 192.720 is added to read as follows:

§ 192.720 Distribution systems: Leak repair.

A leak repair clamp may not be used as a permanent repair method for plastic pipe.

■ 28. Section 192.756 is added to read as follows:

§ 192.756 Joining plastic pipe by heat fusion; equipment maintenance and calibration.

(a) Each operator must maintain equipment used in joining plastic pipe in accordance with the manufacturer's recommended practices or with written procedures that have been proven by test and experience to produce acceptable joints.

(b) Each operator must calibrate and test all equipment used to join plastic pipe in accordance with paragraph (a) of this section. The calibration must be appropriate for the use of the equipment and/or is within the acceptable tolerance limit of that equipment as stated by the manufacturer.

(c) The term ''equipment,'' as specified in this section, includes, but is not limited to, fusion equipment, alignment equipment, facing and adaptor equipment, heater plates, and gauging devices.

(d) The operator must maintain records of these tests and calibrations (other than daily verifications and adjustments) for the life of the pipeline.

■ 29. In Appendix B to Part 192, the title of Appendix B and the list under ''I.'' is revised to read as follows:

Appendix B to Part 192—Qualification of Pipe and Components

I. List of Specifications

A. Listed Pipe Specifications

API 5L—Steel pipe, ''API Specification for Line Pipe'' (incorporated by reference, *see* § 192.7).

ASTM A53/A53M—Steel pipe, ''Standard Specification for Pipe, Steel Black and Hot-Dipped, Zinc-Coated, Welded and Seamless'' (incorporated by reference, *see* § 192.7).

ASTM A106—Steel pipe, ''Standard Specification for Seamless Carbon Steel Pipe for High Temperature Service'' (incorporated by reference, *see* § 192.7).

ASTM A333/A333M—Steel pipe, ''Standard Specification for Seamless and Welded Steel Pipe for Low Temperature Service'' (incorporated by reference, *see* § 192.7).

ASTM A381—Steel pipe, ''Standard Specification for Metal-Arc-Welded Steel Pipe for Use with High-Pressure Transmission Systems'' (incorporated by reference, *see* § 192.7).

ASTM A671—Steel pipe, ''Standard Specification for Electric-Fusion-Welded Pipe for Atmospheric and Lower Temperatures'' (incorporated by reference, *see* § 192.7).

ASTM A672—Steel pipe, ''Standard Specification for Electric-Fusion-Welded Steel Pipe for High-Pressure Service at Moderate Temperatures'' (incorporated by reference, *see* § 192.7).

ASTM A691—Steel pipe, ''Standard Specification for Carbon and Alloy Steel Pipe, Electric-Fusion-Welded for High Pressure Service at High Temperatures'' (incorporated by reference, *see* § 192.7).

ASTM D2513–12ae1, ''Standard Specification for Polyethylene (PE) Gas Pressure Pipe, Tubing, and Fittings'' (incorporated by reference, see § 192.7).

ASTM D2517—Thermosetting plastic pipe and tubing, ''Standard Specification for Reinforced Epoxy Resin Gas Pressure Pipe and Fittings'' (incorporated by reference, *see* § 192.7).

ASTM F2785–12, ''Standard Specification for Polyamide 12 Gas Pressure Pipe, Tubing, and Fittings'' (PA–12) (incorporated by reference, *see* § 192.7).

ASTM F2945–12a, ''Standard Specification for Polyamide 11 Gas Pressure Pipe, Tubing, and Fittings'' (PA–11) (incorporated by reference, *see* § 192.7).

B. Other Listed Specifications for Components

ASME/ANSI B16.40–08, ''Manually Operated Thermoplastic Gas Shutoffs and Valves in Gas Distribution Systems'' (incorporated by reference, *see* § 192.7).

ASTM D2513–12ae1, ''Standard Specification for Polyethylene (PE) Gas Pressure Pipe, Tubing, and Fittings'' (incorporated by reference, see § 192.7).

ASTM D2517—Thermosetting plastic pipe and tubing, ''Standard Specification for Reinforced Epoxy Resin Gas Pressure Pipe and Fittings'' (incorporated by reference, *see* § 192.7).

ASTM F2785–12, ''Standard Specification for Polyamide 12 Gas Pressure Pipe, Tubing, and Fittings'' (PA–12) (incorporated by reference, *see* § 192.7).

ASTM F2945–12a, ''Standard Specification for Polyamide 11 Gas Pressure Pipe, Tubing, and Fittings'' (PA–11) (incorporated by reference, *see* § 192.7).

ASTM F1055–98 (2006), ''Standard Specification for Electrofusion Type Polyethylene Fittings for Outside Diameter Controlled Polyethylene Pipe and Tubing'' (incorporated by reference, *see* § 192.7).

ASTM F1924–12, ''Standard Specification for Plastic Mechanical Fittings for Use on Outside Diameter Controlled Polyethylene Gas Distribution Pipe and Tubing'' (incorporated by reference, *see* § 192.7).

ASTM/ANSI F1948–12, ''Standard Specification for Metallic Mechanical Fittings for Use on Outside Diameter Controlled Thermoplastic Gas Distribution Pipe and Tubing'' (incorporated by reference, *see* § 192.7).

ASTM F1973–13, ''Standard Specification for Factory Assembled Anodeless Risers and Transition Fittings in Polyethylene (PE) and Polyamide 11 (PA 11) and Polyamide 12 (PA 12) Fuel Gas Distribution Systems'' (incorporated by reference, *see* § 192.7).

ASTM/ANSI F2600–09, ''Standard Specification for Electrofusion Type Polyamide-11 Fittings for Outside Diameter Controlled Polyamide-11 Pipe and Tubing'' (incorporated by reference, *see* § 192.7).

ASTM/ANSI F2145–13, ''Standard Specification for Polyamide 11 (PA–11) and Polyamide 12 (PA–12) Mechanical Fittings for Use on Outside Diameter Controlled Polyamide 11 and Polyamide 12 Pipe and Tubing'' (incorporated by reference, *see* § 192.7).

ASTM F2767–12, ''Specification for Electrofusion Type Polyamide-12 Fittings for Outside Diameter Controlled Polyamide-12 Pipe and Tubing for Gas Distribution'' (incorporated by reference, *see* § 192.7).

ASTM F2817–10, ''Standard Specification for Poly (Vinyl Chloride) (PVC) Gas Pressure Pipe and Fittings for Maintenance or Repair'' (incorporated by reference, *see* § 192.7).

* * * * *

Issued in Washington, DC, on May 14, 2015, under authority delegated in 49 CFR 1.97.

Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.

[FR Doc. 2015–12113 Filed 5–20–15; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 36

[Docket No. FWS–R7–NWRS–2014–0003: FF07R05000 145 FXRS12610700000]

RIN 1018–AX56

Refuge-Specific Regulations; Public Use; Kenai National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to amend our public use regulations for Kenai National Wildlife Refuge (Kenai NWR or Refuge) to clarify the existing regulations; implement management decisions from our June 2010 Kenai NWR revised comprehensive conservation plan (CCP); establish regulations for managing wildlife attractants, including food, refuse, and retained fish; and revise the regulations for hunting and trapping. The proposed regulations are aimed at enhancing natural resource protection, public use activities, and public safety on the Refuge; are necessary to ensure the compatibility of public use activities with the Refuge's purposes and the Refuge System's purposes; and would ensure consistency with management policies and approved Refuge management plans.

DATES: To ensure that we are able to consider your comments on this proposed rule, we must receive them on or before July 20, 2015. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by July 6, 2015.

ADDRESSES: You may submit comments on this proposed rule by one of the following methods:

(1) Electronically: Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* Search for FWS–R7–NWRS–2014–0003, which is the docket number for this rulemaking. You may submit a comment by clicking on ''Comment Now!'' Please ensure that you have found the correct rulemaking before submitting your comment.

(2) By hard copy: Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R7–NWRS–2014–0003, U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us. For additional information, see the Request for Comments and Public Availability of Comments sections, below.

FOR FURTHER INFORMATION CONTACT: Stephanie Brady, National Wildlife Refuge System, Alaska Regional Office, 1011 E. Tudor Rd., Mail Stop 211, Anchorage, AK 99503; telephone (907) 306–7448; fax (907) 786–3901.

SUPPLEMENTARY INFORMATION:

Background

Franklin D. Roosevelt established the Kenai National Moose Range (Moose Range) on December 16, 1941, for the purpose of ''protecting the natural breeding and feeding range of the giant Kenai moose on the Kenai Peninsula, Alaska, which in this area presents a unique wildlife feature and an unusual opportunity for the study in its natural environment of the practical management of a big game species that has considerable local economic value'' (Executive Order 8979; see 6 FR 6471, December 18, 1941).

Section 303(4) of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA) (16 U.S.C. 3101 *et seq.*) substantially affected the Moose Range by modifying its boundaries and broadening its purposes from moose conservation to protection and conservation of a broad array of fish, wildlife, habitats, and other resources, and to providing educational and recreational opportunities. ANILCA also redesignated the Moose Range as the Kenai National Wildlife Refuge (NWR or Refuge) and increased the size of the Refuge to 1.92 million acres, of which approximately two-thirds are designated as wilderness.

ANILCA sets out purposes for each refuge in Alaska; the purposes of Kenai NWR are set forth in section 303(4) (B) of ANILCA. The purposes identify some of the reasons why Congress established the Refuge and set the management priorities for the Refuge. The purposes are as follows:

(1) To conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to, moose, bears, mountain goats, Dall sheep, wolves and other furbearers, salmonoids and other fish, waterfowl and other migratory and nonmigratory birds;

(2) To fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats;

(3) To ensure, to the maximum extent practicable and in a manner consistent with the purposes set forth in (1), above, water quality and necessary water quantity within the Refuge;

(4) To provide, in a manner consistent with (1) and (2), above, opportunities for scientific research, interpretation, environmental education, and land management training; and

(5) To provide, in a manner compatible with these purposes, opportunities for fish and wildlife-oriented recreation.

The Wilderness Act of 1964 (16 U.S.C. 1131–1136) provides the following purposes for wilderness areas, including the Kenai wilderness area:

(1) To secure an enduring resource of wilderness;

(2) To protect and preserve the wilderness character of areas within the National Wilderness Preservation System; and

(3) To administer the areas for the use and enjoyment of the American people in a way that will leave them unimpaired for future use and enjoyment as wilderness.

The Refuge is considered by many to be ''Alaska in miniature.'' It includes portions of the Harding Ice Field at its highest elevations, the western slopes of the Kenai Mountains, and forested lowlands bordering Cook Inlet. Treeless alpine and subalpine habitats are home to mountain goats, Dall sheep, caribou, wolverine, marmots, and ptarmigan. Most of the lower elevations on the Refuge are covered by boreal forests composed of spruce and birch forests intermingled with hundreds of lakes. Boreal forests are home to moose; wolves; black and brown bears; lynx; snowshoe hares; and numerous species of neotropical songbirds, such as olive-sided flycatchers, myrtle warblers, and ruby-crowned kinglets. At sea level, the Refuge encompasses the largest estuary on the Peninsula—the Chickaloon River Flats. The Chickaloon River Flats provide a major migratory staging area for thousands of shorebirds and waterfowl and provide a haul-out area for harbor seals and feeding areas for beluga whales.

Under our regulations implementing ANILCA in Title 50 of the Code of Federal Regulations at part 36 (50 CFR 36), all refuge lands in Alaska are open to public recreational activities as long as such activities are conducted in a manner compatible with the purposes for which the refuge was established (50 CFR 36.31). Such recreational activities include, but are not limited to, sightseeing, nature observation and photography, hunting, fishing, boating, camping, hiking, picnicking, and other related activities (50 CFR 36.31(a)).

The National Wildlife Refuge Administration Act of 1966 (16 U.S.C. 668dd–668ee), as amended by the National Wildlife Refuge System Improvement Act of 1997, defines ''wildlife-dependent recreation'' and ''wildlife-dependent recreational use'' as ''hunting, fishing, wildlife observation and photography, or environmental education and interpretation'' (16 U.S.C. 668ee (2)). We encourage these uses, and they receive emphasis in management of the public use of Kenai NWR.

The current refuge-specific regulations for Kenai NWR are set forth at 50 CFR 36.39(i). These regulations include provisions concerning the operation of aircraft, motorboats, off-road vehicles, and snowmobiles; hunting and trapping; camping; timber removal; personal property; use of nonmotorized wheeled vehicles; canoeing; and area closures on the Refuge.

Proposed Changes

In this document, we propose to make the following changes to the refuge-specific regulations for Kenai NWR:

(1) Amend regulations affecting the use of aircraft, motorboats, motorized vehicles, and snowmobiles;

(2) Codify restrictions on hunting and trapping within the Skilak Wildlife Recreation Area recently established in accordance with the procedures set forth at 50 CFR 36.42 (public participation and closure procedures);

(3) Expand a prohibition on the discharge of firearms to include areas of intensive public use along the Kenai and Russian rivers;

(4) Clarify the intent of an existing regulation addressing hunting over bait;

(5) Amend regulations associated with camping, use of public use cabins and public fishing facilities, unattended equipment, livestock including pack animals, and public gatherings;

(6) Establish regulations to reduce potential for negative human-bear interactions;

(7) Establish regulations for noncommercial gathering of natural resources, including collection of edible wild foods and shed antlers; and

(8) Codify restrictions on certain uses within areas of the Refuge under conservation easements and easements made under section 17(b) of the Alaska Native Claims Settlement Act (ANCSA) (43 U.S.C. 1601 *et seq.;* see 43 U.S.C. 1616(b)).

We also propose to clarify the existing regulations through editing for plain language and through correcting misspellings. Our proposed substantive changes are discussed in more detail below.

Implementation of Revised Kenai Comprehensive Conservation Plan

The revised Kenai NWR comprehensive conservation plan (2010) (CCP) addresses five primary issues:

- Management of large-scale habitat changes and the use of fire;
- Management of Refuge facilities for public use while ensuring natural and cultural resource protection;
- Enhancement of wildlife-oriented recreation opportunities;
- Management of the increasing public use to ensure protection of resources, visitor experience, and public safety; and
- Balancing motorized access with protection of resources and visitor experiences.

This proposed rule would implement management direction and/or specific actions identified in the CCP and its record of decision that are intended to address the latter four issues. Specifically, we propose to:

(1) Allow expanded airplane operation on the Chickaloon River Flats, open an additional lake to airplane operation within the Kenai wilderness for permitted hunting access, change the dates of prohibited aircraft operation on any lake where nesting trumpeter swans or their broods or both are present from May 1 to September 30 to May 1 to September 10, and prohibit airdrop of any items except under the terms and conditions of a special use permit (FWS Form 3–1383–G).

(2) Prohibit boat motors in excess of 10 horsepower in selected lakes and adopt motor horsepower and boat size and capacity restrictions for portions of the Kenai River within the Refuge. The proposed motor horsepower, motor type and boat size restrictions would enhance consistency with existing State boating regulations within the Kenai River Special Management Area (11 Alaska Administrative Code [AAC] 20.860 and 11 AAC 20.861).

(3) Clarify that jet skis and personal watercraft are included in the list of prohibited motorized watercraft.

(4) Prohibit the use of snowmobiles to pursue, chase, or herd wildlife.

(5) Establish requirements for use of public fishing facilities to ensure protection of sensitive Kenai River shoreline habitats, and enhance safety for both ferry passengers and visitors fishing in the immediate vicinity of Russian River ferry operations.

Currently, fishing is prohibited in an area 100 feet downstream of the ferry's landing area on the southern shore; the proposed rule would expand the closure to include 100 feet upstream of the landing area.

(6) Clarify requirements for use of developed campgrounds and public use cabins including general occupancy, reservations and payment of fees, length of stay, management of wildlife attractants and human waste, control of pets, and campfire use; prohibit dispersed camping within 100 yards of the Kenai River in certain locations to enhance protection of sensitive riverbank habitats; and prohibit overnight camping at certain developed parking facilities to meet day-use parking needs.

(7) Specify requirements for use of nonmotorized wheeled vehicles on designated roads including a new allowance for use of wheeled game carts; for use of livestock for packing, including a new requirement for use of certified weed-free feed to reduce potential for introducing invasive plant species; for allowance of natural resource collection, including berries and edible plants and shed antlers for personal use; for extension of the allowable time for leaving personal property unattended for certain approved extended stay activities; and for public gatherings.

(8) Codify legal requirements governing use of areas where the Service administers non-development easements, public use easements, and easements made under section 17(b) of ANCSA.

The CCP and its record of decision are available for public inspection on the Federal eRulemaking Portal, *http://www.regulations.gov,* under Docket No. FWS–R7–NWRS–2014–0003.

Managing Wildlife Attractants To Reduce Negative Human-Bear Interactions

This proposed rule would establish regulations addressing food and retained fish storage and handling in an area surrounding the confluence of the Kenai and Russian rivers, which we refer to as the Russian River–Kenai River Special Management Area. The Russian River forms the boundary between the Refuge and the Chugach National Forest. Enhancing public safety and wildlife resource conservation in this area by reducing the potential for negative human-bear interactions has been the focus of formal interagency and stakeholder coordination efforts involving the Service; the U.S. Forest Service; Alaska Department of Fish and Game; Alaska Department of Natural Resources; Cook Inlet Region, Incorporated; and Kenaitze Indian Tribe. Proper food and retained fish storage and handling in this area, which hosts one of Alaska's most popular and accessible recreational fisheries, are necessary and important components of these efforts.

The proposed rule would codify and make permanent food and retained fish regulations that have been issued by the Service as temporary restrictions in recent years in accordance with 50 CFR 36.42, and would provide consistency with U.S. Forest Service's food and retained fish storage regulations applying to adjacent lands within the Chugach National Forest (36 CFR 261.58). This consistency among regulations would have the added benefit of reducing confusion for the public utilizing this area, as visitors regularly use both jurisdictions while recreating in the area.

Hunting and Trapping

By law (National Wildlife Refuge System Administration Act of 1966, as amended; Alaska National Interest Lands Conservation Act of 1980), regulation (43 CFR 24), and policy (the Service Manual at 605 FW 1 and 605 FW 2), the Service must, to the extent practicable, ensure that refuge regulations permitting hunting and fishing are consistent with State laws, regulations, and management plans. In addition, under the Master Memorandum of Understanding (1982) (MMOU) between the Service and the Alaska Department of Fish and Game, it is recognized that taking of fish and wildlife by hunting, trapping, or fishing on Service lands in Alaska is authorized under applicable State and Federal law unless State regulations are found to be incompatible with documented refuge goals, objectives, or management plans. The MMOU also commits the Service to utilize the State's regulatory process to the maximum extent allowed by Federal law in developing new or modifying existing Federal regulations or proposing changes in existing State regulations governing or affecting the taking of fish and wildlife on Service lands in Alaska.

In recognition of the above, nonconflicting State general hunting and trapping regulations are usually adopted on NWRs. Hunting and trapping, however, remain subject to legal mandates, regulations, and management policies pertinent to the administration and management of NWRs. For refuges in Alaska, a number of statutes provide authority and directives, and three statutes are key: The Alaska National Interest Lands Conservation Act (ANILCA) of 1980; the National Wildlife Refuge System Administration Act of 1966, as amended; and the Wilderness Act of 1964.

The prohibitions and/or restrictions on hunting and trapping proposed by the Service in this rule are necessary to ensure that hunting and trapping are regulated in a manner such that these activities remain compatible with Kenai NWR's established purposes and the Refuge System mission; to ensure consistency with Service policy, directives, and approved management plans; to minimize conflicts between authorized users of the Refuge; and to protect public safety. This proposed rule would establish prohibitions and/or restrictions on hunting and trapping within the Skilak Wildlife Recreation Area of the Refuge, establish a prohibition on the discharge of firearms within ¼ mile of the Kenai and Russian rivers (with the exception of firearms used for dispatching legally trapped animals and use of shotguns for waterfowl hunting), and clarify the intent of an existing regulation that allows the harvest of black bears over bait under the terms and conditions of a special use permit (FWS Form 3–1383–G).

This proposed rule would codify an existing regulatory closure of hunting and trapping, with exceptions for certain hunting activities, within the Skilak Wildlife Recreation Area, consistent with the Service's 2007 Skilak Wildlife Recreation Area Revised Final Management Plan (which reaffirmed management objectives for the area established under the Refuge's 1985 CCP) and which mimic State of Alaska hunting and trapping regulations for the area in effect prior to 2013. The Skilak Wildlife Recreation Area is a 44,000-acre area of the Refuge that has, since 1985, been managed with a primary emphasis on providing enhanced opportunities for wildlife viewing, environmental education, and interpretation. Under historic State regulations, the area was closed to hunting and trapping, with the exception of hunting of small game with bow and arrow and falconry, moose hunting by permit, and ''youth-only'' firearm hunting of small game. Hunting of all other species has been prohibited since 1987.

This proposed rule would codify the Service's November 2013 permanent closure, established in accordance with 50 CFR 36.42, to hunting and trapping, with the exceptions for moose and small game described above, in the Skilak Wildlife Recreation Area (see 78 FR 66061, November 4, 2013). The Service

adopted the permanent closure in response to action taken by the Alaska Board of Game in March 2013, which opened the Skilak Wildlife Recreation Area to taking of lynx, coyote, and wolf within the area under State hunting regulations. Under this new State regulation, which became effective July 1, 2013, taking of these species is allowed during open seasons from November 10 to March 31. The Service determined that this hunting of lynx, coyote, and wolf negatively impacts meeting objectives in approved Refuge management plans to provide enhanced wildlife viewing, environmental education, and interpretation opportunities in the area. Meeting Refuge public use objectives in the Skilak Wildlife Recreation Area is consistent with and directly supports meeting specific Refuge purposes under ANILCA for providing the public with opportunities for environmental education and interpretation and for a variety of wildlife-dependent recreational activities, including wildlife viewing and photography. In addition to helping us meet the Refuge's public use objectives, this action helps us ensure public safety.

Also to help ensure protection of public safety, the proposed rule would expand areas closed to the discharge of firearms within the Refuge by prohibiting discharge of firearms along the Kenai and Russian rivers, with exceptions for use of firearms to dispatch animals while lawfully trapping in both areas and use of shotguns for waterfowl and small game hunting along the Kenai River. These river corridors receive intensive recreational use for sport fishing from shorelines and boats during open seasons for salmon and resident fish including rainbow trout and Dolly Varden, and, on the upper Kenai River for river floating, from late spring to freeze-up. The exceptions include an allowance for use of shotguns for waterfowl hunting, a popular traditional recreational activity occurring from September to mid-December along the Kenai River in areas downstream of Skilak Lake and near the outlet of the river into Skilak Lake. The proposed firearm discharge restriction would in effect require that archery equipment be used for taking of big game within the designated river corridors. This change would enhance consistency with State regulations which prohibit the discharge of firearms (with area-specific exceptions) within the Kenai River Special Management Area (11 AAC 20.850).

The proposed rule would clarify an existing regulation which allows hunting over bait for the harvest of black bears under the terms and conditions of a special use permit (FWS Form 3–1383–G). All other hunting over bait is in effect prohibited on the Refuge. This clarification is necessary in light of recent action by the Alaska Board of Game to allow for the take of brown bears at registered black bear baiting stations. It has, and continues to be, the intent of the Service to allow baiting only for the take of black bears under the existing regulations, and this restriction is currently addressed through a stipulation on the refuge special use permit. This change would provide additional notice and clarification for the public of this intent.

Maps depicting proposed changes to existing public uses and/or public use areas and referred to in the proposed rule are available for public inspection on the Federal eRulemaking Portal, *http://www.regulations.gov,* under Docket No. FWS–R7–NWRS–2014–0003.

Request for Comments

You may submit comments and materials on this proposed rule by any one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by email or fax or to an address not listed in the **ADDRESSES** section.

If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the Web site. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on *http://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S Fish and Wildlife Service, Alaska Regional Office, Division of Realty and Conservation Planning, 1011 East Tudor Road, Anchorage, AK 99503.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Required Determinations

Regulatory Planning and Review (Executive Order 12866)

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

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

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996)), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the RFA to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for ''significant impact'' and a threshold for a ''substantial number of small entities.'' See 5 U.S.C. 605(b).

This proposed rule would impact visitor use for wildlife-dependent

recreation on the Refuge. Modifying the visitor use regulations would have small incremental changes on total visitor use days associated with particular activities. For example, visitor use associated with aircraft motorboats and collection of natural resources may increase slightly. However, visitor use associated with camping may decline slightly. We estimate that the overall change in recreation use-days would represent less than 1 percent of the average recreation use-days on the Refuge (1 million visitors annually).

Small businesses within the retail trade industry (such as hotels, gas stations, etc.) (NAIC 44) and accommodation and food service establishments (NAIC 72), may be impacted by spending generated by Refuge visitation. Seventy-six percent of establishments in the Kenai Peninsula Borough qualify as small businesses. This statistic is similar for retail trade establishments (72 percent) and accommodation and food service establishments (65 percent). Due to the negligible change in average recreation days, this proposed rule would have a minimal effect on these small businesses.

With the negligible change in overall visitation anticipated from this proposed rule, it is unlikely that a substantial number of small entities would have more than a small economic effect. Therefore, we certify that, if adopted, this rule would not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act. An initial regulatory flexibility analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This proposed rule is not a major rule under 5 U.S.C. 804(2), the SBREFA. This rule:

a. Would not have an annual effect on the economy of $100 million or more.

b. Would not cause a major increase in costs or prices for consumers; individual industries; federal, State, or local government agencies; or geographic regions.

c. Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This proposed rule would not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule would not have a significant or unique effect on State, local, or tribal governments or on the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630)

This proposed rule does not involve the taking of private property or otherwise have taking implications under Executive Order 12630. This proposed rule, if adopted, would affect the public use and management of Kenai NWR, which is managed by the Service in Alaska. A takings implication assessment is not required.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, this proposed rule does not have significant Federalism effects. A federalism summary impact statement is not required. This proposed rule, if adopted, would affect the public use and management of Kenai NWR, which is managed by the Service in Alaska, and would not have a substantial direct effect on State or local governments in Alaska.

Civil Justice Reform (Executive Order 12988)

This proposed rule complies with the requirements of Executive Order 12988. Specifically, this rule:

a. Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

b. Meets the criteria of section 3(b) (2) requiring that all regulations be written in clear language and contain clear legal standards.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis, and we are seeking their input to evaluate this proposed rule. In addition, we have evaluated this proposed rule under Alaska Native Claims Settlement Act (ANCSA) corporation policies. We are consulting with Alaska Native tribes and Alaska Native corporations regarding the proposed changes in this rule for Kenai NWR.

Paperwork Reduction Act

This proposed rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The special use permit mentioned in this proposed rule (FWS Form 3–1383–G) and the information collected on the registration form at entrance points are approved by OMB under OMB Control Numbers 1018–0102 (expires June 30, 2017) and 1018–0153 (expires December 31, 2015). 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.

National Environmental Policy Act

The Service has analyzed this proposed rule in accordance with the criteria of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) and Department of the Interior policy in part 516 of the Departmental Manual (516 DM). We have determined that this proposed rule is considered a categorical exclusion under 516 DM 8.5(C)(3), which categorically excludes the ''issuance of special regulations for public use of Service-managed land, which maintain essentially the permitted level of use and do not continue a level of use that has resulted in adverse environmental impacts.'' This proposed rulemaking supports the Service's management direction identified through approved Refuge management plans, including the 2010 Kenai NWR Revised CCP and the 2007 Kenai NWR Skilak Wildlife Recreation Area Revised Final Management Plan.

For the CCP, we prepared a draft revised CCP and a draft environmental impact statement (DEIS) under NEPA, and made them available for comment for public comment on May 8, 2008 (73 FR 26140). The public comment period on those draft documents began on May 8, 2008, and ended on September 1, 2008. We then prepared our final revised CCP and final EIS, and made them available for public comment for 30 days, beginning August 27, 2009 (74 FR 43718). We announced the availability of the record of decision for the final revised CCP and final EIS on January 11, 2010 (75 FR 1404).

We completed a draft management plan and draft environmental assessment (EA) under NEPA for the Skilak Wildlife Recreation Area Management Plan in October 2006. We distributed approximately 2,500 copies to individuals, businesses, agencies, and

organizations that had expressed an interest in receiving Kenai NWR planning-related documents. We also announced the availability of these documents through radio stations, television stations, and newspapers on the Kenai Peninsula and in the city of Anchorage. An electronic version of the plan was made available on the Kenai NWR planning Web site, and a Skilak email address was created to facilitate public comment on the draft plan. Presentations were made to the Alaska Board of Game and the Friends of Alaska National Wildlife Refuges. The draft plan and draft environmental assessment (EA) were made available for public review and comment during a 30-day period ending November 17, 2006. We signed a finding of no significant impact (FONSI) for the final revised management plan first on December 6, 2006, and then later (as corrected) on May 11, 2007.

You can obtain copies of the CCP/EIS and the revised final management plan for the Skilak Wildlife Recreation Area either on the Federal eRulemaking Portal, *http://www.regulations.gov,* under Docket No. FWS–R7–NWRS–2014–0003, or by contacting Stephanie Brady (see **FOR FURTHER INFORMATION CONTACT**).

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

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking actions that significantly affect energy supply, distribution, or use. We believe that the rule would not have any effect on energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Clarity of This Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use common, everyday words and clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section, above. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Primary Author

Andy Loranger, Refuge Manager, Kenai NWR, is the primary author of this rulemaking document.

List of Subjects in 50 CFR Part 36

Alaska, Recreation and recreation areas, Reporting and recordkeeping requirements, Wildlife refuges.

Proposed Regulation Promulgation

Accordingly, we propose to amend 50 CFR part 36 as set forth below:

PART 36—ALASKA NATIONAL WILDLIFE REFUGES

■ 1. The authority citation for part 36 continues to read as follows:

Authority: 16 U.S.C. 460(k) *et seq.,* 668dd–668ee, 3101 *et seq.*

■ 2. Amend § 36.2 by adding, in alphabetical order, definitions for ''Operate'' and ''Structure'' to read as follows:

§ 36.2 What do these terms mean?

* * * * *

Operate means to manipulate the controls of any conveyance, such as, but not limited to, an aircraft, snow machine, motorboat, off-road vehicle, or any other motorized or non-motorized form of vehicular transport as to direct its travel, motion, or purpose.

* * * * *

Structure means something temporarily or permanently constructed, built, or placed; and constructed of natural or manufactured parts including, but not limited to, a building, shed, cabin, porch, bridge, walkway, stair steps, sign, landing, platform, dock, rack, fence, telecommunication device, antennae, fish cleaning table, satellite dish/mount, or well head.

* * * * *

■ 3. Amend § 36.39 by revising paragraph (i) to read as follows:

§ 36.39 Public use.

* * * * *

(i) *Kenai National Wildlife Refuge.* Maps of designated areas open to specific public use activities on the refuge are available from Refuge Headquarters at the following address: 1 Ski Hill Road, Soldotna, AK.

(1) *Aircraft.* Except in an emergency, the operation of aircraft on the Kenai National Wildlife Refuge is authorized only in designated areas, as described in this paragraph (i)(1).

(i) We allow the operation of airplanes within the Kenai Wilderness on the following designated lakes, and under the restrictions noted:

(A) *Dave Spencer (Canoe Lakes) Unit:*

Bedlam Lake
Bird Lake
Cook Lake
Grouse Lake
King Lake
Mull Lake
Nekutak Lake
Norak Lake
Sandpiper Lake
Scenic Lake
Shoepac Lake
Snowshoe Lake
Taiga Lake
Tangerra Lake
Vogel Lake
Wilderness Lake
Pepper, Gene, and Swanson lakes are open to operation of airplanes only to provide access for ice fishing.

(B) *Andrew Simons Unit:*

Emerald Lake
Green Lake
Harvey Lake
High Lake
Iceberg Lake
Kolomin Lakes
Lower Russian Lake
Martin Lake
Pothole Lake
Twin Lakes
Upper Russian Lake
Windy Lake
Dinglestadt Glacier terminus lake
Wosnesenski Glacier terminus lake

Tustumena Lake and all lakes within the Kenai Wilderness within 1 mile of the shoreline of Tustumena Lake.

All unnamed lakes in sections 1 and 2, T. 1 S., R. 10 W., and sections 4, 5, 8, and 9, T. 1 S., R. 9 W., Seward Meridian.

An unnamed lake in sections 28 and 29, T. 2 N., R. 4 W., Seward Meridian: The Refuge Manager may issue a special use permit (FWS Form 3–1383–G) for the operation of airplanes on this lake to successful applicants for certain State of Alaska, limited-entry, drawing permit hunts. Successful applicants should contact the Refuge Manager to request information.

(C) *Mystery Creek Unit:*

An unnamed lake in section 11, T. 6 N., R. 5 W., Seward Meridian.

(ii) We allow the operation of airplanes on all lakes outside of the Kenai Wilderness, except that we prohibit aircraft operation on:

(A) The following lakes with recreational developments, including, but not limited to, campgrounds, campsites, and public hiking trails connected to road waysides, north of the Sterling Highway:

Afonasi Lake
Anertz Lake
Breeze Lake
Cashka Lake
Dabbler Lake
Dolly Varden Lake
Forest Lake
Imeri Lake
Lili Lake
Mosquito Lake
Nest Lake
Rainbow Lake
Silver Lake
Upper Jean Lake
Watson Lake
Weed Lake

(B) All lakes within the Skilak Wildlife Recreation Area (south of Sterling Highway and north of Skilak Lake), except for Bottenintnin Lake (open to airplanes year-round) and Hidden Lake (open to airplanes only to provide access for ice fishing).

(C) Headquarters Lake (south of Soldotna), except for administrative purposes. You must request permission from the Refuge Manager.

(iii) Notwithstanding any other provisions of this part, we prohibit the operation of aircraft from May 1 through September 10 on any lake where nesting trumpeter swans or their broods or both are present.

(iv) We prohibit the operation of wheeled airplanes, with the following exceptions:

(A) We allow the operation of wheeled airplanes, at the pilot's risk, on the unmaintained Big Indian Creek Airstrip; on gravel areas within ½ mile of Wosnesenski Glacier terminus lake; and within the SE1/4, section 16 and SW1/4, section 15, T. 4 S., R. 8 W., Seward Meridian.

(B) We allow the operation of wheeled airplanes, at the pilot's risk, within designated areas of the Chickaloon River Flats.

(v) We allow the operation of airplanes on the Kasilof River, on the Chickaloon River (from the outlet to mile 6.5), and on the Kenai River below Skilak Lake (from June 15 through March 14). We prohibit aircraft operation on all other rivers on the refuge.

(vi) We prohibit the operation of unlicensed aircraft anywhere on the refuge except as authorized under terms and conditions of a special use permit (FWS Form 3–1383–G) issued by the Refuge Manager.

(vii) We prohibit air dropping any items within the Kenai Wilderness except as authorized under terms and conditions of a special use permit (FWS Form 3–1383–G) issued by the Refuge Manager.

(2) *Motorboats.*

(i) We allow motorboat operation on all waters of the refuge, except that:

(A) We prohibit motorboat operation within the Dave Spencer (Canoe Lakes) Unit of the Kenai Wilderness, including those portions of the Moose and Swanson rivers within this Unit, except that we allow motorboat operation on those lakes designated for airplane operations as provided in paragraph (i)(1) and shown on a map available from Refuge Headquarters.

(B) We prohibit motorboat operation on the Kenai River from the eastern refuge boundary near Sportsmans Landing and the confluence of the Russian River downstream to Skilak Lake. You may have a motor attached to your boat and drift or row through this section, provided the motor is not operating.

(C) We prohibit motorboat operation on the Kenai River from the outlet of Skilak Lake (river mile 50) downstream for approximately 3 miles (river mile 47) between March 15 and June 14, inclusive. You may have a motor attached to your boat and drift or row through this section, provided the motor is not operating.

(D) We prohibit the operation of motors with a total propshaft horsepower rating greater than 10 horsepower on the Moose, Swanson, Funny, Chickaloon (upstream of river mile 7.5), Killey, and Fox rivers.

(E) On the Kenai River downstream of Skilak Lake (river mile 50) to the refuge boundary (river mile 45.5), we restrict motorboat operation to only those motorboats with 4-stroke or direct fuel injection motors with a total propshaft horsepower rating of 50 horsepower or less, and that are up to 21 feet in length and up to 106 inches in width. On Skilak Lake, we restrict motorboat operation to only those motorboats with 4-stroke or direct fuel injection motors.

(F) A ''no wake'' restriction applies to the entire water body of Engineer, Upper and Lower Ohmer, Bottenintnin, Upper and Lower Jean, Kelly, Petersen, Watson, Imeri, Afonasi, Dolly Varden, and Rainbow lakes. We prohibit the operation of motors with a total propshaft horsepower rating of great than 10 horsepower on each of these lakes.

(ii) Notwithstanding any other provisions of these regulations, we prohibit the operation of motorboats from May 1 through September 10 on any lake where nesting trumpeter swans or their broods or both are present.

(3) *Off-road vehicles.*

(i) We prohibit the operation of all off-road vehicles, as defined at 50 CFR 36.2, except that four-wheel drive, licensed, and registered motor vehicles designed and legal for highway use may operate on designated roads, rights-of-way, and parking areas open to public vehicular access. This prohibition applies to off-road vehicle operation on lake and river ice. At the operator's risk, we allow licensed and registered motor vehicles designed and legal for highway use on Hidden, Engineer, Kelly, Petersen, and Watson lakes only to provide access for ice fishing. You must enter and exit the lakes via existing boat ramps.

(ii) We prohibit the operation of air cushion watercraft, air-thrust boats, jet skis and other personal watercraft, and all other motorized watercraft except motorboats.

(iii) The Refuge Manager may issue a special use permit (FWS Form 3–1383–G) for the operation of specialized off-road vehicles and watercraft for certain administrative activities (to include fish and wildlife-related monitoring, vegetation management, and infrastructure maintenance in permitted rights-of-way).

(4) *Snowmobiles.* We allow the operation of snowmobiles only in designated areas and only under the following conditions:

(i) We allow the operation of snowmobiles from December 1 through April 30 only when the Refuge Manager determines that there is adequate snow cover to protect underlying vegetation and soils. During this time, the Refuge Manager will authorize, through public notice (a combination of any or all of the following: Internet, newspaper, radio, and/or signs), the use of snowmobiles less than 48 inches in width and less than 1,000 pounds (450 kg) in weight.

(ii) We prohibit snowmobile operation:

(A) In all areas above timberline, except the Caribou Hills.

(B) In an area within sections 5, 6, 7, and 8, T. 4 N., R. 10 W., Seward Meridian, east of the Sterling Highway right-of-way, including the Refuge Headquarters complex, the environmental education/cross-country ski trails, Headquarters and Nordic lakes, and the area north of the east fork of Slikok Creek and northwest of a prominent seismic trail to Funny River Road.

(C) In an area including the Swanson River Canoe Route and portages, beginning at the Paddle Lake parking area, then west and north along the Canoe Lakes wilderness boundary to the Swanson River, continuing northeast along the river to Wild Lake Creek, then east to the west shore of Shoepac Lake, south to the east shore of Antler Lake, and west to the beginning point near Paddle Lake.

(D) In an area including the Swan Lake Canoe Route and several road-connected public recreational lakes, bounded on the west by the Swanson River Road, on the north by the Swan Lake Road, on the east by a line from the east end of Swan Lake Road south to the west bank of the Moose River, and on the south by the refuge boundary.

(E) In the Skilak Wildlife Recreation Area, except on Hidden, Kelly, Petersen, and Engineer lakes only to provide access for ice fishing. You must enter and exit these lakes via the existing boat ramps and operate exclusively on the lakes. Within the Skilak Wildlife Recreation Area, only Upper and Lower Skilak Lake campground boat launches may be used as access points for snowmobile use on Skilak Lake.

(F) On maintained roads within the refuge. Snowmobiles may cross a maintained road after stopping.

(G) For racing, or to herd, harass, haze, pursue, or drive wildlife.

(5) *Hunting and trapping.* We allow hunting and trapping on the refuge in accordance with State and Federal laws and consistent with the following provisions:

(i) You may not discharge a firearm within ¼ mile of designated public campgrounds, trailheads, waysides, buildings including public use cabins, or the Sterling Highway from the east Refuge boundary to the east junction of the Skilak Loop Road. You may not discharge a firearm within ¼ mile of the west shoreline of the Russian River from the upstream extent of the Russian River Falls downstream to its confluence with the Kenai River, and from the shorelines of the Kenai River from the east refuge boundary downstream to Skilak Lake and from the outlet of Skilak Lake downstream to the refuge boundary, except that firearms may be used in these areas to dispatch animals while lawfully trapping and shotguns may be used for waterfowl and small game hunting along the Kenai River.

(ii) We prohibit hunting over bait, with the exception of hunting for black bear, and then only as authorized under the terms and conditions of a special use permit (FWS Form 3–1383–G) issued by the Refuge Manager.

(iii) We prohibit hunting big game with the aid or use of a dog, with the exception of hunting for black bear, and then only as authorized under the terms and conditions of a special use permit (FWS Form 3–1383–G) issued by the Refuge Manager.

(iv) We prohibit hunting and trapping within sections 5, 6, 7, and 8, T. 4 N., R. 10 W., Seward Meridian, encompassing the Kenai Refuge Headquarters, Environmental Education Center, Visitor Center Complex, and associated public use trails. A map of closure areas is available at Refuge Headquarters.

(v) The additional provisions for hunting and trapping within the Skilak Wildlife Recreation Area are set forth in paragraph (i)(6).

(6) *Hunting and trapping within the Skilak Wildlife Recreation Area.*

(i) The Skilak Wildlife Recreation Area is bound by a line beginning at the easternmost junction of the Sterling Highway and the Skilak Loop Road (Mile 58), then due south to the south bank of the Kenai River, then southerly along the south bank of the Kenai River to its confluence with Skilak Lake, then westerly along the north shore of Skilak Lake to Lower Skilak Campground, then northerly along the Lower Skilak campground road and the Skilak Loop Road to its westernmost junction with the Sterling Highway (Mile 75.1), then easterly along the Sterling Highway to the point of origin.

(ii) The Skilak Wildlife Recreation Area (Skilak Loop Management Area) is closed to hunting and trapping, except as provided in paragraphs (i)(6)(iii) and (i)(6)(iv).

(iii) You may hunt moose only with a permit issued by the Alaska Department of Fish and Game and in accordance with the provisions set forth in paragraph (i)(5).

(iv) You may hunt small game in accordance with the provisions set forth in paragraph (i)(5) and:

(A) Using falconry and bow and arrow only from October 1 through March 1; or

(B) If you are a youth hunter 16 years old or younger, who is accompanied by a licensed hunter 18 years old or older who has successfully completed a certified hunter education course (if the youth hunter has not), or by someone born on or before January 1, 1986. Youth hunters must use standard .22 rimfire or shotgun, and may hunt only in that portion of the area west of a line from the access road from the Sterling Highway to Kelly Lake, the Seven Lakes Trail, and the access road from Engineer Lake to Skilak Lake Road, and north of the Skilak Lake Road. The youth hunt occurs during each weekend from November 1 to December 31, including the Friday following Thanksgiving. State of Alaska bag limit regulations apply.

(7) *Fishing.* We allow fishing on the refuge in accordance with State and Federal laws, and consistent with the following provisions:

(i) We prohibit fishing from June 1 through August 15 during the hours of the Russian River Ferry operation along the south bank of the Kenai River from a point 100 feet upstream to a point 100 feet downstream of the ferry dock.

(ii) Designated areas along the Kenai River at the two Moose Range Meadows public fishing facilities along Keystone Drive are closed to public access and use. At these facilities, we allow fishing only from the fishing platforms and by wading in the Kenai River. To access the river, you must enter and exit from the stairways attached to the fishing platforms. We prohibit fishing from, walking or placing belongings on, or otherwise occupying designated areas along the river in these areas.

(8) *Public use cabin and camping area management.* We allow camping and use of public use cabins on the refuge in accordance with the following conditions:

(i) Unless otherwise further restricted, camping may not exceed 14 days in any 30-day period anywhere on the refuge.

(ii) Campers may not spend more than 7 consecutive days at Hidden Lake Campground or in public use cabins.

(iii) The Refuge Manager may establish a fee and registration permit system for overnight camping at designated campgrounds and public use cabins. At all of the refuge's fee-based campgrounds and public use cabins, you must pay the fee in full prior to occupancy. No person may attempt to reserve a refuge campsite by placing a placard, sign, or any item of personal property on a campsite. Reservations and a cabin permit are required for public use cabins, with the exception of the Emma Lake and Trapper Joe cabins, which are available on a first-come, first-served basis. Information on the refuge's public use cabin program is available from Refuge Headquarters and online at *http://www.recreation.gov.*

(iv) Campers in developed campgrounds and public use cabins must follow all posted campground and cabin occupancy rules.

(v) You must observe quiet hours from 11:00 p.m. until 7:00 a.m. in all developed campgrounds, parking areas, and public use cabins.

(vi) Within developed campgrounds, we allow camping only in designated sites.

(vii) *Campfires.*

(A) Within developed campgrounds, we allow open fires only in portable, self-contained, metal fire grills, or in the permanent fire grates provided. We prohibit moving a permanent fire grill or grate to a new location.

(B) Campers and occupants of public use cabins may cut only dead and down vegetation for campfire use.

(C) You must completely extinguish (put out cold) all campfires before permanently leaving a campsite.

(viii) While occupying designated campgrounds, parking areas, or public use cabins, all food (including lawfully retained fish, wildlife, or their parts), beverages, personal hygiene items, odiferous refuse, or any other item that may attract bears or other wildlife, and all equipment used to transport, store, or cook these items (such as coolers, backpacks, camp stoves, and grills) must be:

(A) Locked in a hard-sided vehicle, camper, or camp trailer; in a cabin; or in a commercially produced and certified bear-resistant container; or

(B) Immediately accessible to at least one person who is outside and attending to the items.

(ix) We prohibit deposition of solid human waste within 100 feet of annual mean high water level of any wetland, lake, pond, spring, river, stream, campsite, or trail. In the Swan Lake and Swanson River Canoe Systems, you must bury solid human waste to a depth of 6 to 8 inches.

(x) We prohibit tent camping within 600 feet of each public use cabin, except by members and guests of the party registered to that cabin.

(xi) Within 100 yards of the Kenai River banks along the Upper Kenai River from river mile 73 to its confluence with Skilak Lake (river mile 65), and along the Middle Kenai River downstream of Skilak Lake (river mile 50 to river mile 45.5), we allow camping only at designated primitive campsites. Campers can spend no more than 3 consecutive nights at the designated primitive campsites.

(xii) We prohibit camping in the following areas of the refuge:

(A) Within ¼ mile of the Sterling Highway, Ski Hill, or Skilak Loop roads, except in designated campgrounds.

(B) On the two islands in the lower Kenai River between mile 25.1 and mile 28.1 adjacent to the Moose Range Meadows Subdivision.

(C) At the two refuge public fishing facilities and the boat launching facility along Keystone Drive within the Moose Range Meadows Subdivision, including within parking areas, and on trails, fishing platforms, and associated refuge lands.

(9) *Other uses and activities.*

(i) *Must I register to canoe on the refuge?* Canoeists on the Swanson River and Swan Lake Canoe Routes must register at entrance points using the registration forms provided. The maximum group size on the Canoe Routes is 15 people.

(ii) *May I use motorized equipment within designated Wilderness areas on the refuge?* Within the Kenai Wilderness, except as provided in this paragraph (i), we prohibit the use of motorized equipment, including, but not limited to, chainsaws; generators; power tools; powered ice augers; and electric, gas, or diesel power units. We allow the use of motorized wheelchairs, when used by those whose disabilities require wheelchairs for locomotion. We allow the use of snowmobiles, airplanes, and motorboats in designated areas in accordance with the regulations in this paragraph (i).

(iii) *May I use non-motorized wheeled vehicles on the refuge?* Yes, you may use bicycles and other non-motorized wheeled vehicles, but only on refuge roads and rights-of-way designated for public vehicular access. In addition, you may use non-motorized, hand-operated, wheeled game carts, specifically manufactured for such purpose, to transport meat of legally harvested big game on designated industrial roads closed to public vehicular access. Information on these designated roads is available from Refuge Headquarters. Further, you may use a wheelchair if you have a disability that requires its use for locomotion.

(iv) *May I ride or use horses, mules, or other domestic animals as packstock on the refuge?* Yes, as authorized under State law, except on the Fuller Lake Trail and on all trails within the Skilak Wildlife Recreation Area and the Refuge Headquarters area. All animals used as packstock must remain in the immediate control of the owner, or his/her designee. All hay and feed used on the refuge for domestic stock and sled dogs must be certified under the State of Alaska's Weed Free Forage certification program.

(v) *Are pets allowed on the refuge?* Yes, pets are allowed, but you must be in control of your pet(s) at all times. Pets in developed campgrounds and parking lots must be on a leash that is no longer than 6 feet in length. Pets are not allowed on hiking and ski trails in the Refuge Headquarters area.

(vi) *May I cut firewood on the refuge?* The Refuge Manager may open designated areas of the refuge for firewood cutting. You may cut and/or remove firewood only for personal, noncommercial use, and only as authorized under the terms and conditions of a special use permit (FWS Form 3–1383–G) issued by the Refuge Manager.

(vii) *May I cut Christmas trees on the refuge?* You may cut one spruce tree per household per year no larger than 20 feet in height from Thanksgiving through Christmas Day. Trees may be taken anywhere on the refuge, except that we prohibit taking trees from within the 2-square-mile Refuge Headquarters area on Ski Hill Road. Trees must be harvested with hand tools, and must be at least 150 feet from roads, trails, campgrounds, picnic areas, and waterways (lakes, rivers, streams, or ponds). Stumps from harvested trees must be trimmed to less than 6 inches in height.

(viii) *May I pick berries and other edible plants on the refuge?* You may pick and possess unlimited quantities of berries, mushrooms, and other edible plants for personal, noncommercial use.

(ix) *May I collect shed antlers on the refuge?* You may collect and keep up to eight (8) naturally shed moose and/or caribou antlers annually for personal, noncommercial use. You may collect no more than two (2) shed antlers per day.

(x) *May I leave personal property on the refuge?* You may not leave personal property unattended longer than 72 hours unless in a designated area or as authorized under the terms and conditions of a special use permit (FWS Form 3–1383–G) issued by the Refuge Manager. However, refuge visitors involved in approved, extended overnight activities, including hunting, fishing, and camping, may leave personal property unattended during their continuous stay, but in no case longer than 14 days.

(xi) *If I find research marking devices, what do I do?* You must return any radio transmitter collars, neck and leg bands, ear tags, or other fish and wildlife marking devices found or recovered from fish and wildlife on the refuge within 5 days of leaving the refuge to the Refuge Manager or the Alaska Department of Fish and Game.

(xii) *Are there special regulations for alcoholic beverages?* In addition to the provisions of 50 CFR 27.81, anyone under the age of 21 years may not knowingly consume, possess, or control alcoholic beverages on the refuge in violation of State of Alaska law or regulations.

(xiii) *Are there special regulations for public gatherings on the refuge?* In addition to the provisions of 50 CFR 26.36, a special use permit (FWS Form 3–1383–G) is required for any outdoor public gathering of more than 20 persons.

(10) *Areas of the refuge closed to public use.*

(i) From March 15 through September 30, you may not approach within 100 yards of, or walk on or otherwise occupy, the rock outcrop islands in Skilak Lake traditionally used by nesting cormorants and gulls. A map

depicting the closure is available from the Refuge Headquarters.

(ii) Headquarters Lake, adjacent to the Kenai Refuge Headquarters area, is closed to boating.

(11) *Area-specific regulations for the Russian River Special Management Area.* The Russian River Special Management Area includes all refuge lands and waters within ¼ mile of the eastern refuge boundary along the Russian River from the upstream end of the fish ladder at Russian River Falls downstream to the confluence with the Kenai River, and within ¼ mile of the Kenai River from the eastern refuge boundary downstream to the upstream side of the powerline crossing at river mile 73, and areas managed by the refuge under memorandum of understanding or lease agreement at the Sportsman Landing facility. In the Russian River Special Management Area:

(i) While recreating on or along the Russian and Kenai rivers, you must closely attend or acceptably store all attractants, and all equipment used to transport attractants (such as backpacks and coolers) at all times. Attractants are any substance, natural or manmade, including but not limited to, items of food, beverage, personal hygiene, or odiferous refuse that may draw, entice, or otherwise cause a bear or other wildlife to approach. Closely attend means to retain on the person or within the person's immediate control and in no case more than 3 feet from the person. Acceptably store means to lock within a commercially produced and certified bear-resistant container.

(ii) While recreating on or along the Russian and Kenai rivers, you must closely attend or acceptably store all lawfully retained fish at all times. Closely attend means to keep within view of the person and be near enough for the person to quickly retrieve, and in no case more than 12 feet from the person. Acceptably store means to lock within a commercially produced and certified bear-resistant container.

(iii) We prohibit overnight camping except in designated camping facilities at the Russian River Ferry and Sportsman's Landing parking areas. Campers may not spend more than 2 consecutive days at these designated camping facilities.

(iv) You may start or maintain a fire only in designated camping facilities at the Russian River Ferry and Sportsman's Landing parking areas, and then only in portable, self-contained, metal fire grills, or in the permanent fire grates provided. We prohibit moving a permanent fire grill or grate to a new location. You must completely extinguish (put out cold) all campfires before permanently leaving your campsite.

(12) *Area-specific regulations for the Moose Range Meadows Subdivision Non-Development and Public Use Easements.*

(i) Where the refuge administers two variable width, non-development easements held by the United States and overlaying private lands within the Moose Range Meadows Subdivision on either shore of the Kenai River between river miles 25.1 and 28.1, you may not erect any building or structure of any kind; remove or disturb gravel, topsoil, peat, or organic material; remove or disturb any tree, shrub, or plant material of any kind; start a fire; or use a motorized vehicle of any kind (except a wheelchair occupied by a person with a disability), unless such use is authorized under the terms and conditions of a special use permit (FWS Form 3–1383–G) issued by the Refuge Manager.

(ii) Where the refuge administers two 25-foot-wide public use easements held by the United States and overlaying private lands within the Moose Range Meadows Subdivision on either shore of the Kenai River between river miles 25.1 and 28.1, we allow public entry subject to applicable Federal regulations and the following provisions:

(A) You may walk upon or along, fish from, or launch or beach a boat upon an area 25 feet upland of ordinary high water, provided that no vehicles (except wheelchairs) are used. We prohibit non-emergency camping, structure construction, and brush or tree cutting within the easements.

(B) From July 1 to August 15, you may not use or access any portion of the 25-foot-wide public easements or the three designated public easement trails located parallel to the Homer Electric Association Right-of-Way from Funny River Road and Keystone Drive to the downstream limits of the public use easements. Maps depicting the seasonal closure are available from Refuge Headquarters.

(13) *Area-specific regulations for Alaska Native Claims Settlement Act Section 17(b) Easements.* Where the refuge administers Alaska Native Claims Settlement Act Section 17(b) easements to provide access to refuge lands, no person may block, alter, or destroy any section of the road, trail, or undeveloped easement, unless such use is authorized under the terms and conditions of a special use permit (FWS Form 3–1383–G) issued by the Refuge Manager. No person may interfere with lawful use of the easement or create a public safety hazard on the easement. Section 17(b) easements are depicted on a map available from Refuge Headquarters.

* * * * *

Dated: May 5, 2015.

Michael Bean,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2015–12099 Filed 5–20–15; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Marine Fisheries Service

50 CFR Part 424

[Docket Nos. FWS–HQ–ES–2015–0016; DOC 150506429–5429–01; 4500030113]

RIN 1018–BA53; 0648–BF06

Endangered and Threatened Wildlife and Plants; Revisions to the Regulations for Petitions

AGENCY: U.S. Fish and Wildlife Service (FWS), Interior; National Marine Fisheries Service (NMFS), Commerce.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service, propose changes to the regulations concerning petitions, to improve the content and specificity of petitions and to enhance the efficiency and effectiveness of the petitions process to support species conservation. Our proposed revisions to the regulations would clarify and enhance the procedures by which the Services will evaluate petitions under section 4(b)(3) of the Endangered Species Act of 1973, as amended. These revisions would also maximize the efficiency with which the Services process petitions, making the best use of available resources.

DATES: We will accept comments that we receive on or before July 20, 2015. Please note that if you are using the Federal eRulemaking Portal (see **ADDRESSES** section, below), the deadline for submitting an electronic comment is 11:59 p.m. Eastern Time on the closing date.

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

- *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter the docket number for this proposed rule, which is FWS–HQ–ES–

2015–0016. Then click on the Search button. In the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on ''Comment Now!'' Please ensure that you have found the correct document before submitting your comment.

• *By hard copy:* Submit by U.S. mail or hand delivery to: Public Comments Processing, Attn: Docket No. FWS–HQ–ES–2015–0016; U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Request for Information section, below, for more information).

FOR FURTHER INFORMATION CONTACT: Douglas Krofta, U.S. Fish and Wildlife Service, Division of Conservation and Classification, 5275 Leesburg Pike, Falls Church, VA 22041–3803, telephone 703–358–2171; facsimile 703–358–1735; or Angela Somma, National Marine Fisheries Service, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910, telephone 301–427–8403. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

The primary purpose of the petition process is to empower the public, in effect, to direct the attention of the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (Services) to (1) species that may be imperiled and not otherwise known to the Services, (2) changes to a listed species' threats or other circumstances that warrant that species being reclassified (*i.e.,* changed in listing status by ''downlisting'' from endangered to threatened, or by ''uplisting'' from threatened to endangered) or delisted (*i.e.,* removed from the Federal List of Endangered and Threatened Wildlife or List of Endangered and Threatened Plants), or (3) necessary revisions to critical habitat designations. The petition process is a central feature of the Endangered Species Act of 1973 (Act; 16 U.S.C. 1531 *et seq.*), as amended, and serves a beneficial public purpose.

Purpose of Proposed Revision of Regulations

The Services are proposing changes to the regulations at 50 CFR 424.14 concerning petitions to improve the content and specificity of petitions and to enhance the efficiency and effectiveness of the petitions process to support species conservation. Our proposed revisions to § 424.14 would clarify and enhance the procedures by which the Services will evaluate petitions under section 4(b)(3) of the Act, 16 U.S.C. 1533(b)(3). We propose to revise the regulations pertaining to the petition process to provide greater clarity to the public on the petition-submission process, which will assist petitioners in providing complete petitions. These revisions would also maximize the efficiency with which the Services process petitions, making the best use of available resources. These changes would improve the quality of petitions through expanded content requirements and guidelines; and, in doing so; better focus the Services' energies on petitions that merit further analysis. The following discussion outlines the proposed changes and explains the benefits of making these changes.

Specific Proposed Changes to Current Regulations at 50 CFR 424.14

General Authority and Requirements for Petitions—Paragraphs (a) and (b)

Proposed paragraph (a) would retain the first sentence of the current section. Proposed new paragraph (b) would incorporate the substance of the second and third sentences of current paragraph (a), which set forth certain minimum content requirements for a request for agency action to qualify as a petition for the purposes of section 4(b)(3) of the Act, 16 U.S.C. 1533(b)(3). The new paragraph would also expand upon the list of requirements for a petition, drawing in part from the provisions in current paragraph (b)(2). Proposed paragraph (b)(2) would, however, newly require that a petition address only one species. Although the Services in the past have accepted multi-species petitions, in practice it has often proven to be difficult to know which supporting materials apply to which species, and has sometimes made it difficult to follow the logic of the petition. This requirement would not place any limitation on the ability of an interested party to petition for section 4 actions, but would require petitioners to organize the information in a way (on a species-by-species basis) that will allow more efficient action by the Services.

The first six requirements (in proposed paragraphs (b)(1) through (b)(6)) would apply to each type of petition recognized under section 4(b)(3) of the Act. The first four requirements (in proposed paragraphs (b)(1) through (b)(4)) are all contained in the current regulations at § 424.14(a) and (b). The fifth and sixth requirements (in proposed paragraphs (b)(5) and (b)(6)) clarify and expand on the current provisions regarding a petition's supporting documentation at § 424.14(b)(2)(iv). The seventh requirement (in proposed paragraph (b)(7)), however, would apply only to petitions to list a species, and would require that information be presented on the face of the request to demonstrate that the entity that is the subject of the request is or may be a ''species'' as defined in the Act (which includes a species, subspecies, or distinct population segment). Section 4(b)(3)(A) of the Act applies only to ''a petition . . . to add a *species* to, or to remove a *species* from, either of the lists [of endangered or threatened wildlife and plants]'' (emphasis added). This provision screens from needless consideration those requests that clearly do not involve a species, subspecies, or distinct population segment. The eighth requirement (in proposed paragraph (b)(8)), would apply only to petitions to list, delist, or reclassify a species, and would require that information be included in the petition describing the current range of the species, including range States or countries, as appropriate.

Although section 4(b)(3)(A) of the Act authorizes interested persons to submit a petition to add a species to, or remove a species from, the Lists of Endangered and Threatened Wildlife and Plants, and section 4(b)(3)(D) of the Act authorizes submission of petitions to revise critical habitat designations, the Act does not specify the required contents of such a petition, but instead leaves with the Secretary the authority to do so. The Services are concerned that the States, which often have considerable experience and information on the species within their boundaries, have opportunity to be involved in providing information as part of the petition process. To further the Act's directive to cooperate to the maximum extent practicable with the States, the Secretary proposes to revise the regulations pertaining to the required contents of such petitions, as well as petitions to revise or designate critical habitat. The goal of this proposed revision is to encourage greater communication and cooperation among would-be petitioners and State conservation agencies prior to the submission of listing or critical habitat petitions to the Secretary.

To that end, we propose a ninth requirement (proposed paragraph (b)(9)) that would apply only to petitions to the U.S. Fish and Wildlife Service to add a

species that occurs within the United States to the List of Endangered and Threatened Wildlife or List of Endangered and Threatened Plants, change the status of a listed domestic species, or designate or revise critical habitat for any domestic species under its jurisdiction. This proposed requirement concerns communications between the petitioner(s); the State agency(ies) responsible for the management and conservation of fish, plant, or wildlife resources in each State where the species that is the subject of the petition occurs; and the U.S. Fish and Wildlife Service. As a general matter, States have jurisdiction and the responsibility for managing and conserving freshwater fish, wildlife, and plant species that are not listed as endangered or threatened species under the Act. In the exercise of their jurisdiction and responsibility, the States have developed substantial experience, expertise, and information relevant to the conservation of such species. The Act recognizes and acknowledges that experience and expertise in a number of ways. For example, section 6 of the Act directs the Secretary to cooperate to the maximum extent practicable with the States in carrying out the program authorized by the Act. Consistent with this mandate, section 4(b) of the Act directs the Secretary, when making determinations with respect to the listing of any species, to take into account the efforts being made by any State to protect such species. In addition, although the Secretary is free to adopt regulations pursuant to section 4 that are at odds with the written recommendations of a State conservation agency, when he or she does so, section 4(i) of the Act requires the Secretary to provide the State agency with a written justification for not adopting regulations consistent with State's recommendations. In these and other ways, the Act recognizes and respects the special status of the States with respect to the conservation and management of fish, wildlife, and plants.

Proposed paragraph (b)(9) would require that for any petition submitted to the U.S. Fish and Wildlife Service pertaining to species found within the United States, a petitioner must certify that a copy of the petition was provided to the State agency(ies) responsible for the management and conservation of fish, plant, or wildlife resources in each State where the species occurs at least 30 days prior to submission to the Service. The certification must include the date that the petition was provided to the relevant State agency(ies). If the State agency(ies) provided data or written comments regarding the accuracy or completeness of the petition, those data or comments must be labeled as such, appended to the petition, and submitted with the petition. If the State agency(ies) did not provide any data or written comments regarding the accuracy or completeness of the petition, the petitioner must so certify. We realize that States may not have jurisdiction over or regulate all species, such as insects or plants, and thus may not be able to provide any data for certain species.

Note that if a State provides data or written comments to the petitioner after the petition is filed, section 424.14(b)(9) would not require that the petitioner resubmit the petition with the new State data or written comments (although the petitioner may choose to do so). State data received after the filing of the petition will not reset the clock for the Services' consideration of the petition, but will become part of the data available in our files that we may elect to review under proposed section (g)(1)(ii) if sufficient time remains to do so.

In this proposed rule, we are proposing to include the requirement under (b)(9) only as to petitions filed with the United States Fish and Wildlife Service. We recognize the relatively greater logistical difficulties that would be posed to petitioners if they were required to identify and coordinate with all interested States regarding marine species and wide-ranging anadromous species. However, we seek public comment as to whether this requirement, if adopted, should also apply to petitions filed with the National Marine Fisheries Service.

The Services are also concerned that petitions should include a presentation of all reasonably available, relevant data on the subject species (or, if relevant for the particular petition, its habitat), including information that supports the petition as well as that which may tend to refute it. This is particularly true for information publicly available from affected States, who have special status and concerns with respect to implementation of the Act, as discussed above. Fostering greater inclusion of such data would help ensure that any petition submitted to the Secretary is based on reliable and unbiased information and does not consist simply of unrepresentative, selected data.

To this end, we propose a tenth requirement (proposed paragraph (b)(10)), applicable to all petitions filed with either Service, that would require a petitioner to certify that the petitioner has gathered all relevant information readily available, including from Web sites maintained by the affected States, and has clearly labeled and appended such information to the petition so that it is submitted with the petition. As an alternative to this provision, we are considering limiting the requirement under (b)(10) to extend only to gathering and certifying submission of relevant information publicly available on affected States' Web sites.

The Services would apply § 424.14(b) to identify those requests that contain all the elements of a petition, so that consideration of the request would be an efficient and wise use of agency resources. A request that fails to meet these elements would be screened out from further consideration, as discussed below, because a request cannot meet the statutory standard for demonstrating that the petitioned action may be warranted if it does not contain at least some information on each of the areas relevant to that inquiry.

Types of Information To Be Included in Petitions—Paragraphs (c) and (d)

Proposed § 424.14(c) and (d) describe the types of information that would be relevant to the Secretary's determination as to whether the petition provides substantial information that the petitioned action may be warranted. Petitioners are advised that compliance with paragraph (b) would result in issuance of a 90-day finding, but for that finding to be positive, petitioners should include as much of the types of information listed in paragraphs (c) or (d) (as relevant to the type of petition they are filing) as possible.

Petitions To List, Delist, or Reclassify

The proposed informational elements for listing, delisting, and reclassification petitions in proposed paragraphs (c)(1) through (c)(5) are rooted in the substance of current paragraphs (b)(2)(ii) and (iii). These elements would clarify in the regulations the key considerations that are relevant when the Services are determining whether or not the petition presents ''substantial scientific or commercial information indicating that the petitioned action may be warranted,'' which is the standard for making a positive 90-day finding as described in section 4(b)(3)(A) of the Act, 16 U.S.C. 1533(b)(3)(A).

Proposed paragraph (c)(3) refers to inclusion in a petition of a description of the magnitude and immediacy of threats. This request is included to assist the U.S. Fish and Wildlife Service in assessing the listing priority number of species for which a warranted-but-precluded finding is made under the U.S. Fish and Wildlife Service's (FWS)

September 21, 1983, guidance, which requires assessing, in part, the magnitude and immediacy of threats (48 FR 43098). In addition to being useful for status reviews, this information should be included to assist in determinations on delisting and reclassification requests. While such information will likely also be useful to the National Marine Fisheries Service (NMFS), it should be noted that NMFS has not adopted the 1983 FWS guidance, and so would not apply that guidance to petitions within its jurisdiction.

Proposed paragraph (c)(5) is a revision of the language in current paragraph (b)(2) that describes information a petitioner may include for consideration in designating critical habitat in conjunction with a listing or reclassification. We propose to delete the clause ''and indicates any benefits and/or adverse effects on the species that would result from such designation'' because this information is not relevant to the biological considerations that underlay a listing determination.

Petitions To Revise Critical Habitat

Similarly, proposed new § 424.14(d) sets forth the kinds of information a petitioner should include in a petition to revise critical habitat. The Secretary's determination as to whether the petition provides ''substantial scientific information indicating that the revision may be warranted'' (16 U.S.C. 1533(b)(3)(D)(i)) will depend in part on the degree to which the petition includes this type of information.

The items set out at proposed new paragraph (d) are an expanded and reworded version of the substance of current paragraph (c)(2). Proposed paragraph (d)(1) would confirm that, to justify a revision to critical habitat, it is important to demonstrate that the existing designation includes areas that should not be included or does not include areas that should be included, and to discuss the benefits of designating additional areas, or the reasons to remove areas from an existing designation. Additionally, including maps with enough detail to clearly identify the particular area(s) being recommended for inclusion or exclusion will be useful to the Services in making a petition finding.

Proposed paragraph (d)(2) is drawn from the substance of current paragraphs (c)(2)(i) and (ii), which have been reorganized and clarified. Proposed paragraph (d)(2) would clarify that several distinct pieces of information are needed to analyze whether any area of habitat should be designated, beginning with a description of the ''physical or biological features'' that are essential for the conservation of the species and which may require special management. Proposed paragraphs (d)(3) and (d)(4) would detail the informational needs the Services will have in considering whether to add or remove habitat from the designation comprising specific areas occupied by the species at the time of listing, respectively. Proposed paragraph (d)(5) would highlight the particular informational needs associated with evaluating habitat that was unoccupied at the time of listing—that is, information that fulfills the statutory requirement that any specific areas designated are ''essential to the conservation of the species.'' See section 3(5)(A)(ii) of the Act, 16 U.S.C. 1532(5)(A)(ii).

Proposed paragraph (d)(6) would provide additional direction that a petition should include information demonstrating that the petition provides a complete presentation of the relevant facts, including an explanation of what sources of information the petitioner consulted in drafting the petition, as well as any relevant information known to the petitioner not included in the petition.

Responses to Petitions—Paragraph (e)

Proposed new § 424.14(e) sets out the possible responses the Secretary may make to requests. Proposed paragraph (e)(1) would clarify that a request that fails to satisfy the mandatory elements set forth in proposed paragraph (b) may be returned by the Services without a further determination on the merits of the request. In light of the volume of requests received by the Services, it is critical that we have the option to identify early on those requests that on their faces are incomplete, in order to ensure that agency resources are not diverted from higher priorities. Although this authority is implied in the current regulations, making the point explicit in the revised regulations would provide additional notice to petitioners, and lead to better-quality requests and more efficient and effective (in terms of species conservation) use of agency resources. Proposed § 424.14(e)(2) would confirm that a request that complies with the mandatory requirements will be acknowledged in writing as a petition within 30 days of receipt (as required under current 424.14(a)).

Additional Information Provided Subsequent to Receipt of the Petition—Paragraph (f)

Proposed paragraph (f) would address the situation in which a petitioner supplements a petition with additional information at a later date, requesting that the Secretary take the new information into account. The Services' standard practice in these circumstances has been to notify petitioners of receipt of this information and inform them that, in order to meaningfully consider this information, the Services consider the statutory deadlines to now run from the receipt date of the supplemental information. The proposed provision would clarify our position that the statutory period applicable to making any required finding would be re-set to begin running from the time such additional information is received by the Secretaries. In effect, the supplemental information, together with the original petition, will be considered a new petition that constructively supplants the original petition and re-sets the period for making a 90-day finding under section 4(b)(3)(A) of the Act. This is consistent with 16 U.S.C. 1533(b)(3)(A) and 1533(b)(3)(D)(i), which direct the Services to determine whether ''the petition'' presents substantial information indicating that the petitioned action may be warranted. Supplementing the information supporting a petition is, therefore, constructively the same as submitting a new petition. The Services propose to make this explicit in the regulations to ensure that the Services have adequate time to consider the supplemental information relevant to a petition. Also, by giving clear notice of this process, the Services can encourage petitioners to assemble all the information they believe necessary to support the petition prior to sending it to the Services for consideration, further enhancing the efficiency of the petition process.

Findings on a Petition To List, Delist, or Reclassify—Paragraph (g)

Proposed § 424.14(g) would explain the kinds of findings the Services may make on a petition to list, delist, or reclassify a species and the standards to be applied in that process. Proposed paragraph (g)(1) is drawn largely from current paragraph (b)(1), with some revisions. Most significantly, proposed paragraph (g)(1)(i) would clarify the substantial-information standard by defining it as credible scientific and commercial information that would lead a reasonable person conducting an impartial scientific review to conclude that the action proposed in the petition

may be warranted. Thus, conclusory statements made in a petition without the support of credible scientific or commercial information are not ''substantial information.'' For example, a petition that states only that a species is rare and thus should be listed, without other credible information regarding its status, does not provide substantial information. This interpretation is consistent with the Scott's riffle beetle case (*WildEarth Guardians* v. *Salazar* (D. Colo. Sept. 19, 2011)). In that case, the court rejected the challenge to a negative 90-day finding, because the petition did not present any information of any potential threat currently affecting the species or reasonably likely to do so in the foreseeable future. The court found that information as to the rarity of a species, without more information, is not ''substantial information'' that listing the species may be warranted.

In § 424.14(g)(1)(ii), we propose to add a new sentence to clarify that the Services may consider information that is readily available in the relevant agency's possession at the time it makes a 90-day finding. For purposes of § 424.14(g)(1), the Services recognize that the statute places the obligation squarely on the petitioner to present the requisite level of information to meet the ''substantial information'' test, and that the Services therefore should not seek to supplement petitions. (Please see the Columbian sharp-tailed grouse case (*WildEarth Guardians* v. *U.S. Secretary of the Interior,* 2011 U.S. Dist. Lexis 32470 (D. Idaho Mar. 28, 2011)), which provided, among other things, that the petitioner has the burden of providing substantial information.) However, the Services believe they should evaluate such petitions in context and using the Services' expertise. In order to apply their best professional judgment, Service staff reviewing petitions may need to take into account information readily available in the agency's possession, including both information tending to support the petition and information tending to contradict the information presented therein. Although the Services are mindful that, at the stage of formulating an initial finding, they should not engage in outside research or an effort to comprehensively compile the best available information, they must be able to place the information presented in the petition in context.

The Act contemplates a two-step process in reviewing a petition. The 12-month finding is meant to be the more in-depth determination and follows a status review, while the 90-day finding is meant to be a quicker evaluation of a more limited set of information. However, based on their experience in administering the Act, the Services conclude that evaluating the information presented in the petition in a vacuum can lead to inaccurately supported decisions and misdirection of resources away from higher priorities. It may be difficult for the Services to bring informed expertise to their evaluation of the facts and claims alleged in a petition without considering the petition in the context of other information of the sort that the Services maintain in their possession and would routinely consult in the course of their work. It is reasonable for the Services to be able to examine the veracity of the information included in a petition prior to committing limited Federal resources to the significant expense of a status review.

The Act's legislative history also supports explicitly recognizing the discretion that the Services have to bring their informed expertise and judgment to bear in reviewing petitions. In a discussion of judicial review of the Secretary's 90-day findings on petitions, a House Conference report states that, when courts review such a decision, the ''object of [the judicial] review is to determine whether the Secretary's action was arbitrary or capricious *in light of the scientific and commercial information available* concerning the petitioned action.'' H.R. Conf. Rep. No. 97–835, at 20, reprinted in 1982 U.S.C.C.A.N. 2860, 2862 (emphasis added). By requiring courts to evaluate the Secretary's substantial information findings in light of information ''available,'' this statement suggests that the drafters anticipated that the Secretary could evaluate petitions in the context of scientific and commercial information available to the Services, and not limited arbitrarily to a subset of available information presented in the petitions. In these regulatory amendments, the Services have crafted a balanced approach that will ensure that the Services may take into account the information available to us, without opening the door to the type of wide-ranging survey more appropriate for a status review. The intent is not to solicit new information.

The precise range of information properly considered readily available in the agency's possession will vary with circumstances, but could include the information physically held by any office within the Services (including, for example, the NMFS Science Centers and FWS Field Offices), and may also include information stored electronically in databases routinely consulted by the Services in the ordinary course of their work. For example, it would be appropriate to consult online databases such as the Integrated Taxonomic Information System (*http://www.itis.gov*), a database of scientifically credible nomenclature information maintained in part by the Services.

Proposed paragraph (g)(1)(iii) would explain how the substantial-information standard applies to a petition to list, delist, or reclassify a species that is submitted after the Secretary has already conducted a status review of that species and determined that the petitioned action is not warranted, or made another listing action; such petitions are referred to as ''subsequent petitions.'' Subsequent petitions may follow a 12-month finding or a final determination on a proposed listing, reclassification, or delisting rule. The prior status review and determination are part of the information readily available in the agency's possession for consideration in evaluating the subsequent petition, and they play an important role in setting the context for the 90-day finding. In addition, 5-year reviews completed for listed species would be considered in our evaluation of a petition to delist or reclassify. Although the substantial-information standard applies to all petitions under section 4(b)(3)(A) of the Act, the standard's application depends on the context in which the finding is being made. The context of a finding after a status review and determination is quite different than that before any status review has been completed. Thus, proposed § 424.14(g)(1)(iii) requires that for a subsequent petition to provide substantial information the petition must provide sufficient new information or analysis such that a reasonable person conducting an impartial scientific review would conclude that the action proposed in the petition may be warranted, despite the previous determination. (Please see the Columbian sharp-tailed grouse case (*WildEarth Guardians* v. *U.S. Secretary of the Interior,* 2011 U.S. Dist. Lexis 32470 (D. Idaho Mar. 28, 2011)), in which the court found the FWS could consider scientific conclusions in previous 12-month finding valid, because that finding was not challenged.)

A reasonable person would not conclude that the petitioned action may be warranted if the petition fails to present any substantial new information or analysis that might alter the conclusions of the Services' prior determination. Following a positive 90-day finding on a petition, the Services gather all available scientific and

commercial information and conduct a status review of the species; the resulting 12-month finding is a result of this review. The Secretary may also initiate and conduct a status review on his or her own and determine if listing, delisting, or reclassifying is warranted. Similarly, a final determination on a proposed rule to list or delist a species requires that we first conduct a status review of the species. If the subsequent petition fails to provide any substantial new information or analysis beyond that already considered in a prior status review or 5-year review that resulted in a finding that listing or reclassification of the species is not warranted, it would not be rational to expect a different outcome.

One corollary of this conclusion is that the Secretary may find that a subsequent petition fails the ''substantial information'' standard, even though a prior petition seeking the same action initially received a positive 90-day finding. Because the prior status review, and resultant 12-month finding, are now a part of the information readily available in the agency's possession, the subsequent petition is on a different footing from the prior petition. Although similar information may have qualified as ''substantial'' when it was initially evaluated, it may not necessarily be considered substantial in the context of the completed status review.

The completion of a status review of a species consumes considerable agency resources. The application of § 424.14(g)(1)(iii) is intended to assist the Services in making judicious use of those resources, by eliminating unnecessary duplication of effort in responding to a petition when the Services have already evaluated the species in question and no substantial new information or analysis is available. This would allow the Services to instead concentrate on petitions for actions that will best make use of limited agency resources and potentially result in greater conservation value for a species that may be in need of the protections of the Act.

Proposed § 424.14(g)(2) is substantially the same as current paragraph (b)(3). Among other changes, we propose new language clarifying the standard for making expeditious-progress determinations in warranted-but-precluded findings, including (in paragraph (g)(2)(iii)(B)) a clear acknowledgement that such determinations are to be made in light of resources available after complying with nondiscretionary duties, court orders, and court-approved settlement agreements to take actions under section 4 of the Act. Current paragraph (b)(4) would be redesignated as paragraph (g)(3), although we propose to remove the reference in the current language that ''no further finding of substantial information will be required,'' as it merely repeats statutory language.

Findings on a Petition To Revise Critical Habitat—Paragraph (h)

Proposed § 424.14(h) would explain the kinds of findings that the Services may make on a petition to revise critical habitat. Proposed paragraph (h)(1) is essentially the same as current paragraph (c)(1) and describes the standard applicable to the Secretary's finding at the 90-day stage. Please refer to the discussion of the ''substantial information'' test discussed in the description of § 424.14(g)(1), above. Proposed paragraph (h)(2) would specifically acknowledge, consistent with the statute, that such finding may, but need not, take a form similar to one of the findings called for at the 12-month stage in the review of a petition to list, delist, or reclassify species. Section 4(a)(3)(A) of the Act establishes a mandatory duty to designate critical habitat for listed species to the maximum extent prudent and determinable at the time of listing (in subsection (A)(i)), but respecting subsequent revision of such habitat provides only that the Services ''*may,* from time-to-time thereafter as appropriate, revise such designation'' (in subsection (A)(ii) (emphasis added)).

That the Services have broad discretion to decide when it is appropriate to revise critical habitat is also evident in the differences between the Act's provisions discussing petitions to revise critical habitat, on the one hand, and the far more prescriptive provisions regarding the possible findings that can be made at the 12-month stage on petitions to list, delist, or reclassify species, on the other. Section 4(b)(3)(B) includes three detailed and exclusive options for 12-month findings on petitions to list, delist, or reclassify species. In contrast, section 4(b)(3)(D)(ii) requires only that the Secretary (acting through the Services) ''determine how he intends to proceed with the requested revision'' and promptly publish notice of such intention in the **Federal Register** within 12 months of receipt of a petition to revise critical habitat that has been found to present substantial information that the petitioned revision may be warranted. The differences in these subsections indicates that the listing petition procedures are not required to be followed in determining how to proceed with petitions to revise critical habitat. See *Sierra Club* v. *U.S. Fish and Wildlife Service,* 2013 U.S. Dist. LEXIS 37349 (D.D.C. Mar. 19, 2013) (12-month determinations on petitions to revise are committed to the agency's discretion by law, and thus unreviewable under the Administrative Procedure Act); *Morrill* v. *Lujan,* 802 F. Supp. 424 (S.D. Ala. 1992) (revisions to critical habitat are discretionary); see also *Barnhart* v. *Sigman Coal Co., Inc.,* 122 S. Ct. 941, 951 (2002) (''it is a general principle of statutory construction that when 'Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion' '') (citing *Russello* v. *United States,* 464 U.S. 16, 23 (1983)); *Federal Election Commission* v. *National Rifle Ass'n of America,* 254 F.3d 173, 194 (D.C. Cir. 2001) (same).

Further, the legislative history for the 1982 amendments that added the petition provisions to the Act confirms that Congress intended to grant discretion to the Services in determining how to respond to petitions to revise critical habitat. After discussing at length the detailed listing petition provisions and their intended meaning, Congress said of the critical habitat petition requirements, ''Petitions to revise critical habitat designations may be treated differently.'' H.R. Rep. No. 97–835, at 22 (1982), *reprinted in* 1982 U.S.C.C.A.N. 2860, 2862.

The Services may find in particular situations that terminology similar to that set out in the listing-petition provisions is useful for explaining their intended response at the 12-month stage on a petition to revise critical habitat. For example, the Services have, at times, used the term ''warranted'' to indicate that requested revisions of critical habitat would satisfy the definition of critical habitat in section 3 of the Act. However, use of the listing-petition terms in a finding on a petition to revise critical habitat would not mean that the associated listing-petition procedures and timelines apply or are required to be followed with respect to the petition. For example, if the Services find that a petitioned revision of critical habitat is, in effect, ''warranted,'' in that the areas would meet the definition of ''critical habitat,'' that finding would not require the Services to publish a proposed rule to implement the revision in any particular timeframe. Similarly, a finding on a petition to revise critical habitat that uses the phrase ''warranted but precluded,'' or a functionally similar phrase, to describe the Secretary's intention would not trigger the

requirements of section 4(b)(3)(B)(iii) or (C) (establishing requirements to make particular findings, to implement a monitoring system, etc.).

Though the Services have discretion to determine how to proceed with a petition to revise critical habitat, the Services believe that certain factors respecting conservation and recovery of the relevant species are likely to be relevant and potentially important to most such determinations. Such factors may include, but are not limited to: The status of the existing critical habitat for which revisions are sought (*e.g.,* when it was designated, the extent of the species' range included in the designation); the effectiveness or potential of the existing critical habitat to contribute to the conservation of the relevant listed species; the potential conservation benefit of the petitioned revision to the listed species relative to the existing designation; whether there are other, higher-priority conservation actions that need to be completed under the Act, particularly for the species that is the subject of the petitioned revision; the availability of personnel, funding, and contractual or other resources required to complete the requested revision; and the precedent that accepting the petition might set for subsequent requested revisions.

Petitions To Initially Designate Critical Habitat and Petitions for Special Rules—Paragraph (i)

Proposed § 424.14(i) would be substantially the same as current paragraph (d), regarding petitions to initially designate critical habitat or for adoption of special rules under section 4(d) of the Act.

Withdrawn Petitions—Paragraph (j)

Proposed § 424.14(j) would describe the process for a petitioner to withdraw a petition, and the Services' discretion to discontinue action on the withdrawn petition. Although the Services may discontinue work on a 90-day or 12-month finding for a petition that is withdrawn, in the case of a petition to list a species, the Services may use their own process to evaluate whether the species may warrant listing and whether it should become a candidate for listing. In the case of the withdrawal of a petition to delist, uplist or downlist a species, the Services may use the 5-year review process to further evaluate the status of the species, or elect to consider the issue at any time.

Request for Information

Any final rule based on this proposal will consider information and recommendations timely submitted from all interested parties. We solicit comments, information, and recommendations from governmental agencies, Native American tribes, the scientific community, industry groups, environmental interest groups, and any other interested parties on this proposed rule. All comments and materials received by the date listed in **DATES**, above, will be considered prior to the approval of a final rule.

We request comments and information evaluating each of several alternatives for insuring greater inclusion of relevant data supporting petitions, including information available from State conservation agencies within the range of the species. We specifically seek comment on proposed paragraph (b)(9), requiring petitioner coordination with States prior to submission of a petition to the Fish and Wildlife Service, and paragraph (b)(10), requiring certification that all reasonably available information, including relevant information publicly available from affected States' Web sites, has been gathered and appended to a petition filed with either Service. We note that either of these two provisions could stand alone, or both could be included in a final rule, as shown in the proposed regulatory text. We also suggested an alternative to (b)(10) that would require a certification only that relevant information from affected States' Web sites has been gathered and appended to a petition filed with either Service. We seek information on which alternatives, alone or in combination, would be most consistent with law and best achieve our goals of fostering better-informed petitions and greater cooperation with States. We also seek comments and information regarding any other alternative the public may suggest to achieve the goals of greater coordination with States and better-supported petitions. Finally, we seek comment on the criteria in paragraph (d), including comments on the utility of the criteria, the adequacy of the criteria, and the effect of the criteria on the workload on the petitioner.

You may submit your information concerning this proposed rule by one of the methods listed in **ADDRESSES**. If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Information and supporting documentation that we receive in response to this proposed rule will be available for you to review at *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Division of Conservation and Classification (see **FOR FURTHER INFORMATION CONTACT**).

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

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

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

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 601 *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare, and make available for public comment, a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility

analysis is required if the head of an agency, or his designee, certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. We certify that, if adopted as proposed, this proposed rule would not have a significant economic effect on a substantial number of small entities. The following discussion explains our rationale.

The proposed rule would revise and clarify the regulations governing documentation needed by the Services in order to effectively and efficiently evaluate petitions under the Act. While some of the changes may require petitioners to expend some time (such as coordination with State(s)) and effort (providing complete petitions), we do not expect this will prove to be a hardship, economically or otherwise. Further, we expect the effect on any external entities, large or small, would likely be positive, as they will lead to improved quality of petitions through expanded content requirements and guidelines.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) On the basis of information contained in the *Regulatory Flexibility Act* section above, this proposed rule would not ''significantly or uniquely'' affect small governments. We have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502, that this rule would not impose a cost of $100 million or more in any given year on local or State governments or private entities. A Small Government Agency Plan is not required. As explained above, small governments would not be affected because the proposed rule would not place additional requirements on any city, county, or other local municipalities.

(b) This proposed rule would not produce a Federal mandate on State, local, or tribal governments or the private sector of $100 million or greater in any year; that is, this proposed rule is not a ''significant regulatory action''' under the Unfunded Mandates Reform Act. This proposed rule would impose no obligations on State, local, or tribal governments.

Takings (E.O. 12630)

In accordance with Executive Order 12630, this proposed rule would not have significant takings implications. This proposed rule would not pertain to ''taking'' of private property interests, nor would it directly affect private property. A takings implication assessment is not required because this proposed rule (1) would not effectively compel a property owner to suffer a physical invasion of property and (2) would not deny all economically beneficial or productive use of the land or aquatic resources. This proposed rule would substantially advance a legitimate government interest (conservation and recovery of endangered and threatened species) and would not present a barrier to all reasonable and expected beneficial use of private property.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, we have considered whether this proposed rule would have significant Federalism effects and have determined that a federalism summary impact statement is not required. This proposed rule pertains only to the petition process under the Endangered Species Act, and would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Civil Justice Reform (E.O. 12988)

This proposed rule does not unduly burden the judicial system and meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988. This proposed rule would clarify the petition process under the Endangered Species Act.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations With Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis.

National Environmental Policy Act

We are analyzing this proposed regulation in accordance with the criteria of the National Environmental Policy Act (NEPA), the Department of the Interior regulations on Implementation of the National Environmental Policy Act (43 CFR 46.10–46.450), the Department of the Interior Manual (516 DM 1–6 and 8), and National Oceanic and Atmospheric Administration (NOAA) Administrative Order 216–6. We invite the public to comment on the extent to which this proposed regulation may have a significant impact on the human environment, or fall within one of the categorical exclusions for actions that have no individual or cumulative effect on the quality of the human environment. We will complete our analysis, in compliance with NEPA, before finalizing this regulation.

Energy Supply, Distribution or Use (E.O. 13211)

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule, if made final, is not expected to affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Clarity of This Proposed Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule or policy we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the proposed rule, your comments should be as specific as possible. For example, you should tell us the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

List of Subjects in 50 CFR Part 424

Administrative practice and procedure, Endangered and threatened species.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 424, subchapter A of chapter IV, title 50 of the Code of Federal Regulations, as set forth below:

PART 424—LISTING ENDANGERED AND THREATENED SPECIES AND DESIGNATING CRITICAL HABITAT

■ 1. The authority citation for part 424 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

■ 2. Revise § 424.14 to read as follows:

§ 424.14 Petitions.

(a) *Ability to petition.* Any interested person may submit a written petition to the Secretary requesting that one of the actions described in § 424.10 be taken for a species.

(b) *Requirements for petitions.* A petition must clearly identify itself as such, be dated, and contain the following information:

(1) The name, signature, address, telephone number, if any, and the association, institution, or business affiliation, if any, of the petitioner;

(2) The scientific and any common name of the species that is the subject of the petition. One and only one species may be the subject of a petition;

(3) A clear indication of the administrative action the petitioner seeks (*e.g.,* listing of a species or revision of critical habitat);

(4) A detailed narrative justification for the recommended administrative action that contains an analysis of the information presented;

(5) Literature citations that are specific enough for the Secretary to locate the information cited in the petition, including page numbers or chapters as applicable;

(6) Electronic or hard copies of any supporting materials (*e.g.,* publications, maps, reports, letters from authorities) cited in the petition, or valid links to public Web sites where the supporting materials can be accessed; and

(7) For a petition to list a species, information to establish whether the subject entity is a ''species'' as defined in the Act.

(8) For a petition to list a species, delist a species, or change the status of a listed species, information on the current geographic range of the species, including range States or countries.

(9) For any petition submitted to the U.S. Fish and Wildlife Service pertaining to species found within the United States, a certification:

(i) That a copy of the petition was provided to the State agency(ies) responsible for the management and conservation of fish, plant, or wildlife resources in each State where the species occurs at least 30 days prior to submission to the Service; and

(ii) That the State agency(ies) either:

(A) Provided to the petitioner data or written comments regarding the accuracy or completeness of the petition, and all those data or comments have been clearly labeled as such and appended to the petition; or

(B) Did not provide to the petitioner in response any data or written comments regarding the accuracy or completeness of the petition.

(10) Certification that the petitioner has gathered all relevant information (including information that may support a negative 90-day finding) that is reasonably available, such as that available on Web sites maintained by the affected States, and has clearly labeled this information and appended it to the petition.

(c) *Types of information to be included in petitions to add or remove species from the lists, or change the listed status of a species.* The Secretary's determination as to whether the petition provides substantial information that the petitioned action may be warranted will depend in part on the degree to which the petition includes the following types of information; failure to include adequate information on any one or more of the following (except paragraph (5)) may result in the Secretary finding that the petition does not present substantial information:

(1) Information on current population status and trends and estimates of current population sizes and distributions, both in captivity and the wild, if available;

(2) Identification of the factors under section 4(a)(1) of the Act that may affect the species and where these factors are acting upon the species;

(3) Whether any or all of the factors alone or in combination identified in section 4(a)(1) of the Act may cause the species to be an endangered species or threatened species (*i.e.,* place the species in danger of extinction now or in the foreseeable future), and, if so, how, including a description of the magnitude and imminence of the threats;

(4) Information on adequacy of regulatory protections and conservation activities initiated or currently in place that may protect the species or its habitat; and

(5) Except for petitions to delist, information that is useful in determining whether a critical habitat designation for the species is prudent and determinable (see § 424.12), including information on recommended boundaries and physical features and the habitat requirements of the species; such information, however, will not be a basis for determining whether the petition has presented substantial information that the petitioned action may be warranted.

(d) *Additional information to include in petitions to revise critical habitat.* The Secretary's determination as to whether the petition provides substantial information that the petitioned action may be warranted will depend in part on the degree to which the petition includes the following types of information; failure to include adequate information on any one or more of the following may result in the Secretary finding that the petition does not present substantial information:

(1) A description and map(s) of areas that the current designation does not include that should be included, or includes that should no longer be included, and the benefits of designating or not designating these specific areas as critical habitat. Petitioners should include available data layers if feasible;

(2) A description of the physical or biological features essential for the conservation of the species and whether they may require special management considerations or protection;

(3) For any areas petitioned to be added to critical habitat within the geographical area occupied by the species at time it was listed, information indicating that the specific areas contain the physical or biological features that are essential to the conservation of the species and may require special management considerations or protection. The petitioner should also indicate which specific areas contain which features;

(4) For any areas petitioned for removal from currently designated critical habitat within the geographical area occupied by the species at the time it was listed, information indicating that the specific areas do not contain features (including features that allow the area to support the species periodically, over time) that are essential to the conservation of the species, or that these features do not require special management consideration or protections;

(5) For any areas petitioned to be added to or removed from critical habitat that were outside the geographical area occupied by the species at the time it was listed, information indicating why the petitioned areas are or are not essential for the conservation of the species; and

(6) Information demonstrating that the petition includes a complete presentation of the relevant facts, including an explanation of what sources of information the petitioner consulted in drafting the petition, as well as any relevant information known

to the petitioner not included in the petition.

(e) *Response to requests.* (1) If a request does not meet the requirements set forth at paragraph (b) of this section, the Secretary will reject the request without making a finding, and will notify the sender and provide an explanation of the rejection.

(2) If a request does meet the requirements set forth at paragraph (b) of this section, the Secretary will acknowledge, in writing, the receipt of a petition, within 30 days of receipt.

(f) *Supplemental information.* If the petitioner provides supplemental information before the initial finding is made and asks that it be considered in making a finding, the new information, along with the previously submitted information, is treated as a new petition that supersedes the original petition, and the statutory timeframes will begin when such supplemental information is received.

(g) *Findings on petitions to add or remove a species from the lists, or change the listed status of a species.* (1) To the maximum extent practicable, within 90 days of receiving a petition to add a species to the lists, remove a species from the lists, or change the listed status of a species, the Secretary will make a finding as to whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. The Secretary will promptly publish such finding in the **Federal Register** and so notify the petitioner.

(i) For the purposes of this section, ''substantial scientific or commercial information'' refers to credible scientific or commercial information in support of the petition's claims such that a reasonable person conducting an impartial scientific review would conclude that the action proposed in the petition may be warranted. Conclusions drawn in the petition without the support of credible scientific or commercial information will not be considered ''substantial information.''

(ii) The Secretary will consider the information referenced at paragraphs (b), (c), and (f) of this section. The Secretary may also consider information readily available in the agency's possession at the time the determination is made in reaching his or her initial finding on the petition. The Secretary will not consider any supporting materials cited by the petitioner that are not provided to us by the petitioner in the format required at paragraph (b)(6) of this section or otherwise readily available in our possession.

(iii) The ''substantial scientific or commercial information'' standard must be applied in light of any prior determinations made by the Secretary for the species that is the subject of the petition. Where the Secretary has already conducted a status review of that species (whether in response to a petition or on the Secretary's own initiative) and made a final listing determination, any petition seeking to list, reclassify, or delist that species will be considered a ''subsequent petition'' for purposes of this section. A subsequent petition provides ''substantial scientific or commercial information'' only if it provides sufficient new information or analysis not considered in the previous determination (or previous 5-year review, if applicable) such that a reasonable person conducting an impartial scientific review would conclude that the action proposed in the petition may be warranted despite the previous determination.

(2) If a positive 90-day finding is made, the Secretary will commence a review of the status of the species concerned. Within 12 months of receipt of the petition, the Secretary will make one of the following findings:

(i) The petitioned action is not warranted, in which case the Secretary shall promptly publish such finding in the **Federal Register** and so notify the petitioner.

(ii) The petitioned action is warranted, in which case the Secretary will promptly publish in the **Federal Register** a proposed regulation to implement the action pursuant to § 424.16; or

(iii) The petitioned action is warranted, but:

(A) The immediate proposal and timely promulgation of a regulation to implement the petitioned action is precluded because of other pending proposals to list, delist, or change the listed status of species; and

(B) Expeditious progress is being made to list, delist, or change the listed status of qualified species, in which case such finding will be promptly published in the **Federal Register** together with a description and evaluation of the reasons and data on which the finding is based. The Secretary will make a determination of expeditious progress in relation to the amount of funds available after complying with nondiscretionary duties under section 4 of the Act and court orders and court-approved settlement agreements to take actions pursuant to section 4 of the Act.

(3) If a finding is made under paragraph (g)(2)(iii) of this section with regard to any petition, the Secretary will, within 12 months of such finding, again make one of the findings described in paragraph (g)(2) of this section with regard to such petition.

(h) *Findings on petitions to revise critical habitat.* (1) To the maximum extent practicable, within 90 days of receiving a petition to revise a critical habitat designation, the Secretary will make a finding as to whether the petition presents substantial scientific information indicating that the revision may be warranted. The Secretary will promptly publish such finding in the **Federal Register** and so notify the petitioner.

(i) For the purposes of this section, ''substantial scientific information'' refers to credible scientific information in support of the petition's claims such that a reasonable person conducting an impartial scientific review would conclude that the revision proposed in the petition may be warranted. Conclusions drawn in the petition without the support of credible scientific information will not be considered ''substantial information.''

(ii) The Secretary will consider the information referenced at paragraphs (b), (d), and (f) of this section. The Secretary may also consider other information readily available in the agency's possession at the time the determination is made in reaching its initial finding on the petition. The Secretary will not consider any supporting materials cited by the petitioner that are not provided to us by the petitioner in the format required by paragraph (b)(6) of this section or otherwise readily available in our possession.

(2) Within 12 months after receiving a petition found to present substantial information indicating that revision of a critical habitat designation may be warranted, the Secretary will determine how to proceed with the requested revision, and will promptly publish notice of such intention in the **Federal Register**. Such finding may, but need not, take a form similar to one of the findings described under paragraph (g)(2) of this section.

(i) *Petitions to designate critical habitat or adopt special rules.* Upon receiving a petition to designate critical habitat or to adopt a special rule to provide for the conservation of a species, the Secretary will promptly conduct a review in accordance with the Administrative Procedure Act (5 U.S.C. 553) and applicable Departmental regulations, and take appropriate action.

(j) *Withdrawal of petition.* A petitioner may withdraw the petition at any time during the petition process by submitting such request in writing. This request must include the name,

signature, address, telephone number, if any, and the association, institution, or business affiliation, if any, of the petitioner. If a petition is withdrawn, the Secretary may, at his or her discretion, discontinue action on the petition finding, even if the Secretary has already made a positive 90-day finding.

Dated: May 15, 2015.

Michael J. Bean,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

Dated: May 13, 2015.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2015–12316 Filed 5–20–15; 8:45 am]

BILLING CODE 4310–55–P; 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 150428405–5405–01]

RIN 0648–XD927

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Annual Specifications

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

ACTION: Proposed rule.

SUMMARY: NMFS proposes to implement annual management measures and harvest specifications to establish the allowable catch levels (*i.e.* annual catch limit (ACL)/harvest guideline (HG)) for the northern subpopulation of Pacific sardine (hereafter, simply Pacific sardine), in the U.S. exclusive economic zone (EEZ) off the Pacific coast for the fishing season of July 1, 2015, through June 30, 2016. This rule is proposed according to the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). The proposed would include a prohibition on directed non-tribal Pacific sardine commercial fishing for Pacific sardine off the coasts of Washington, Oregon and California, which is required because the estimated 2015 biomass of Pacific sardine has dropped below the cutoff threshold in the HG control rule. Under the proposed action Pacific sardine may still be harvested as part of either the live bait or tribal fishery or incidental to other fisheries; the incidental harvest of Pacific sardine would initially be limited to 40-percent by weight of all fish per trip when caught with other CPS or up to 2 metric tons (mt) when caught with non-CPS. The proposed annual catch limit (ACL) for 2015–2016 Pacific sardine fishing year is 7,000 mt. This proposed rule is intended to conserve and manage the Pacific sardine stock off the U.S. West Coast.

DATES: Comments must be received by June 5, 2015.

ADDRESSES: You may submit comments on this document identified by NOAA–NMFS–2015–0064 by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0064,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to William W. Stelle, Jr., Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070; Attn: Joshua Lindsay.
- *Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Copies of the report ''Assessment of Pacific Sardine Resource in 2015 for U.S.A. Management in 2015–2016'' may be obtained from the West Coast Regional Office (see **ADDRESSES**).

FOR FURTHER INFORMATION CONTACT: Joshua Lindsay, West Coast Region, NMFS, (562) 980–4034.

SUPPLEMENTARY INFORMATION: During public meetings each year, the estimated biomass for Pacific sardine is presented to the Pacific Fishery Management Council's (Council) CPS Management Team (Team), the Council's CPS Advisory Subpanel (Subpanel) and the Council's Scientific and Statistical Committee (SSC), and the biomass and the status of the fishery are reviewed and discussed. The biomass estimate is then presented to the Council along with the calculated overfishing limit (OFL), available biological catch (ABC), and HG, along with recommendations and comments from the Team, Subpanel, and SSC. Following review by the Council and after hearing public comment, the Council adopts a biomass estimate and makes its catch level recommendations to NMFS. NMFS manages the Pacific sardine fishery in the U.S. EEZ off the Pacific coast (California, Oregon, and Washington) in accordance with the FMP. Annual specifications published in the **Federal Register** establish the allowable harvest levels (*i.e.* OFL/ACL/HG) for each Pacific sardine fishing year. The purpose of this proposed rule is to implement these annual catch reference points for 2015–2016, including the OFL and an ABC that takes into consideration uncertainty surrounding the current estimate of biomass for Pacific sardine in the U.S. EEZ off the Pacific coast. The FMP and its implementing regulations require NMFS to set these annual catch levels for the Pacific sardine fishery based on the annual specification framework and control rules in the FMP. These control rules include the HG control rule, which in conjunction with the OFL and ABC rules in the FMP, are used to manage harvest levels for Pacific sardine, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* According to the FMP, the quota for the principle commercial fishery is determined using the FMP-specified harvest guideline (HG) formula. The HG formula in the CPS FMP is HG = [(Biomass − CUTOFF) * FRACTION * DISTRIBUTION] with the parameters described as follows:

1. *Biomass.* The estimated stock biomass of Pacific sardine age one and above. For the 2015–2016 management season this is 96,688 mt.
2. *CUTOFF.* This is the biomass level below which no HG is set. The FMP established this level at 150,000 mt.
3. *DISTRIBUTION.* The average portion of the Pacific sardine biomass estimated in the EEZ off the Pacific coast is 87 percent.
4. *FRACTION.* The temperature-varying harvest fraction is the percentage of the biomass above 150,000 mt that may be harvested.

As described above, the Pacific sardine HG control rule, the primary mechanism for setting the annual directed commercial fishery quota, includes a CUTOFF parameter which has been set as a biomass amount of 150,000 mt. This amount is subtracted from the annual biomass estimate before calculating the applicable HG for the fishing year. Therefore, because this year's biomass estimate is below that

value, the formula results in an HG of zero and therefore no Pacific sardine are available for the commercial directed fishery during the 2015–2016 fishing season.

At the April 2015 Council meeting, the Council adopted the ''Assessment of the Pacific Sardine Resource in 2015 for U.S.A. Management in 2015–2016'' completed by NMFS Southwest Fisheries Science Center and the resulting Pacific sardine biomass estimate of 96,688 mt. Based on recommendations from its SSC and other advisory bodies, the Council recommended and NMFS is proposing, an OFL of 13,227 mt, an ABC of 12,074 mt, and a prohibition on sardine catch unless it is harvested as part of either the live bait or tribal fishery or incidental to other fisheries for the 2015–2016 Pacific sardine fishing year. As additional conservation measures, the Council also recommended and NMFS is proposing an ACL of 7,000 mt and an annual catch target (ACT) of 4,000 mt under which the incidental catch of Pacific sardine in other CPS fisheries would be managed. Incidental catch under the ACT would also be subject to the following management controls to reduce targeting and potential discard of Pacific sardine: (1) A 40 percent by weight incidental catch rate when Pacific sardine are landed with other CPS until a total of 1,500 mt of Pacific sardine are landed, (2) after 1,500 mt have been caught the allowance would be reduced to 30 percent, and (3) when 4,000 mt is reached the incidental per landing allowance would be reduced to 5 percent for the remainder of the 2015–2016 fishing year. Additionally, the council adopted a 2 mt incidental per landing allowance in non-CPS fisheries. Because Pacific sardine is known to comingle with other CPS stocks, these incidental allowances were adopted to allow for the continued prosecution of these other important CPS fisheries and reduce the potential discard of sardine.

The NMFS West Coast Regional Administrator would publish a notice in the **Federal Register** announcing the date of attainment of any of the incidental catch levels described above and subsequent changes to allowable incidental catch percentages. Additionally, to ensure the regulated community is informed of any closure, NMFS will also make announcements through other means available, including fax, email, and mail to fishermen, processors, and state fishery management agencies.

In the previous 3 fishing years the Quinault Indian Nation requested, and NMFS approved, set-asides for the exclusive right to harvest Pacific sardine in the Quinault Usual and Accustomed Fishing Area off the coast of Washington State, pursuant to the 1856 Treaty of Olympia (Treaty with the Quinault). For the 2015–2016 fishing season the Quinault Indian Nation has requested that NMFS provide a set-aside of 1,000 mt (3,000 mt less than was requested and approved in 2014–2015) and NMFS is considering the request.

Detailed information on the fishery and the stock assessment are found in the report ''Assessment of the Pacific Sardine Resource in 2015 for U.S.A. Management in 2015–2016'' (see **ADDRESSES**).

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the CPS FMP, other provisions of the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable law, subject to further consideration after public comment.

These proposed specifications are exempt from review under Executive Order 12866 because they contain no implementing regulations.

An Initial Regulatory Flexibility Analysis (IRFA) was prepared, as required by section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. The results of the analysis are stated below. For copies of the IRFA, and instructions on how to send comments on the IRFA, please see the **ADDRESSES** section above.

On June 12, 2014, the Small Business Administration (SBA) issued an interim final rule revising the small business size standards for several industries effective July 14, 2014 (79 FR 33467). The rule increased the size standard for Finfish Fishing from $19.0 to 20.5 million, Shellfish Fishing from $5.0 to 5.5 million, and Other Marine Fishing from $7.0 to 7.5 million. 78 FR 33656, 33660, 33666 (See Table 1). NMFS conducted its analysis for this action in light of the new size standards.

The purpose of this proposed rule is to conserve the Pacific sardine stock by preventing overfishing, so that directed fishing may occur in future years. This is accomplished by implementing the 2015–2016 annual specifications for Pacific sardine in the U.S. EEZ off the Pacific coast. The small entities that would be affected by the proposed action are the vessels that fish for Pacific sardine as part of the West Coast CPS small purse seine fleet. As stated above, the U.S. Small Business Administration now defines small businesses engaged in finfish fishing as those vessels with annual revenues of $20.5 million or less. Under the former, lower standards, all entities subject to this action in previous years were considered small entities, and under the new standards they continue to be considered small. In 2014, there were approximately 81 vessels permitted to operate in the directed sardine fishery component of the CPS fishery off the U.S. West Coast; 58 vessels in the Federal CPS limited entry fishery off California (south of 39 N. lat.), and a combined 23 vessels in Oregon and Washington's state Pacific sardine fisheries. The average annual per vessel revenue in 2014 for the West Coast CPS finfish fleet was well below $20.5 million; therefore, all of these vessels therefore are considered small businesses under the RFA. Because each affected vessel is a small business, this proposed rule has an equal effect on all of these small entities and therefore will impact a substantial number of these small entities in the same manner. Therefore, this rule would not create disproportionate costs between small and large vessels/businesses.

For the 2014–2015 fishing year, approximately 22,076 mt were available for harvest by the directed non-tribal commercial fishery (this includes 2,500 rolled over from the tribal set aside). Approximately 19,440 mt (approximately 3,378 mt in California and 16,023 mt in Oregon and Washington) of this allocation was harvested during the 2014–2015 fishing season, for an estimated ex-vessel value of $8.8 million.

The CPS FMP and its implementing regulations require NMFS to annually set an OFL, ABC, ACL and HG or ACT for the Pacific sardine fishery based on the specified harvest control rules in the FMP applied to the current stock biomass estimate for that year. The derived annual HG or ACT is the level typically used to manage the principle commercial sardine fishery and is the harvest level typically used by NMFS for profitability analysis each year. As stated above, the FMP dictates that when the estimated biomass drops below a certain level (150,000 mt) that there is no HG. Therefore, purposes of profitability analysis, this action is essentially proposing that an HG of zero for the 2015–2016 Pacific sardine

fishing season (July 1, 2014 through June 30, 2015). As there is no directed fishing for the 2015–2016 fishing year, the proposed rule will decrease small entities' potential profitability compared to last season.

However, revenue derived from harvesting Pacific sardine is typically only one source of fishing revenue for a majority of the vessels that harvest Pacific sardine; as a result, the economic impact to the fleet from the proposed action cannot be viewed in isolation. From year to year, depending on market conditions and availability of fish, most CPS/sardine vessels supplement their income by harvesting other species. Many vessels in California also harvest anchovy, mackerel, and in particular squid, making Pacific sardine only one component of a multi-species CPS fishery. For example, market squid have been readily available to the fishery in California over the last three years with total annual ex-vessel revenue averaging approximately $66 million over that time, compared to an annual average ex-vessel from sardine of $16 million over that same time period. Additionally, some sardine vessels that operate off of Oregon and Washington also fish for salmon in Alaska or squid in California during times of the year when sardine are not available. The purpose of the proposed incidental allowances under this action are to ensure the vessels impacted by this sardine action can still access these other profitable fisheries while still limited the harvest of sardine.

These vessels typically rely on multiple species for profitability because abundance of sardine, like the other CPS stocks, is highly associated with ocean conditions and different times of the year, and therefore are harvested at various times and areas throughout the year. Because each species responds to ocean conditions in its own way, not all CPS stocks are likely to be abundant at the same time; therefore, as abundance levels and markets fluctuate, it has necessitated that the CPS fishery as a whole rely on a group of species for its annual revenues. Therefore, although there will a reduction in sardine revenue for the small entities affected by this proposed action as compared to the previous season, it is difficult to predict exactly how this reduction will impact overall annual revenue for the fleet.

No significant alternatives to this proposed rule exist that would accomplish the stated objectives of the applicable statutes and which would minimize any significant economic impact of this proposed rule on the affected small entities. The CPS FMP and its implementing regulations require NMFS to calculate annual harvest levels by applying the harvest control rule formulas to the current stock biomass estimate. Therefore, if the estimated biomass decreases or increases from one year to the next, so do the applicable quotas. Determining the annual harvest levels merely implements the established procedures of the FMP with the goal of continuing to provide expected net benefits to the nation, regardless of what the specific annual allowable harvest of Pacific sardine is determined to be.

There are no reporting, record-keeping, or other compliance requirements required by this proposed rule. Additionally, no other Federal rules duplicate, overlap or conflict with this proposed rule.

This action does not contain a collection-of-information requirement for purposes of the Paper Reduction Act.

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

Dated: May 14, 2015.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2015–12321 Filed 5–20–15; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 80, No. 98

Thursday, May 21, 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

National Agricultural Statistics Service

Notice of Intent To Request Revision and Extension of a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the National Agricultural Statistics Service (NASS) to request revision and extension of a currently approved information collection, the Mink Survey. The target population will be pulled from farmers who have reported mink production in the past, trade magazines, or grower's association's lists. The questionnaire that NASS is planning to use is the same as what was used in previous years, with one additional pelt color class being added to both the producer and price questionnaires. Any additional changes to the questionnaires would result from requests by industry data users.

DATES: Comments on this notice must be received by July 20, 2015 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–0212, by any of the following methods:

- *Email: omboffi cer@nass.usda.gov.* Include docket number above in the subject line of the message.
- *E-fax:* (855) 838–6382.
- *Mail:* Mail any paper, disk, or CD–ROM submissions to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW., Washington, DC 20250–2024.
- *Hand Delivery/Courier:* Hand deliver to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW., Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT: R. Renee Picanso, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333. Copies of this information collection and related instructions can be obtained without charge from David Hancock, NASS—OMB Clearance Officer, at (202) 690–2388 or at *omboffi cer@nass.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Mink Survey.

OMB Control Number: 0535–0212.

Expiration Date of Approval: January 31, 2016.

Type of Request: Intent to Seek Approval to Revise and Extend an Information Collection for 3 years.

Abstract: The primary objective of the National Agricultural Statistics Service is to prepare and issue State and national estimates of crop and livestock production, prices, and disposition. The Mink Survey collects data on the number of mink pelts produced, the number of females bred, and the number of mink farms. Mink estimates are used by the federal government to calculate total value of sales and total cash receipts, by State governments to administer fur farm programs and health regulations, and by universities in research projects. The current expiration date for this docket is January 31, 2016. NASS intends to request that the Mink Survey be approved for another 3 years.

Authority: These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985 as amended, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501, *et seq.*), and Office of Management and Budget regulations at 5 CFR part 1320.

NASS also complies with OMB Implementation Guidance, ''Implementation Guidance for Title V of the E-Government Act, Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA),'' **Federal Register**, Vol. 72, No. 115, June 15, 2007, p. 33362.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 10 minutes per response. NASS plans to mail out publicity materials with the questionnaires to inform producers of the importance of this survey. NASS will also use multiple mailings, followed up with phone and personal enumeration to increase response rates and to minimize data collection costs.

Respondents: Farmers and ranchers.

Estimated Number of Respondents: 350.

Estimated Total Annual Burden on Respondents: 90 hours.

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 will have practical utility; (b) 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; (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 those who are to respond, through the use of appropriate automated, electronic, mechanical, technological, or other forms of information technology collection methods.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, May 5, 2015.

R. Renee Picanso,

Associate Administrator.

[FR Doc. 2015–12322 Filed 5–20–15; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 150428403–5403–01]

RIN 0694–XC024

Reporting for Calendar Year 2014 on Offsets Agreements Related to Sales of Defense Articles or Defense Services to Foreign Countries or Foreign Firms

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Notice; annual reporting requirements.

SUMMARY: This notice is to remind the public that U.S. firms are required to

report annually to the Department of Commerce (Commerce) information on contracts for the sale of defense articles or defense services to foreign countries or foreign firms that are subject to offsets agreements exceeding $5,000,000 in value. U.S. firms are also required to report annually to Commerce information on offsets transactions completed in performance of existing offsets commitments for which offsets credit of $250,000 or more has been claimed from the foreign representative. This year, such reports must include relevant information from calendar year 2014 and must be submitted to Commerce no later than June 15, 2015.

ADDRESSES: Reports should be addressed to ''Offsets Program Manager, U.S. Department of Commerce, Office of Strategic Industries and Economic Security, Bureau of Industry and Security (BIS), Room 3878, Washington, DC 20230.''

FOR FURTHER INFORMATION CONTACT: Ronald DeMarines, Office of Strategic Industries and Economic Security, Bureau of Industry and Security, U.S. Department of Commerce, telephone: 202–482–3755; fax: 202–482–5650; email: *ronald.demarines@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 723(a)(1) of the Defense Production Act of 1950, as amended (DPA) (50 U.S.C. app. 2172 (2009)), requires the President to submit an annual report to Congress on the impact of offsets on the U.S. defense industrial base. Section 723(a)(2) directs the Secretary of Commerce (Secretary) to prepare the President's report and to develop and administer the regulations necessary to collect offsets data from U.S. defense exporters.

The authorities of the Secretary regarding offsets have been delegated to the Under Secretary of Commerce for Industry and Security. The regulations associated with offsets reporting are set forth in part 701 of title 15 of the Code of Federal Regulations. Offsets are compensation practices required as a condition of purchase in either government-to-government or commercial sales of defense articles and/or defense services, as defined by the Arms Export Control Act and the International Traffic in Arms Regulations. For example, a company that is selling a fleet of military aircraft to a foreign government may agree to offset the cost of the aircraft by providing training assistance to plant managers in the purchasing country. Although this distorts the true price of the aircraft, the foreign government may require this sort of extra compensation as a condition of awarding the contract to purchase the aircraft. As described in the regulations, U.S. firms are required to report information on contracts for the sale of defense articles or defense services to foreign countries or foreign firms that are subject to offsets agreements exceeding $5,000,000 in value. U.S. firms are also required to report annually information on offsets transactions completed in performance of existing offsets commitments for which offsets credit of $250,000 or more has been claimed from the foreign representative.

Commerce's annual report to Congress includes an aggregated summary of the data reported by industry in accordance with the offsets regulations and the DPA (50 U.S.C. app. 2172 (2009)). As provided by section 723(c) of the DPA, BIS will not publicly disclose individual firm information it receives through offsets reporting unless the firm furnishing the information specifically authorizes public disclosure. The information collected is sorted and organized into an aggregate report of national offsets data, and therefore does not identify company-specific information.

In order to enable BIS to prepare the next annual offset report reflecting calendar year 2014 data, U.S. firms must submit required information on offsets agreements and offsets transactions from calendar year 2014 to BIS no later than June 15, 2015.

Dated: May 18, 2015.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2015–12394 Filed 5–20–15; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–843]

Certain Lined Paper Products From India: Notice of Court Decision Not in Harmony With Final Results of Antidumping Duty Administrative Review and Notice of Amended Final Results of Antidumping Duty Administrative Review; 2010–2011

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On May 4, 2015, the United States Court of International Trade (the Court) issued *Navneet II,* [1] sustained the Final Remand Results [2] that the Department of Commerce (the Department) issued in connection with *Navneet I.* [3] the Department recalculated the weighted-average dumping margin that was established for 51 companies that neither failed to cooperate with the agency nor were selected for individual investigation (hereinafter referred to as the non-selected respondents).[4]

Consistent with the decision of the United States Court of Appeals for the Federal Circuit (CAFC) in *Timken,* [5] clarified by *Diamond Sawblades,* [6] Department is notifying the public that the final judgment in this case is not in harmony with the Department's final results of the administrative review of the antidumping duty order on certain lined paper products from India covering the period of review September 1, 2010, through August 31, 2011 (POR).

DATES: *Effective Date:* May 14, 2015.

FOR FURTHER INFORMATION CONTACT: Cindy Robinson, AD/CVD Operations Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3797.

SUPPLEMENTARY INFORMATION:

Background

On April 15, 2013, the Department issued the *Final Results.* [7] Education Ltd. (Navneet) [8] and eight other companies [9] timely filed

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[1] *See Navneet Publications (India) Ltd. et al.* v. *United States,* Court No. 13–00204, Slip. Op. 15–41 (CIT May 4, 2015) (*Navneet II*).

[2] *See Final Results Of Redetermination Pursuant To Court Remand,* Court No. 13–00204, Slip Op. 14–87 (December 4, 2014) (Final Remand Results), which is available at *http://enforcement.trade.gov/remands/14-87.pdf.*

[3] *See Navneet Publications (India) Ltd.* v. *United States,* Court No. 13–00204, Slip Op. 14–87 (CIT July 22, 2014) (*Navneet I*).

[4] *See* Final Remand Results at 12–17.

[5] *See Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

[6] *See Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

[7] *See Certain Lined Paper Products from India: Final Results of Antidumping Duty Administrative Review; 2010–2011,* 78 FR 22232 (April 15, 2013) (*Final Results*) and accompanying Issues and Decision Memorandum (Final Decision Memorandum).

[8] Navneet Education Ltd. (Navneet) was formally known as Navneet Publications (India) Ltd. *See Certain Lined Paper Products From India: Final Results of Changed Circumstances Review,* 79 FR 35727 (June 24, 2014) (*Navneet CCR Final Results*).

[9] The other eight companies are: Marisa International; Riddhi Enterprises, Ltd.; Super Impex; Pioneer Stationary Pvt. Ltd.; SGM Paper Products; SAB International; Lodha Offset Limited; and Magic International Pvt. Ltd. By Court Order on

complaints with the Court and challenged certain aspects of the *Final Results.* In *Navneet I,* the Court remanded the Department's *Final Results* with respect to the Department's calculation of the 11.01 percent non-selected rate assigned to 51 non-selected respondents. The Department based the non-selected rate on the simple average of the two mandatory respondents' zero rates and two (out of four) of the 22.02 percent adverse facts available (AFA) rates assigned to the uncooperative respondents, which failed to respond to the Department's quantity and value questionnaire.[10]

On July 22, 2014, the Court remanded the Department's *Final Results* and instructed the Department to reconsider the following two issues: (1) That the rate assigned to the non-selected companies should be supported by ''substantial evidence,'' and (2) that the rate reflects the ''economic reality'' and ''pricing behavior'' of the non-selected respondents.[11]

On December 4, 2014, the Department filed the Final Remand Results with the Court, in which it continued to find evidence of dumping during the POR, drew an inference that the behavior of uncooperative respondents reflects rational choice, and, thus, found it reasonable to assign an above *de minimis* margin to the non-selected respondents.[12] In the Final Remand Results, the Department explained that this approach complied with the Court's holding in *Navneet I* that the non-selected margin be tied to the relevant factual circumstances of the administrative review and the economic reality of the non-selected respondents.[13] On May 4, 2015, the Court entered judgment sustaining the Final Remand Results.[14]

Timken Notice

In *Timken,* 893 F.2d at 341, as clarified by *Diamond Sawblades,* the CAFC held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), the Department must publish a notice of a court decision that is not ''in harmony'' with a Department determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The Court's judgment in *Navneet II* sustaining the Final Remand Results constitutes a final decision of the Court that is not in harmony with the Department's *Final Results.* This notice is published in fulfillment of the publication requirement of *Timken.*

Amended Final Results

Because there is now a final court decision, the Department is amending the *Final Results* with respect to Navneet and the other non-selected, cooperative exporters that are plaintiffs in this case. The revised weighted-average dumping margins for these exporters during the period September 1, 2010, through August 31, 2011, are as follows:

WEIGHTED-AVERAGE DUMPING MARGIN FOR PLAINTIFF EXPORTERS

Producer/exporter	Weighted-average dumping margin (percent)
Lodha Offset Limited	0.50
Magic International Pvt Ltd	0.50
Marisa International	0.50
Navneet Education Ltd[15]	0.50
Pioneer Stationery Pvt. Ltd	0.50
SGM Paper Products	0.50
Super Impex	0.50

Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision. In the event the Court's ruling is not appealed or, if appealed, upheld by the CAFC, the Department will instruct U.S. Customs and Border Protection to assess antidumping duties on unliquidated entries of subject merchandise exported by the above listed exporters at the rate listed above.

Cash Deposit Requirements

Since the *Final Results,* the Department has established a new cash deposit rate for Navneet Education Ltd. and Super Impex.[16] Therefore, the cash deposit rate for these two companies does not need to be updated as a result of these amended final results The cash deposit rate will be the rate listed above for the remaining five companies listed above and subject to this remand.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e), 751(a)(1), and 777(i)(1) of the Act.

Dated: May 14, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2015–12337 Filed 5–20–15; 8:45 am]

BILLING CODE 3510–DS–P

June 20, 2013, Riddhi Enterprises, Ltd. and SAB International were dismissed from the litigation.

[10] See *Navneet I* at 19, referencing the Final Decision Memorandum at Comment 5.

[11] *See Navneet I* at 15.

[12] *See* Final Remand Results 14–15.

[13] *Id.*

[14] *See Navneet II* at 11.

[15] Navneet Education Ltd. is a successor in interest to Navneet Publications (India) Ltd. *See Navneet CCR Final Results.*

[16] *See Certain Lined Paper Products From India: Final Results of Antidumping Duty Administrative Review; 2011–2012,* 79 FR 26205 (May 7, 2014); *see also Certain Lined Paper Products From India: Final Results of Antidumping Duty Administrative Review; 2012–2013,* 80 FR 19278 (April 10, 2015).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD935

Mid-Atlantic Fishery Management Council (MAFMC); Fisheries of the Northeastern United States; Scoping Process

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

ACTION: Notice of intent to prepare an environmental impact statement (EIS); notice of initiation of scoping process; notice of public scoping meetings; request for comments.

SUMMARY: The Mid-Atlantic Fishery Management Council announces its intent to prepare, in cooperation with NMFS, either an amendment to the fishery management plan for golden tilefish or a new fishery management plan. In either case, the reason for action is to develop conservation and management measures for blueline tilefish off the Mid-Atlantic. To support this effort, the Council may prepare an environmental impact statement in accordance with the National Environmental Policy Act to analyze the impacts of any proposed management measures. This notice announces a public process for determining the scope of issues to be addressed, for identifying concerns and potential alternatives related to management of blueline tilefish off the Mid-Atlantic, and for determining the appropriate level of environmental analysis. This notice alerts the interested public of the scoping process, the potential development of an environmental impact statement or environmental assessment as appropriate, and provides for public participation in that process. Five scoping hearings will be held in June 2015 for this action.

DATES: The meetings will be held between June 1, 2015, and June 18, 2015, as described below. Written

comments must be received on or before July 6, 2015.

ADDRESSES: There will be five scoping meetings with the following dates/times/locations:

1. Monday June 1, 2015, 6:00 p.m. Hyatt Place Long Island/East End. 451 E Main St, Riverhead, NY 11901. Telephone: (631) 208–0002.
2. Tuesday June 2, 2015, 6:00 p.m. Congress Hall Hotel. 251 Beach Ave, Cape May, NJ 08204. Telephone: (888) 944–1816.
3. Tuesday June 16, 2015, 6:00 p.m. Dare County Administrative Building. Commissioners Meeting Room, 954 Marshall C. Collins Drive, Manteo, NC 27954. Telephone: (252) 475–5700.
4. Wednesday June 17, 2015, 6:00 p.m. Hilton Virginia Beach Oceanfront. 3001 Atlantic Ave, Virginia Beach, VA 23451. Telephone: (757) 213–3000.
5. Thursday, June 18, 5:00 p.m. Ocean City Chamber of Commerce. Eunice Q. Sorin Visitor & Conference Center. 12320 Ocean Gateway, Ocean City, Maryland 21842. Telephone: (410) 213–0552.

Comment addresses: Written comments may be sent by any of the following methods:

- Email to the following address: *jdidden@mafmc.org;* Include ''Blueline Tilefish Scoping Comments'' in the subject line (recommended); there will also be an online comment submission form at *http://www.mafmc.org/actions/blueline-tilefish.*
- Mail or hand-deliver to Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, Delaware 19901. Mark the outside of the envelope ''Blueline Tilefish Scoping Comments''; or
- Fax to (302) 674–5399.
- Comments may also be provided verbally at any of the public scoping meetings.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 526–5255. The MAFMC's Web site, *www.mafmc.org* (see ''Current Issues'') also has details on the meeting locations and background materials. A scoping informational document and presentation recording will be posted to *http://www.mafmc.org/actions/blueline-tilefish* no later than May 25, 2015.

SUPPLEMENTARY INFORMATION: The South Atlantic Fishery Management Council (SAFMC) manages blueline tilefish south of the Virginia/North Carolina border. There are currently (as of May 11, 2015) no management measures for blueline tilefish in Federal waters north of North Carolina. Virginia and Maryland have instituted regulations for state waters, but catches in any Federal waters north of North Carolina may be landed from Delaware north without restriction. Blueline tilefish are likely susceptible to overfishing due to their life history (relatively long-lived, sedentary, slow growing, and late maturing) so the MAFMC is considering developing conservation and management measures. These measures could be considered via an amendment to the MAFMC's Golden Tilefish Fishery Management Plan (FMP), or a new FMP for blueline tilefish and/or other deep-water fish such as sand tilefish, snowy grouper, and black-bellied rosefish. Management measures could include a definition of the management unit, as well as acceptable biological catches, annual catch limits, essential fish habitat, trip limits and/or minimum fish sizes for the commercial or recreational fisheries, etc.

For waters north of North Carolina, in response to recent catch increases, the MAFMC has already requested NMFS take emergency action to implement a 300-lb (136-kg) (whole weight) commercial trip limit and a seven-fish per person recreational possession limit. This request was the result of a February 25, 2015, MAFMC meeting, the details of which may be found at: *http://www.mafmc.org/briefing/2015/february-2014-blueline-tilefish-webinar-meeting.* These emergency measures are intended to prevent depletion of blueline tilefish off the Mid-Atlantic on an interim basis (for a maximum of 366 days) while the Council develops long-term management measures through the normal Magnuson-Stevens Act process.

The SAFMC has also requested that NMFS (via an emergency rule) extend management measures recently enacted in the Southeastern Region (March 30, 2015; 80 FR 16583) north to apply to all Federal waters off the U.S. East Coast. Because any emergency rule can only be in effect for a maximum of 366 days, the MAFMC is moving ahead with scoping for an amendment or new FMP to develop long-term management and conservation measures for blueline tilefish off the Mid-Atlantic.

This is the first and best opportunity for members of the public to raise concerns related to the scope of issues that will be considered in the Council's action. The MAFMC needs your input both to identify management issues and develop effective alternatives. Potential management measures could include a definition of the management unit, as well as acceptable biological catches, annual catch limits, essential fish habitat, trip limits and/or minimum fish sizes for the commercial or recreational fisheries, and/or other measures that may be deemed appropriate. Your comments early in the FMP/amendment development process will help us address issues of public concern in a thorough and appropriate manner. Comment topics could include the scope of issues in the FMP or amendment, concerns and potential alternatives related to blueline tilefish management. Comments can be made during the scoping hearings as detailed above or in writing. After scoping, the MAFMC plans to develop a range of management alternatives to be considered and prepare a draft environmental impact statement (EIS) and/or other appropriate environmental analyses. A new FMP would require an EIS, while an amendment to the existing Golden Tilefish FMP may require an EIS or an Environmental Assessment. These analyses will consider the impacts of the management alternatives being considered, as required by National Environmental Policy Act. Following a review of any comments on the draft analyses, the MAFMC will then choose preferred management measures for submission with a Final EIS or Environmental Assessment to the Secretary of Commerce for review and consideration for approval. Approved management measures would be implemented through publication of proposed and final rules, which include additional opportunity for public comment.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: May 14, 2015.

Emily H. Menashes,

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

[FR Doc. 2015–12261 Filed 5–20–15; 8:45 am]

BILLING CODE 3510–22–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2015–0021]

Request for Information Regarding Student Loan Servicing

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for information.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau or CFPB) is seeking comments from the public related to the market for student loan servicing. The submissions to this request for information will serve to assist market participants and policymakers on potential options to improve borrower service, reduce defaults, develop best practices, assess consumer protections, and spur innovation.

DATES: Comments must be received on or before July 13, 2015.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2015–0021, by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: FederalRegisterComments@cfpb.gov.* Include Docket No. CFPB–2015–0021 in the subject line of the message.
- *Mail:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.
- *Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1275 First Street NE., Washington, DC 20002.

Instructions: All submissions should include the agency name and docket number for this proposal. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1275 First Street NE., Washington, DC 20002, on official business days between the hours of 10 a.m. and 5 p.m. eastern standard time. You can make an appointment to inspect the documents by telephoning (202) 435–7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or social security numbers, should not be included. Comments generally will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: For general inquiries, submission process questions or any additional information, please contact Monica Jackson, Office of the Executive Secretary, at 202–435–7275.

SUPPLEMENTARY INFORMATION: The Consumer Financial Protection Bureau is engaged in a joint effort with the U.S. Department of Education and the U.S. Department of the Treasury to identify initiatives to strengthen student loan servicing. This request seeks comments related to the critical role that servicing plays in facilitating repayment of student loans, in order to improve customer service, identify innovative practices and business models, and assess the current framework that exists regarding the consumer protection for student loan borrowers in repayment.

The submissions to this request for information may serve to assist federal and state agencies in prioritizing resources and to assist financial services providers in developing best practices. The public comments may also be used to inform a report required by a Presidential Memorandum signed on March 10, 2015.[1]

The deadline for submission of comments is July 13, 2015.

The Bureau encourages comments from the public, including:

- Student loan borrowers;
- Organizations representing students and student loan borrowers;
- Innovators, technology providers, and recent entrants into the student loan market;
- Institutions of higher education and affiliated parties;
- Financing services providers, including but not limited to lenders and servicers in the mortgage, credit card, and student loan markets;
- Trust administrators of student loan asset-backed securities;
- Credit reporting agencies;
- Debt collectors;
- Organizations promoting financial education;
- Civil rights groups; and
- Nationally recognized statistical rating organizations.

Please note that the Bureau is not soliciting individual student account information in response to this notice and request for information, nor is the Bureau seeking personally identifiable information (PII) regarding student accounts from the parties or any third party.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or social security numbers, should not be included. Comments generally will not be edited to remove any identifying or contact information.

Part A: Issues Related to Student Loan Repayment

The Student Loan Market

In the last decade, the student loan market has undergone rapid growth and change. Today, the Consumer Financial Protection Bureau (the Bureau) estimates that there are over 40 million borrowers with student loans who collectively owe over $1.2 trillion.[2] Student debt is the largest category of unsecured debt owed by American consumers.

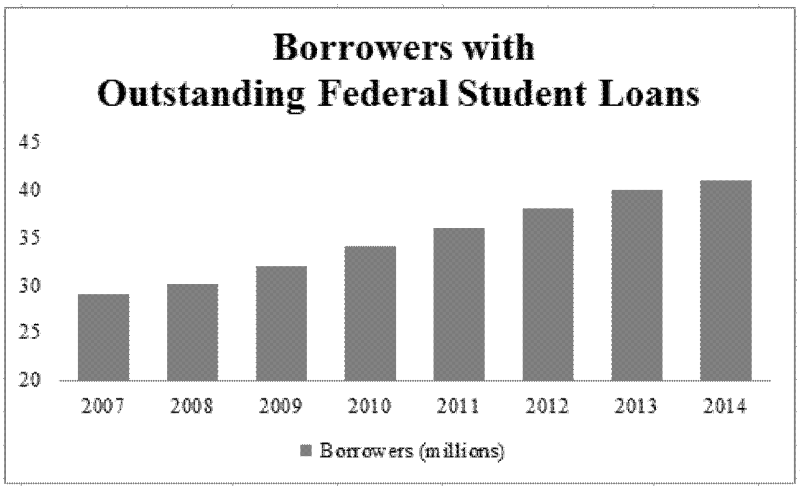
Compared to other large markets of consumer financial products (such as residential mortgages and credit cards),[3] availability of market data is quite limited, particularly for private student loans, which grew rapidly in the years leading up to the financial crisis.[4] Based on the Bureau's analysis of various sources, such as consumer credit panels, audited financial statements, and consumer surveys, both the number and proportion of student loan borrowers in a repayment status has grown.

[1] The White House, *Presidential Memorandum—Student Aid Bill of Rights* (March 10, 2015), *available at https://www.whitehouse.gov/the-press-office/2015/03/10/presidential-memorandum-student-aid-bill-rights.*

[2] U.S. Department of Education, *Federal Student Aid Portfolio Summary,* Data Center: Federal Student Loan Portfolio, accessed on 3/30/2015, available at *https://studentaid.ed.gov/about/data-center/student/portfolio;* Consumer Financial Protection Bureau and U.S. Department of Education, *Private Student Loans* (2012), available at *http://www.consumerfinance.gov/reports/private-student-loans-report/;* and U.S. Department of Education, *Federal Student Aid Annual Report 2014* (2014), available at *http://www2.ed.gov/about/reports/annual/2014report/fsa-report.pdf.*

[3] For example, under the Home Mortgage Disclosure Act, most loan-level mortgage application, origination, and purchase data is currently subject to public disclosure, stripped of certain information to protect borrower privacy. The CFPB developed and maintains a web tool to allow the public to access and analyze HMDA data. *See* Consumer Financial Protection Bureau, *The Home Mortgage Disclosure Act,* available at *http://www.consumerfinance.gov/hmda.* In addition, data from housing GSEs and mortgage-backed securities filings shed significant light on loan-level performance. The Office of the Comptroller of the Currency regularly publishes a mortgage metrics report, detailing loan modification performance and other key servicing data.
See, for example, Office of the Comptroller of the Currency, *Mortgage Metrics Report for 2014 Q4* (March 2015), available at *http://www.occ.gov/publications/publications-by-type/other-publications-reports/mortgage-metrics/mortgage-metrics-q4-2014.pdf.*

[4] Consumer Financial Protection Bureau and U.S. Department of Education, *Private Student Loans* (2012), available at *http://www.consumer finance.gov/reports/private-student-loans-report/.*



[5]

While the features and borrower characteristics of each type of student loan may vary, the three major types of student loans currently outstanding, as described below, are generally serviced by the same market participants.

The three main types of post-secondary education loans under which borrowers have outstanding balances are loans made under the Federal Family Education Loan program (FFELP), loans made under the William D. Ford Federal Direct Loan (Direct Loan) program, and private student loans. Direct Loans and private student loans are still available for new originations.[6]

Federal Family Education Loans: More than $380 billion [7] in outstanding student loans were made under FFELP.[8] While FFELP loans were generally originated using private capital, they were guaranteed by a governmental or not-for-profit entity, and reinsured by the Federal government. These loans are serviced either by the loan holders themselves or by a third-party student loan servicer pursuant to contracts with the loan holders. A noteworthy portion of these loans serve as collateral for asset-backed securities.[9] Pursuant to the 2010 SAFRA Act, the origination of new guaranteed loans under FFELP was suspended.

Federal Direct Loans: Pursuant to SAFRA, the Department of Education shifted primarily to direct lending, providing loans directly to borrowers under the William D. Ford Federal Direct Loan program.[10] As of the end of calendar year 2014, 28.5 million borrowers collectively owed approximately $744 billion in outstanding Direct Loans.[11] Direct Loans are serviced by third parties that contract with the Department of Education pursuant to Title IV of the Higher Education Act (HEA).[12] Preceding the suspension of new FFELP originations, many of the FFELP student loan servicers were awarded servicing contracts to begin servicing loans held by the Department of Education, including loans made under the Direct Loan program.[13]

Private Student Loans: The student loan market includes private student loans, which are not originated pursuant to Title IV of the HEA. Most private student loans are typically originated by very large depository institutions and specialty student loan companies. A substantial portion of private student loans serve as collateral for asset-backed securities. The market for private student loans is opaque, as market participants generally do not make available key origination and performance information, and reporting requirements on outstanding balances and performance are extremely limited.

The vast majority of student loan servicing activity is now concentrated among large student loan servicers that service all three types of student loans.[14]

The Student Loan Servicing Business Model

More than 40 million Americans with student loan debt depend on student loan servicers as their primary point of contact for their student loans. A servicer is often different than the lender or loan holder, and borrowers almost always lack control or choice over which company services their loan. Student loan servicers' duties typically include managing borrowers' accounts, processing monthly payments, and communicating directly with borrowers.[15] These duties may also

[5] U.S. Department of Education, *Federal Student Aid Annual Report* (2007–2014), available at *http://www2.ed.gov/about/reports/annual/index.html.*

[6] There are additional Federal programs under Title IV which also authorize student loans. For example, one such program finances loans made directly by certain post-secondary education institutions through their financial aid offices. *See* 20 U.S.C. 1087aa *et seq.* Another offers grants to those who pledge to become teachers. If the recipients do not become teachers, then the disbursed funds are converted from grants to loans. *See* 20 U.S.C. 1070g *et seq.*

[7] U.S. Department of Education, *Federal Student Aid Portfolio Summary,* Data Center: Federal Student Loan Portfolio, accessed on 5/6/2015, available at: *https://studentaid.ed.gov/about/data-center/student/portfolio.*

[8] 20 U.S.C. 1078(b), (c).

[9] *See, for example,* Sallie Mae, *SLM Corporation: Overview of FFELP and FFELP ABS Transactions* (June 18, 2012), available at *https://www.navient.com/assets/about/investors/webcasts/2012FFELPOverviewvFinal.pdf.*

[10] *See* Public Law 111–152, secs. 2101–2213, 124 Stat. 1071 (2010). The Direct Loan Program actually began in 1992, *see* Public Law 102–325, 106 Stat. 569 (1992), but Federal Direct loans constituted only a small portion of Federal student lending before the enactment of the SAFRA Act in 2010.

[11] U.S. Department of Education, *Federal Student Aid Portfolio Summary,* Data Center: Federal Student Loan Portfolio, accessed on 5/7/2015, available at: *https://studentaid.ed.gov/about/data-center/student/portfolio.*

[12] 20 U.S.C. 1087f(b).

[13] In 2008, the enactment of the Ensuring Continued Access to Student Loans Act (ECASLA) authorized the Secretary of Education to take extraordinary measures to ensure students could continue to borrow amid turmoil in the capital markets. Under this authority, the Department of Education acquired a large volume of loans made by private lenders through FFELP and assigning the servicing to certain third parties. *See* Pub. L. 110–227; following the termination of the FFEL program, third-party servicers were awarded additional Direct Loan volume through this contract. *For further discussion, see* U.S. Department of Education, *Loan Servicing Update* (July 2012) available at *www.ifap.ed.gov/presentations/attachments/NASFAA2012LoanServicingUpdate.ppt.*

[14] For further discussion of student loan servicing market composition, *see* Consumer Financial Protection Bureau, *Final Rule: Defining Larger Participants of the Student Loan Servicing Market* (December 2013), available at *http://files.consumerfinance.gov/f/201312_cfpb_student-servicing-rule.pdf.*

[15] The Bureau defined student loan servicing as (1) receiving loan payments (or receiving notification of payments) and applying payments to

include informing borrowers about loan repayment options and facilitating enrollment in alternative repayment plans and other benefits, including options to assist federal student loan borrowers experiencing financial hardship.[16]

When problems arise because of servicing problems, student loan borrowers may face a range of different consequences. They may miss a payment, owe more money because of additional interest on principal, or face future difficulties with credit because of a poor payment history.

For the majority of student loan borrowers who make payments on time each month and never contact their servicer for additional assistance, loan servicing generally may be limited to accepting and applying monthly payments and awarding benefits earned by satisfying specific loan terms (*e.g.* interest rate reductions for enrolling in auto-debit or making a series of on-time monthly payments). These borrowers also depend on their student loan servicers to accurately report their payment history to the credit bureaus. Adequate student loan servicing is critical for these borrowers to establish a good credit history through their timely student loan payments, in order to ensure that they are positioned to participate fully in the marketplace for other financial products and services.[17]

Student loan borrowers facing unemployment or other financial hardship need adequate loan servicing for a different reason. Student loan servicers assist these borrowers with enrolling in alternative repayment plans, obtaining deferments or forbearances, or requesting a modification of loan terms. For these borrowers, proper loan servicing may be the key to successfully avoid default and ultimately perform on the loan. When borrowers face difficulties, loan servicers can help borrowers avoid default, minimize damage to borrowers' credit, and ensure that borrowers can find sustainable solutions that keep them on a long-term path to future financial success. In addition, adequate loan servicing also helps to ensure that owners of the loans are repaid.

Financial Incentives for Student Loan Servicers

The Bureau estimates that there are nearly 8 million student loan borrowers in default, representing over $110 billion in balances.[18] In addition, the Department of Education estimates that another 3 million Direct Loan borrowers are at least 30 days past due on one or more student loans, comprising over $58 billion in balances.[19] As the number of borrowers with defaulted or delinquent student loans has grown,[20] it has prompted questions about what steps servicers should take to achieve greater success in minimizing defaults and curing delinquencies. For example, it appears that few, if any, private student lenders and loan servicers have developed transparent, widely-offered flexible repayment options to mitigate defaults for borrowers in distress.[21]

While federal student loans feature an array of flexible repayment options, it is not clear whether third-party student loan servicers, particularly those servicing Federal Family Education Loans, have adequate economic incentive to enroll borrowers in these options to avoid default. For both private and federal student loans, the compensation model used in most third-party servicing contracts provides student loan servicers with a flat monthly fee per account serviced.[22] Although this fee may adjust based on a loan's repayment status, fees are generally fixed on a monthly basis and do not rise or fall depending on the level of service a particular borrower requires in a given month.

The Regulatory Landscape for Student Loan Servicing

In recent years, policymakers have undertaken broad-based legislative and regulatory efforts to strengthen applicable federal consumer financial laws protecting consumers in the servicing of mortgages and credit cards. For student loan borrowers, there is no existing, comprehensive federal statutory or regulatory framework providing uniform standards for the servicing of all student loans.[23] However, there are limited protections for certain federal student loan borrowers related to certain aspects of the repayment process.[24]

There may be variation in the level of service delivered by student loan

the borrower's account pursuant to the terms of the post-secondary education loan or of the contract governing the servicing; (2) during periods when no payments are required, maintaining account records and communicating with borrowers on behalf of loan holders; or (3) interactions with borrowers, including activities to help prevent default, conducted to facilitate the foregoing activities. *See* 12 CFR 1090.106.

[16] *See, for example,* 20 U.S.C. 1098e.

[17] In addition, certain consumer protections included in Title IV of the Higher Education Act require student loan borrowers to remit on-time monthly payments under certain repayment arrangements in order to obtain loan forgiveness. These repayment arrangements may require student loan servicers to certify income documentation on an annual basis in order for borrowers to obtain the maximum benefit. In some cases, loan forgiveness is also contingent upon certain types of employment. Student loan servicers are responsible for evaluating the timeliness of monthly payments, evaluating whether employment qualifies a borrower for certain benefits and applying these benefits to borrowers' accounts. Depending on the program, high-quality student loan servicing over a period of 5, 10, 20 or 25 years is critical for these borrowers to realize benefits provided by statute. *See, for example,* 20 U.S.C. 1078–10 *and* 20 U.S.C. 1087e(m).

[18] As of the first quarter of FY15, 7.3 million federal student loan borrowers were in default on more than $106 billion in federal student loans. *See,* U.S. Department of Education, *Federal Student Aid Portfolio Summary,* Data Center: Federal Student Loan Portfolio, accessed on 5/7/2015, available at: *https://studentaid.ed.gov/about/data-center/student/portfolio;* According to a 2012 study of the private student loan market published by the U.S. Department of Education and the Consumer Financial Protection Bureau, 850,000 private student loans with an outstanding principal balance of over $8 billion were in default. *See* U.S. Department of Education and Consumer Financial Protection Bureau, *Private Student Loans* (2012), available at *http://www.consumerfinance.gov/reports/private-student-loans-report/.*

[19] U.S. Department of Education, *Federal Student Aid Portfolio Summary,* Data Center: Federal Student Loan Portfolio, accessed on 3/30/2015, available at: *https://studentaid.ed.gov/about/data-center/student/portfolio.*

[20] Consumer Financial Protection Bureau, *A closer look at the trillion* (August 5, 2013), available at *http://www.consumerfinance.gov/blog/a-closer-look-at-the-trillion/.*

[21] Consumer Financial Protection Bureau, *Annual Report of the CFPB Student Loan Ombudsman* (2014), available at *http://files.consumerfinance.gov/f/201410_cfpb_report_annual-report-of-the-student-loan-ombudsman.pdf.*

[22] This monthly servicing fee may be set as a flat dollar amount per month per account, or set based on a percentage of a borrower's aggregate principal balance. In both cases, the fee paid to student loan servicers may vary depending on repayment status but generally do not vary depending on the level of service provided in a given month. *See, for example,* First Marblehead Corporation, *Prospectus Supplement: The National Collegiate Student Loan Trust 2007–3* (September 17, 2007), available at *http://www.snl.com/interactive/lookandfeel/4094003/NCSLT_2007_3_FPS.PDF and* U.S. Department of Education, *Title IV Redacted Contract Awards 12–13,* available at *https://www.fbo.gov/spg/ED/FSA/CA/FSA-TitleIV-09/listing.html.* Contracts fix monthly compensation on a per-borrower basis, and the compensation depends on the repayment status of each borrower being serviced. *See also* U.S. Department of Education, *Student Aid Administration Fiscal Year 2015 Request,* at AA–15, available at *http://www2.ed.gov/about/overview/budget/budget15/justifications/aa-saadmin.pdf.* This estimates the average cost per-borrower to be $1.67 per month, based on the contractual prices and the proportion of borrowers with different repayment statuses.

[23] In 2014, the Bureau expanded its examination program for student loan servicing to supervise both large depository institutions and larger nonbank student loan servicers for compliance with federal consumer law, including the prohibition against unfair, deceptive and abusive practices under the Dodd-Frank Act. This is the first examination program at the federal level focused on both bank and nonbank actors in the student loan servicing market. *See* Consumer Financial Protection Bureau, *Education Loan Examination Procedures* (December 2013), available at *http://files.consumerfinance.gov/f/201312_cfpb_exam-procedures_education-loans.pdf.*

[24] *See, e.g.,* 34 CFR part 682 for certain disclosures and other requirements for companies servicing FFELP loans.

servicers depending on the type of loan borrowed, the identity of lender, or the company selected to service the loan. The statutory and regulatory framework for student loan servicing, and the gaps in that framework, may contribute to this variation.

Higher Education Act of 1965 (HEA)

Title IV of HEA authorizes the federal student loan programs and establishes a framework for conduct by and oversight of companies participating in FFELP, including student loan servicers contracted by holders of FFELP loans to service these loans. This framework establishes a number of conditions that loan holders and service providers must meet in order for federal loan guarantees to remain in effect, including arranging for periodic independent financial audits and complying with program requirements established in implementing regulations.[25]

Congress has amended Title IV of HEA periodically since its enactment, creating a set of flexible repayment plans, loan cancellation options, and other protections for borrowers with federal student loans.[26] Student loan servicers are responsible for administering these benefits and protections. In addition, these amendments have expanded the extraordinary collection tools available to recover defaulted federal student loans, including extra-judicial wage garnishment, tax refund offset, and seizure of federal payments, such as certain benefits administered by the Social Security Administration.[27]

Amendments to the Higher Education Act Included in the Higher Education Opportunity Act (HEOA) of 2008

In 2008, Congress enacted HEOA, reauthorizing HEA and amending Title IV to provide additional protections for borrowers with loans made through FFELP. Implementing regulations require student loan servicers to provide certain notices to borrowers with FFELP loans during the course of repayment, including notices related to account terms, repayment plans, and servicing transfers.[28] These regulations create basic compliance requirements as a precondition for student loan servicers to maintain eligibility to participate in FFELP.

Amendments to the Truth in Lending Act (TILA) Included in HEOA

HEOA also amended TILA to create new protections for borrowers with private education loans, largely related to the origination of these loans.[29] These protections include safeguards to mitigate the risk that private student lenders will extend credit to borrowers to cover expenses beyond the total cost of attendance and requirements for schools entering into preferred lender arrangements with lenders seeking to market private loans to students.[30]

Fair Credit Reporting Act (FCRA)

FCRA and its implementing regulation, Regulation V, require entities that furnish information to consumer reporting agencies to have reasonable policies and procedures regarding the accuracy and integrity of information they furnish.[31] While furnishing is generally a voluntary activity,[32] federal student loan servicers have an affirmative duty to furnish. Title IV of HEA requires that certain participants in the student loan market furnish information about federal student loans to consumer reporting agencies.[33]

Risks for Consumers Repaying Student Loan Debt

In July 2011, the Bureau launched an examination program to supervise education lending and servicing at the largest depository institutions.[34] In December 2013, the Bureau finalized a rule expanding its supervisory authority to include large nonbank participants in the student loan servicing market—the companies that perform more than 70 percent of all nonbank student loan servicing activity, including those student loan servicers contracted by the Department of Education to service the federally-owned loan portfolio.[35] Nonbank entities perform the vast majority of student loan servicing activity.[36] Historically, these entities have not been subject to federal or state licensing requirements or supervision for compliance with federal consumer protection laws.

In October 2011, the Secretary of the Treasury designated a student loan ombudsman within the Bureau, pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The Bureau's student loan ombudsman is required to submit certain reports to the Director of the Bureau, the Secretary of the Treasury, and the Secretary of Education related to student loan complaints.[37] These reports have focused on private student loans and highlighted a range of consumer complaints submitted to the Bureau regarding servicing issues, including:

- *Payment posting:* Some consumers have reported that it takes servicers several days to process payments and servicers may charge interest on the outstanding principal during that processing time. Consumers have complained that servicers may also apply payments to an account well after they debit funds from a borrower's bank account. Consumers note that some servicers may take several days to process payments submitted online, when other financial services companies are able to credit such payments upon receipt.
- *Processing prepayments:* Consumers may attempt to prepay their

[25] *See, e.g.,* 34 CFR 682.401; 682.416. In addition, HEA establishes a number of conditions related to the origination of federal student loans, including specific requirements related to disclosure and counseling at the time of origination and prior to entering repayment.

[26] *See, for example,* Pub. L. 110–84.

[27] For example, the Higher Education Technical Amendments of 1991 eliminated the statute of limitations for lawsuits to collect of federal student loan debt. *See* Pub. L. 102–26. In addition, a number of other federal laws govern the collection of debts owed to the federal government. *See, for example,* Pub. L. 104–134.

[28] *See* Pub. L. 110–315. For example, servicers must provide borrowers with a notice of servicing transfer containing information about the new servicer 45 days after the effective date of transfer—a protection that has been triggered for more than 10 million student loan borrowers since 2010. This requirement of notice does not require any notice to the borrower prior to the effective date of transfer. In contrast, protections offered to mortgage borrowers under the Real Estate Settlement Procedures Act (RESPA) requires notice of a servicing transfer 15 days prior to and 15 days after the effective date of transfer.

[29] Pub. L. 110–315, 15 U.S.C. 1650.

[30] TILA and its implementing regulation, Regulation Z, explicitly exempt credit extended pursuant to Title IV of the Higher Education Act from requirements established for private education loans. *See* 15 U.S.C. 1650a(7)(A)(i).

[31] *See* 15 U.S.C. 1681–1681x; *and* 12 CFR part 1022.

[32] *See* 15 U.S.C. 1681s *and* 12 CFR part 1022, App. E ("The Bureau encourages voluntary furnishing of information to consumer reporting agencies.").

[33] *See, for example,* 20 U.S.C. 1080a.

[34] In December 2012, the Bureau published the examination procedures used in examinations of student lending at these institutions. *See* Consumer Financial Protection Bureau, *CFPB Releases Exam Procedures for Student Loans* (2012), available at *http://www.consumerfinance.gov/newsroom/consumer-financial-protection-bureau-releases-exam-procedures-for-student-loans/.*

[35] Consumer Financial Protection Bureau, *Final Rule: Defining Larger Participants of the Student Loan Servicing Market* (December 2013), available at *http://files.consumerfinance.gov/f/201312_cfpb_student-servicing-rule.pdf.*

[36] For further discussion of student loan servicing market composition, *see* Consumer Financial Protection Bureau, *Final Rule: Defining Larger Participants of the Student Loan Servicing Market* (December 2013), available at *http://files.consumerfinance.gov/f/201312_cfpb_student-servicing-rule.pdf.*

[37] *See* 12 U.S.C. 5535. In addition, the Higher Education Act established a Student Loan Ombudsman at the U.S. Department of Education to assist borrowers with federal student loans. *See* 20 U.S.C. 1018.

loans in order to reduce the amount of interest owed over the life of the loan. But many consumers have expressed confusion about how to pay off their loans early. For example, borrowers have complained that servicers apply payments in excess of the amount due across all their loans, not to the highest-interest rate loan that they would prefer to pay off first. These processing problems may result from insufficient investment in a servicing platform's information technology infrastructure.

• *Processing partial payments:* When consumers have multiple loans with one servicer and are unable to pay all of the loans on their bill in full, borrowers have reported that many servicers instruct them to make whatever payment they can afford. Many complaints have described how servicers often divide up the partial payment and apply it evenly across all of the loans in their account. This may maximize the late fees charged to the consumer.

• *Paperwork and account information:* Consumers have reported experiencing lost paperwork submitted to process applications for forbearance or alternative payment plans. Borrowers have reported that servicers do not correct errors in a timely fashion. Consumers have also reported encountering limited access to basic account information, including their payment history. Some borrowers have reported difficulty when seeking to determine how their payments have been applied to interest and principal, particularly when loans are grouped together for billing purposes.

• *Servicing transfers:* Consumers have noted many servicing interruptions following a change in servicer. Many of these consumers were unaware that their loans had been transferred to a new servicer until the point at which they encountered a problem. Consumers have explained that, following a change in servicer, they experience interruptions when receiving billing statements, notices, or other routine communications. Consumers have also noted that they were charged late fees because borrowers mailed their payments to their old servicers. Consumers have complained that, in some cases, servicers did not process payments correctly post-transfer, if the consumer mailed a check to the new servicer containing account information from the old servicer.

• *Customer service:* Consumers have complained that servicing personnel may not be adequately trained to provide assistance or may be unaware of resources available to borrowers in distress. This problem may be exacerbated at companies that service many different loan portfolios for third-party lenders. Consumers have reported that servicers transferred them to multiple departments, and, in some cases, none were responsive or empowered to provide a clear answer. Consumers have also complained about being unable to reach appropriate service staff members to correct a mistake in how a payment was applied to their account. Other consumers have complained about conflicting instructions from different employees of the same servicer.

• *Repayment incentives:* It is common for lenders to offer various incentives to borrowers in marketing materials prior to origination. These might include interest rate or principal reductions for engaging in activities that increase the likelihood of repayment, such as graduation or enrollment in an auto-debit program. But consumers have complained that some servicers place unexpected obstacles when borrowers seek to apply these benefits.

• *Issues related to co-signers, including acceleration of performing loans:* Consumers identify a range of issues specific to co-signed student loans, including problems related to access to basic account information for co-signers and problems related to co-signer release, an advertised benefit of many private loans that some consumers find is prohibitively complicated to obtain. In addition, many consumers assume that the death of a co-signer, often a parent or grandparent, will result in the release of the co-signer's obligation to repay. But many private student loan contracts include provisions that have been interpreted to provide the lender with the option to immediately demand the full loan balance upon death of the co-signer. Many private student loan contracts also include provisions that have been interpreted to allow the lender to place a loan in default if the borrower's co-signer files for bankruptcy.

Borrowers have submitted complaints detailing how they face loan acceleration, including consequences such as credit damage and frequent debt collection calls, even if the loan was in good standing prior to and while the co-signer is in bankruptcy, or upon a co-signer's death. Acceleration may be triggered when data from probate and other court record scans are matched with a company's customer database, without regard to whether the borrower is in good standing.

• *Benefits for members of the military:* Servicemembers have identified problems they encountered when accessing the protections granted to them under federal rules, including the Servicemembers Civil Relief Act (SCRA). The hurdles they describe range from not being able to get the information they need, to being met with roadblocks when they do try to pursue their benefits.

As noted in these reports, consumer complaints are not necessarily representative of typical experiences of student loan borrowers. However, examination and investigative activities have revealed that problems may not be limited to individual consumers filing complaints. For example, in 2014, the Federal Deposit Insurance Corporation (FDIC) addressed alleged misconduct with one large student loan servicer for illegal practices regarding student loan payment processing.[38] The FDIC found violations of a federal law prohibiting unfair and deceptive practices with regard to student loan borrowers through the servicer's following actions:

• Inadequately disclosing its payment allocation methodologies to borrowers while allocating borrowers' underpayments across multiple loans in a manner that maximizes late fees; and

• Misrepresenting and inadequately disclosing in its billing statements how borrowers could avoid late fees.

In addition, the Department of Justice joined with the FDIC to enter an order providing $60 million in restitution for more than 60,000 servicemembers in an action against the same company, related to its awarding of benefits under the SCRA to active duty members of the military.[39] The FDIC found illegal conduct, including:

• Unfairly conditioning receipt of benefits under the SCRA upon requirements not found in the law;

• Improperly advising servicemembers that they must be deployed in order to receive benefits under the SCRA; and

• Failing to provide complete SCRA relief to servicemembers after having been put on notice of these borrowers' active duty status.

While supervising for compliance with federal consumer financial laws,

[38] Federal Deposit Insurance Corporation, *FDIC Announces Settlement with Sallie Mae for Unfair and Deceptive Practices and Violations of the Servicemembers Civil Relief Act* (May 2014), available at *http://www.fdic.gov/news/news/press/2014/pr14033.html.*

[39] *See* Federal Deposit Insurance Corporation, *FDIC Announces Settlement with Sallie Mae for Unfair and Deceptive Practices and Violations of the Servicemembers Civil Relief Act* (May 2014), available at *http://www.fdic.gov/news/news/press/2014/pr14033.html; and* U.S. Department of Justice, *United States* v. *Navient Solutions, Inc., Navient DE Corporation and Sallie Mae Bank* (May 2014), available at *http://www.justice.gov/crt/about/hce/documents/salliecomp.pdf.*

the Bureau has also identified illegal practices through its examination program. Bureau examiners found one or more student loan servicers were: [40]

• *Misrepresenting minimum payments:* Bureau examiners found that one or more servicers inflated the minimum payment that was due on periodic statements and online account statements. These inflated numbers included amounts that were in deferment and not actually due.

• *Charging improper late fees:* CFPB examiners found one or more servicers were unfairly charging late fees when payments were received during the grace period. Like many other types of loans, many student loan contracts have grace periods after the due date. If a payment is received after the due date, but during the grace period, the promissory note stated that late fees would not be charged.

• *Failing to provide accurate tax information:* CFPB examiners found cases where student loan servicers failed to provide consumers with information essential for deducting student loan interest payments on their tax filings. The servicers impeded borrowers from accessing this information and misrepresented information on the consumers' online account statements. This practice may have caused some consumers to lose up to $2,500 in tax deductions.

• *Misleading consumers about bankruptcy protections:* CFPB examiners found that some servicers told consumers student loans are not dischargeable in bankruptcy. While student loans are more difficult to discharge in bankruptcy than most other types of loans, it is possible to discharge a student loan if the borrower affirmatively asserts and proves ''undue hardship'' in a court. Servicer communications with borrowers asserted or implied that student loans were never dischargeable.

• *Making illegal debt collection calls to consumers at inconvenient times:* Examiners found that one or more student loan servicers routinely made debt collection calls to delinquent borrowers early in the morning or late at night. For example, examiners identified more than 5,000 calls made at inconvenient times during a 45-day period, which included 48 calls made to one consumer.

[40] *See* Consumer Financial Protection Bureau, *Supervisory Highlights: Fall 2014* (2014), available at *http://www.consumerfinance.gov/reports/supervisory-highlights-fall-2014.*

Presidential Memorandum on a Student Aid Bill of Rights

On March 10, 2015, the President signed a Presidential Memorandum titled the ''Student Aid Bill of Rights.'' [41] The memorandum was addressed to the Secretary of the Treasury, Secretary of Education, Commissioner of Social Security, Director of the Consumer Financial Protection Bureau, Director of the Office of Management and Budget, Director of the Office of Science and Technology Policy, and the Director of the Domestic Policy Council. The memorandum directed certain executive agencies to undertake a number of steps to improve student loan borrowers' experience in repayment, with a particular focus on enhancing student loan servicing. The memorandum requires the Secretary of Education, in consultation with the Secretary of the Treasury and the Director of the Consumer Financial Protection Bureau, to issue a report to the President ''after assessing the potential applicability of consumer protections in the mortgage and credit card markets to student loans, [on] recommendations for statutory or regulatory changes in this area, including, where appropriate, strong servicing standards.''

Policymakers Have Established a Framework To Strengthen Servicing Protections for Mortgage and Credit Card Borrowers

The Bureau has observed similarities between the servicing problems encountered by student loan borrowers and those experienced by borrowers with other financial products. Loan servicing generally includes many common functions, irrespective of the underlying consumer financial product, including account maintenance, billing and payment processing, customer service, and managing accounts for customers experiencing financial distress.[42]

During and in the wake of the financial crisis, Congress, state policymakers, law enforcement officials, and federal financial regulators sought to address a broad range of loan servicing problems in the credit card and mortgage markets. Several large mortgage servicers reached settlements with State and Federal regulators to address a range of troubling practices.[43]

[41] The White House, *Presidential Memorandum—Student Aid Bill of Rights* (March 10, 2015), available at *https://www.whitehouse.gov/the-press-office/2015/03/10/presidential-memorandum-student-aid-bill-rights/.*

[42] There are also noteworthy differences between the servicing of mortgages, credit cards and student loans. These include but are not limited to differences related to the servicing of loans secured by real estate compared to unsecured loans, and practices unique to open-ended products with replenishing lines of credit, commonly used in repeated transactions.

Mortgage Servicing

Congress has passed several significant legislative and regulatory interventions to protect mortgage borrowers from illegal and deceptive mortgage servicing practices. In 1968 and 1974, Congress passed TILA and the Real Estate Settlement Procedures Act of 1974 (RESPA), respectively. Taken together, these statutes provide additional disclosure requirements and regulate certain acts associated with consumer risk and harm.[44] TILA and RESPA also provide a private right of action and damages in certain circumstances for certain violations.[45] Over the past nearly 50 years, Congress has amended both TILA and RESPA on numerous occasions to add additional protections for consumers.[46]

In 2010, Congress again intervened by providing additional protections through the Dodd-Frank Act. The Dodd-Frank Act gave the Bureau authority to promulgate regulations to implement new mortgage servicing protections following the wake of the financial crisis and granted the Bureau with rule-making, supervision, and enforcement

[43] For example, in 2012, the attorneys general of forty-nine states, the District of Columbia and the federal government reached an agreement with five large mortgage servicers to address mortgage loan servicing and foreclosure abuses. *See* U.S. Department of Justice, *National Mortgage Settlement,* available at *http://www.justice.gov/ust/eo/public_affairs/consumer_info/nms/;* In addition, there have been a number of cases of alleged improper treatment of military families, including cases where mortgage servicers conducted allegedly wrongful foreclosures in violation of the SCRA, *See* U.S. Department of Justice, *Recent Accomplishments of the Housing and Civil Enforcement Division,* available at *http://www.justice.gov/crt/about/hce/whatnew.php* (summarizing the enforcement actions concerning the Servicemember Civil Relief Act).

[44] In addition to TILA and RESPA, Congress enacted the Home Ownership and Equity Protection Act (HOEPA) in 1994 as an amendment to TILA, establishing certain disclosures and protections related to high-cost mortgages. *See* Pub. L. 103–325.

[45] 15 U.S.C. 1640; 12 U.S.C. 2605.

[46] *See* CFPB Consumer Law and Regulations, *RESPA Procedures—TILA RESPA Integrated Disclosures (applicable for examinations after the August 2015 effective date), and Mortgage Servicing Requirements (January 2014),* available at *http://files.consumerfinance.gov/f/201503_cfpb_regulation-x-real-estate-settlement-procedures-act.pdf* (summarizing amendments to RESPA); *See also,* CFPB Consumer Law and Regulations, *TILA Procedures—TILA RESPA Integrated Disclosures (applicable for examinations after the August 2015 effective date), and Higher-Priced Mortgage Loan Appraisals (January 2014), Escrow Accounts (January 2014), and Mortgage Servicing Requirements (January 2014),* available at *http://files.consumerfinance.gov/f/201503_cfpb_truth-in-lending-act.pdf* (summarizing amendments to TILA).

authority over covered financial institutions.[47] The Bureau implemented a series of new rules to significantly improve consumer protections for mortgage borrowers.[48] The rules address critical servicer practices including error resolution, prompt crediting of payments, and providing payoff statements. They also include requirements relating to servicer policies and procedures, early intervention for delinquent borrowers, continuity of contact, and procedures for evaluating and responding to loss mitigation applications. These rules protect consumers from detrimental actions by mortgage servicers and give consumers better tools and information when dealing with mortgage servicers. For example, the mortgage servicing rules include:

• Notice of transfer of loan servicing. If a lender or servicer transfers a loan's servicing to a new servicer, the prior servicer must provide a notice to the borrower no less than 15 days before the effective date of transfer, and the transferee servicer must provide a notice not more than 15 days after the effective date of transfer, with limited exceptions.[49] In addition, during the 60-day period beginning on the effective date of transfer, the servicer cannot treat a consumer's payment as late for any purpose (and cannot charge a late fee) if the consumer has made a timely payment to the prior servicer.[50]

• Timely transfer of documents to new servicer. Mortgage servicers are required to maintain policies and procedures reasonably designed to facilitate the transfer of information during servicing transfers.[51] These policies should be tailored to ensure timely transfer of all documents and information in the possession or control of the prior servicer relating to the transferred loan to the new servicer.

• Payoff statements. A servicer must provide a payoff statement, specifying the amount needed to pay the loan in full as of a particular date, within seven business days after receiving the consumer's written request.[52]

• Error resolution procedures. Generally, mortgage servicers must respond to written notices from consumers asserting a servicing error, such as charges for late fees that the servicer lacks a reasonable basis to impose.[53] Within five days of a mortgage servicer receiving a written notice of error, the servicer must provide a timely written response acknowledging receipt.[54] Then the servicer must correct the error or conduct a reasonable investigation and provide a written notice that the error has been corrected or conduct a reasonable investigation and provide the borrower a written notification that no error has occurred, along with the rationale behind the determination, and a statement of the borrower's right to request documents relied upon by the servicer and information on how to request such documents.[55]

• Continuity of contact. Mortgage servicers must maintain policies and procedures designed to assign designated personnel to respond to the consumer's inquiries, and, as applicable, assist the consumer with available loss mitigation options.[56] This gives the delinquent consumers continuity of contact and the ability to access information about the mortgage without being transferred to multiple customer service representatives.

• Record retention. Mortgage servicers are required to retain certain records that document actions taken regarding the mortgage loan account until one year after the date the loan is discharged or servicing is transferred.[57] Records required to be preserved include a schedule of all transactions debited or credited, any notes created by the servicer reflecting communications with the borrowers about the mortgage, and copies of any documents provided by the consumer to the servicer in accordance with error resolution or loss mitigation procedures.[58]

• Early intervention for delinquent borrowers. Mortgage servicers must make a good faith effort to establish live contact with a borrower no later than the 36th day of a borrower's delinquency.[59] No later than the 45th day of delinquency, a servicer must provide a written early intervention notice.[60]

Credit Cards

In 2009, Congress enacted the Credit Card Accountability, Responsibility, and Disclosure Act (CARD Act), establishing new protections for consumers with credit cards.[61] The CARD Act included a number of changes to credit card servicing and payment processing practices. For example, these changes include:

• Timely posting of payments. Credit card companies must credit all payments received by 5 p.m. on the day they are received.[62] If they are received by 5 p.m. on the due date, payments are generally considered to be on-time.

• Periodic billing statements. Credit card companies must have reasonable procedures designed to ensure that billing statements are mailed or delivered at least 21 days before a payment is due.[63] In addition, credit card companies must disclose on the billing statement how long it would take the consumer, including how much it would cost, to pay the full balance on the card by paying only the required minimum payments.[64] The statement must also disclose the monthly payment required to repay the full balance in three years, and the resulting total cost to the consumer, assuming no additional transactions.[65]

• Application of Payments. Credit card companies, upon receipt of a payment in excess of the minimum payment amount due, must first apply the excess to the card balance bearing the highest interest rate, and then to each successive balance bearing the next highest rate of interest, until the payment is exhausted.[66]

Part B: Questions Related to Student Loan Servicing

The Bureau is interested in responses in the following general areas, as well as the specific questions below. Part A of this Request for Information (RFI) provides a general overview of the problems experienced by consumers when repaying student debt.

In the following section, we offer commenters a series of questions to consider when responding to this RFI.

[47] Public Law 111–203.

[48] *See* CFPB Consumer Law and Regulations, *RESPA Procedures—TILA RESPA Integrated Disclosures (applicable for examinations after the August 2015 effective date), and Mortgage Servicing Requirements (January 2014),* available at *http://files.consumerfinance.gov/f/201503_cfpb_regulation-x-real-estate-settlement-procedures-act.pdf* (summarizing amendments to RESPA); *see also,* CFPB Consumer Law and Regulations, *TILA Procedures—TILA RESPA Integrated Disclosures (applicable for examinations after the August 2015 effective date), and Higher-Priced Mortgage Loan Appraisals (January 2014), Escrow Accounts (January 2014), and Mortgage Servicing Requirements (January 2014),* available at *http://files.consumerfinance.gov/f/201503_cfpb_truth-in-lending-act.pdf* (summarizing amendments to TILA).

[49] 12 CFR 1024.33(b).

[50] 12 CFR 1024.33(c).

[51] 12 CFR 1024.38(a), (b)(4).

[52] 12 CFR 1026.36(c)(3).

[53] 12 CFR 1024.35(a), (b).

[54] 12 CFR 1024.35(d).

[55] 12 CFR 1024.35(e).

[56] 12 CFR 1024.40(a).

[57] 12 CFR 1024.38(c)(1).

[58] 12 CFR 1024.38(c)(2).

[59] 12 CFR 1024.39(a).

[60] 12 CFR 1024.39(b).

[61] Pub. L. 111–24. Consumers with credit cards had a number of servicing protections in place under TILA prior to the enactment of the CARD Act, including those related to error resolution, limits on liability and periodic statements.

[62] 15 U.S.C. 1666c(a).

[63] 15 U.S.C. 1666b(a).

[64] 15 U.S.C. 1637(b)(11)(B)(i) and (ii).

[65] 15 U.S.C. 1637(b)(11)(B)(iii).

[66] 15 U.S.C. 1666c(b)(1).

Responses may include answers to the following categories of questions. Part One of this section solicits feedback on questions related to general practices in the student loan servicing industry, including industry practices for borrowers in distress. Part Two seeks comments on the applicability of consumer protections from other consumer financial product markets, including the markets for servicing credit cards and mortgages. Part Three solicits feedback on the availability of data about student loan performance and borrower characteristics during repayment. Respondents are encouraged to provide responses to any of the broad categories of questions outlined below.

Part One: General Questions on Common Industry Practices Related to Student Loan Repayment

The following section seeks to solicit input on common practices, policies, and procedures in the student loan servicing market. Respondents may wish to address any structural features of the student loan servicing market as they relate to specific practices, including but not limited to:

- The traditional compensation model for third-party student loan servicing, including compensation related to default aversion and alternative repayment options;
- Information systems used by student loan servicers, including information systems used to process alternative repayment options, servicing transfers, and furnishing of credit information; or
- Existing federal and state statutory or regulatory protections for student loan borrowers in repayment.

Respondents may also wish to highlight effective or innovative approaches to delivering service, including:

- Practices by incumbents or new entrants in the student loan servicing market;
- Practices by loan servicers in other markets, including but not limited to servicing practices for credit cards and mortgages; or
- Alternative business models to traditional loan servicing that could reduce costs, increase recoveries, or enhance transparency for borrowers.

Practices Related to Student Loan Repayment

(1) Please describe the extent to which issues related to the following common student loan servicing policies and procedures should inform policymakers and market participants considering options to improve the quality of student loan servicing, including but not limited to:

a. Processing, allocation, and application of payments (including partial payments and prepayments);

b. The imposition and disclosure of late fees, including the impact of late fees across billing groups;

c. Transfer of loans between lenders, loan holders, and student loan servicers;

d. The complaint resolution process (including the consumers' ability to adequately request and receive accurate and timely responses for information and corrections related to their account);

e. Furnishing of credit information to credit reporting agencies (including the appropriateness, adequacy, and accuracy of the information furnished);

f. The impact of a single late payment on borrowers' future abilities to avail themselves of repayment benefits, such as interest rate reductions for enrolling in auto-debit;

g. Disclosure, accessibility, and availability of refinance products;

h. Disclosure, accessibility, and availability of options to release a co-signer from their legal obligation to repay a co-signed student loan; or

i. Disclosure, accessibility, and availability of options to discharge or reduce student loan debt in the event of the death or disability of a borrower or co-signer.

Practices Related to Student Loan Repayment for Borrowers in Distress

(2) Please describe the extent to which issues related to the following common student loan servicing policies and procedures should inform policymakers and market participants considering options to improve the quality of student loan servicing for borrowers in distress, including but not limited to:

a. Procedures servicers utilize to ensure that borrowers can avail themselves of alternative repayment options;

b. The circumstances in which a fee occurs or should be permissible, and the manner of disclosure of servicing-related fees, including those imposed for modifications or cessation of payment (*e.g.* forbearance or deferment);

c. The offering and disclosure of variable rate private loans that increase the interest rate based on borrower behavior, including missed payments;

d. Policies and procedures related to acceleration of debts (including the availability and disclosures of co-signer release policies);

e. Disclosure, accessibility, and availability of affordable modification options; or

f. The adequacy and clarity of communication regarding certain borrower rights to discharge debt (*e.g.,* in cases of school misconduct, borrower disability).

Impact of Practices Related to Student Loan Repayment for Borrower Segments With Unique Characteristics

(3) Please identify any unique issues that are specific to certain segments of the student loan borrower population related to the common student loan servicing practices, operations, policies, and procedures described above. Responses should consider borrower segments with unique characteristics, including but not limited to servicemembers, veterans, and their families; first-generation college attendees; current or former attendees of Historically Black Colleges and Universities (HBCU) or Minority-Servicing Institutions (MSI); and older Americans.

Part Two: Applicability of Consumer Protections From Other Consumer Financial Product Markets

Respondents may wish to evaluate existing loan servicing protections for consumers in other markets, including protections for consumers with mortgages and credit cards. The following questions seek to solicit feedback on any conduct requirements required by statute, regulation, consent decree or other means that should inform policymakers and market participants when considering options to improve the quality of student loan servicing. Respondents may wish to consider aspects of loan servicing in these markets that are common across products and may also wish to note differences between types of loan servicing that may make the delivery of service unique to a particular market. Responses need not address all questions in this section and need not be limited to the specific provisions identified below.

Requirements Related to Mortgage Servicing Practices

(4) Describe any mortgage servicing standards or other provisions under RESPA, TILA or the Home Ownership and Equity Protection Act (HOEPA) that should inform policymakers and market participants considering options to improve the quality of student loan servicing. Responses need not be limited to requirements related to:

a. Payment handling. Specific conduct requirements for mortgage servicers related to payment handling, including payoff requests or prompt crediting of payments, and to periodic statements, including the timing of periodic statements or specific periodic

statement disclosures for delinquent borrowers.

b. Servicing transfers. Specific conduct requirements for mortgage servicers in the event of a servicing transfer, including requirements related to the timing of notices in the event of a transfer of servicing, record retention requirements for the transferor servicer, or prohibitions against certain late fees and treating certain payments as late for a fixed period following the transfer of servicing.

c. Error resolution. Specific conduct requirements for mortgage servicers related to error resolution and requests for information, including notices required upon receipt of a written notice of error or request for information, requirements related to investigations and error resolution, requirements related to the production of requested information, and notices required if requested information is not available.

d. Interest rate adjustment notifications. Specific conduct requirements for mortgage servicers related to interest rate adjustment notifications, including notice of interest rate adjustment prior to the first payment at a new rate and notice of rate adjustment prior to the first payment due after the rate adjusts, if payment will change.

e. Loan counseling. Specific conduct requirements for creditors related to homeownership counseling, including the timely provision of information about homeownership counseling organizations or requirements related to the confirmation of consumer's completion of homeownership counseling prior to making a loan that permits negative amortization to a first-time borrower.

Requirements Related to Mortgage Servicing for Borrowers in Distress

(5) Describe any mortgage servicing standards or other provisions under RESPA, TILA, or HOEPA that should inform policymakers and market participants considering options to improve the quality of student loan servicing for distressed borrowers. Responses need not be limited to specific conduct related to:

a. Live contact. Specific conduct requirements for mortgage servicers related to outreach to delinquent borrowers, including the requirement for mortgage servicers to establish or make good faith efforts to establish live contact with borrower early in borrowers' delinquency.

b. Loss mitigation information. Specific conduct requirements for mortgage servicers related to the disclosure of loss mitigation options, including the requirement for mortgage servicers to maintain policies and procedures reasonably designed to ensure that servicer personnel assigned to a delinquent borrower provide the borrower with accurate information about loss mitigation options and actions the borrower must take to be evaluated for such loss mitigation options.

c. Timing requirements for foreclosure filings. Specific conduct requirements for mortgage servicers related to timing for foreclosure filings, including the specific prohibition on mortgage servicers from making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process until after a borrower becomes delinquent for a certain period of time. Respondents may wish to contrast these requirements with conduct requirements in place related to servicing student loans in late-stage delinquency.

d. Assignment of continuity of contact personnel. Specific conduct requirements for mortgage servicers related to ensuring borrowers can access customer service personnel, including the requirement for mortgage servicers to maintain policies and procedures reasonably designed to achieve the objective of assigning continuity of contact personnel (which can be one or a team of personnel) to a delinquent borrower who will be available via telephone, and will provide a live response to a borrower immediately or in a timely manner.

e. Conduct by continuity of contact personnel. Specific conduct requirements for mortgage servicers related to customer service provided by continuity of conduct personnel, including the requirement for mortgage servicers to have reasonable policies and procedures reasonably designed to ensure that assigned continuity of contact personnel retrieve in a timely manner written information the borrower provided to the servicer (or prior servicers) in connection with a loss mitigation application and provide such information to other persons required to evaluate a borrower for loss mitigation options made available by the servicer, if applicable.

f. Prohibition on recommending default. Specific conduct requirements for creditors related to conditions under which a creditor can recommend refinancing of a high-cost mortgage, including a prohibition on recommending default on an existing loan.

g. Prohibition on certain fees. Specific conduct requirements for creditors related to fees charged to borrowers, including the requirement that creditors, servicers and assignees cannot charge a fee to modify, defer, renew, extend, or amend a high-cost mortgage, the restriction of late fees to four percent of the past due payment and rules for imposing late fees when a consumer resumes making payments after missing one or more payments, or the limitation on the imposition of fees for payoff.

Requirements Related to Servicing Practices in the Credit Card Market

(6) Describe any protections afforded to consumers with credit cards, including but not limited to protections under the Credit CARD Act of 2009 (15 U.S.C. 1637), to inform policymakers and market participants considering options to improve the quality of student loan servicing. Responses should consider, but should not be limited to:

a. Notice of rate increases and significant changes. Specific conduct requirements for card issuers related to written notice of an increase in an annual percentage rate or any other significant change, including the requirement that such notice be sent 45 days prior to the effective date of the rate increase or change.

b. Notice of certain penalties for late payments. Specific conduct requirements for card issuers related to written notices required in response to borrowers' failure to make a minimum payment within 60 days of the due date, including the notice requirement triggered when a card issuer increases the APR or fees.

c. Timing of periodic statements. Specific conduct requirements for card issuers related to the timing of periodic statements, including the requirement that a creditor may not treat a payment on an open-end consumer credit plan as late for any purpose, unless the creditor has adopted reasonable procedures designed to ensure that each periodic statement is mailed or delivered to the consumer no later than 21 days before the payment due date.

d. Posting of payments. Specific conduct requirements for card issuers related to the posting of payments, including the requirement that credit card companies credit or treat as on time all payments received by 5 p.m. on the day they are received.

e. Fees for processing payments. Specific conduct requirements for card issuers related to fees for processing payments, including the requirement that a creditor may not impose a separate fee to allow the borrower to repay an extension of credit or finance charge, such as a fee for processing a payment, unless such payment involves

an expedited service by a service representative of the creditor.

f. Application of payments. Specific conduct requirements for card issuers related to the application of payments, including the requirement that credit card companies upon receipt of a payment in excess of the minimum payment amount due, must first apply the excess to the card balance bearing the highest interest rate, and then to each successive balance bearing the next highest rate of interest, until the payment is exhausted.

g. Limitations on changes to fees, charges and annual percentage rates. Specific conduct requirements for card issuers related to certain changes to terms, including the requirement that a card issuer may not elect to increase the annual percentage rate or assess fees or other charges, with some exceptions.

h. Disclosures related to payments and interest charges. Specific conduct requirements for card issuers related to disclosures about payment application and interest charges, including the requirement that credit card issuer provide disclosures on consumers' periodic statements warning them that if they make only minimum payments on their accounts, they will pay more in interest, and it will take longer to pay off their account balance.

i. Online publication of certain documents. Specific conduct requirements for card issuers related to the publication of certain documents online, including the requirement for a creditor to establish and maintain an Internet site and post the written agreement between the creditor and the consumer for each credit card account under an open-end consumer credit plan and that the creditor provide in electronic format the credit card agreement on the creditor's Web site.

Other Requirements Related to Loan Servicing

(7) To what extent should the specific conduct requirements included in settlements between financing services providers and state law enforcement agencies inform policymakers and market participants considering options to improve the quality of student loan servicing? Respondents may wish to address, but need not be limited to, specific requirements contained in the National Mortgage Settlement (NMS), including protections related to members of the military and their families.

(8) Describe any other standards of conduct required by statute, regulation, consent decree or other means that should inform policymakers and market participants when considering options to improve the quality of student loan servicing, including but not limited to, provisions related to:

a. Payment handling and allocations;

b. Periodic statement requirements;

c. Disclosures required on periodic statements;

d. Servicing transfers;

e. Dispute resolution procedures;

f. Request for information;

g. Interest rate adjustment notifications;

h. The imposition of fees;

i. Imposition of interest rate penalties in response to changes in customer behavior;

j. The availability and accessibility of affordable repayment options; or

k. The ability for a lender to place a borrower or co-signer in default based on consumer behavior other than missed payments.

(9) Describe the extent to which the existing statutory or regulatory protections afforded to consumers under the following laws should inform policymakers and market participants considering options to improve the quality of student loan servicing:

a. Truth in Lending Act;

b. Real Estate Settlement Procedures Act;

c. Fair Credit Reporting Act;

d. Fair Debt Collection Practices Act;

e. Electronic Funds Transfer Act;

f. Higher Education Act; or

g. Federal Trade Commission Act.

Part Three: Impact of Limits on Availability of Data About Student Loan Servicing and Student Loan Repayment on Borrowers

The following section seeks to solicit input about the availability of data on student loan performance and on borrower characteristics during repayment. Respondents should consider existing data sources and gaps in availability that should inform policymakers and market participants considering options to improve the quality of student loan servicing.

(10) To what extent do available data and reports about student loan repayment reveal usage and specific risks to student loan borrowers, including those related to:

a. Loan performance, delinquency, and default;

b. Utilization of income-driven payment plans and other alternative repayment options; or

c. Utilization of repayment options that result in temporary cessation of payment, including deferment and forbearance.

(11) To what extent do gaps in available data create problems for policymakers or other stakeholders seeking to evaluate consumer risks as it relates to student loan servicing?

(12) To what extent are publicly available data sets in other consumer financial markets (*e.g.,* the Bureau's Home Mortgage Disclosure Act microdata, the OCC's monthly mortgage metrics, and the Bureau's Credit Card Agreement Database) instructive as policymakers consider ways to better afford the public and regulators the ability monitor trends in the market and assess consumer risks?

Authority: 12 U.S.C. 5511(c).

Dated: May 15, 2015.

Christopher D'Angelo,

Chief of Staff, Bureau of Consumer Financial Protection.

[FR Doc. 2015–12276 Filed 5–20–15; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2015–OS–0052]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice to alter a System of Records.

SUMMARY: The Office of the Secretary of Defense proposes to alter a system of records, DWHS E02, entitled ''Freedom of Information Act Case Files'' in its inventory of record systems subject to the Privacy Act of 1974, as amended. Information is being collected and maintained in this system for the purpose of processing FOIA requests and administrative appeals; for participating in litigation regarding agency action on such requests and appeals; and for assisting the DoD in carrying out any other responsibilities under FOIA.

DATES: Comments will be accepted on or before June 22, 2015. This proposed action will be effective the date 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 the **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy and Civil Liberties Office Web site at *http://dpcld.defense.gov/.*The proposed system report, as required by U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on May 15, 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: May 18, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DWHS E02

SYSTEM NAME:

Freedom of Information Act Case Files (January 28, 2013, 78 FR 5783).

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with ''Freedom of Information Act (FOIA) Case Files.''

SYSTEM LOCATION:

Delete entry and replace with ''Washington Headquarters Services (WHS) records: Freedom of Information Division, Executive Services Directorate, Washington Headquarters Services, 4800 Mark Center Drive, Alexandria, VA 22350–3100.

DoD Education Activity (DoDEA) records: Department of Defense Education Activity, Freedom of Information Act Requester Service Center, Executive Services Office, 4800 Mark Center Drive, Alexandria, VA 22350–1400.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Individuals who have requested documents under the provisions of the FOIA from the Office of the Secretary of Defense/Joint Staff (OSD/JS), and the DoDEA, FOIA Requester Service Centers; individuals whose requests and/or records have been processed under the FOIA and referred by other Federal agencies; and attorneys representing individuals submitting such requests.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Records created or compiled in response to FOIA requests and administrative appeals, *i.e.,* original requests and administrative appeals (including requesters name, mailing address, FOIA case number, date and subject of the request, with some requesters also voluntarily submitting additional information such as telephone numbers and email addresses), responses to such requests and administrative appeals; all related memoranda, correspondence, notes, and other related or supporting documentation; and copies of requested records and records under administrative appeal.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''5 U.S.C. 552, Freedom of Information Act; 10 U.S.C. 113, Secretary of Defense; DoD Directive 5400.07, DoD Freedom of Information Act (FOIA) Program; DoD Regulation 5400.7–R, DoD Freedom of Information Act Program; and Administrative Instruction 108, Office of the Secretary of Defense and Joint Staff (JS) Freedom of information Act (FOIA) Program.''

PURPOSE(S):

Delete entry and replace with ''Information is being collected and maintained for the purpose of processing FOIA requests and administrative appeals; for participating in litigation regarding agency action on such requests and appeals; and for assisting the DoD in carrying out any other responsibilities under the FOIA.''

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with ''In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the National Archives and Records Administration, Office of Government Information Services (OGIS), to the extent necessary to fulfill its responsibilities in 5 U.S.C. 552(h), to review administrative agency policies, procedures and compliance with the Freedom of Information Act (FOIA), and to facilitate OGIS' offering of mediation services to resolve disputes between persons making FOIA requests and administrative agencies.

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 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 DoD, 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.

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 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''*.

* * * * *

RETRIEVABILITY:

Delete entry and replace with ''Retrieved by name of requester, subject matter, date of request, and FOIA request case number.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''WHS records: Chief, Freedom of Information Division, Executive Services Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

DoDEA records: Chief, Department of Defense Education Activity, Freedom of Information Act Requester Service Center, Executive Services Office, 4800 Mark Center Drive, Alexandria, VA 22350–1400.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to:

WHS records: Chief, Freedom of Information Division, Executive Services Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

DoDEA records: Chief, Department of Defense Education Activity, Freedom of Information Act Requester Service Center, Executive Services Office, 4800 Mark Center Drive, Alexandria, VA 22350–1400.

Signed written requests should include the requester's name, mailing address, and name and number of this system of records notice.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system of records should address written inquiries to:

WHS records: Office of the Secretary of Defense/Joint Staff Freedom of Information Act Requester Service Center, Office of Freedom of Information, Washington Headquarters, 1155 Defense Pentagon, Washington, DC 20301–1155.

DoDEA records: Department of Defense Education Activity, Freedom of Information Act Requester Service Center, Executive Services Office, 4800 Mark Center Drive, Alexandria, VA 22350–1400.

Note: For DoDEA records, a non-custodial parent or legal guardian requesting records pertaining to his or her minor child or ward must also provide evidence of that relationship. For example, such parent or legal guardian may provide a copy of a divorce decree or a child custody or guardianship order that includes the child's name.

Requests for information should be in writing, signed, and provide evidence of the requester's identity, such as a copy of a photo ID or passport or similar document bearing the requesters signature. Requests must contain the requesters name, mailing address, FOIA case number, name and number of this system of records notice and be signed.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The 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:

Delete entry and replace with ''Individuals who submit initial requests and administrative appeals pursuant to the FOIA; the agency records searched in the process of responding to such requests and appeals; DoD personnel assigned to handle such requests and appeals; other agencies or entities that have referred to the DoD requests concerning DoD records or that have consulted with the DoD regarding the handling of particular requests; submitters of records; and information from those that have provided assistance to the DoD in making FOIA access determinations.''

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Delete entry and replace with ''During the course of a FOIA action, exempt materials from other systems of records may, in turn, become part of the case records in this system. To the extent that copies of exempt records from those other systems of records are entered into this FOIA case record, WHS, and the DoDEA, hereby claim the same exemptions for the records from those other systems that are entered into this system, as claimed for the original primary systems of records which they are a part.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c), and (e) and published in 32 CFR part 311. For additional information contact the system manager.''

[FR Doc. 2015–12334 Filed 5–20–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2015–OS–0053]

Proposed Collection; Comment Request

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Defense Logistics Agency announces a proposed public information collection and seeks public comment on the provisions thereof. 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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by July 20, 2015.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking 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, docket number and title 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.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Christopher Hall, Office of Small Business Programs, Program Manager, Procurement Technical Assistance Program, Defense Logistics Agency (email: *christopher.hall@dla.mil*), Phone: (703) 767–3297.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Procurement Technical Assistance Center Cooperative Agreement Performance Report; DLA Form 1806; OMB Control Number 0704–0320.

Needs and Uses: The information collection requirement is necessary as the Defense Logistics Agency uses the report as the principal instrument for measuring the performance of Cooperative Agreement awards made under 10 U.S.C. chapter 142.

Affected Public: Not-for-profit institutions; state, local or tribal government; individuals or households.

Annual Burden Hours: 2,660.

Number of Respondents: 95.

Responses per Respondent: 4.

Annual Responses: 380.

Average Burden per Response: 7 hours.

Frequency: Quarterly.

Each cooperative agreement award recipient submitted goals and objectives in their application that were subsequently incorporated into their cooperative agreement awards. The level of achievement of these goals and the funds expended in the process of conducting the program is measured by the report. The government's continued funding of a cooperative agreement and the decision to exercise an option award for a cooperative agreement award is based to a significant degree on the award holder's current performance as measured by the report. Information from the report is also used to identify programs that may be in need of assistance and/or increased surveillance.

Dated: May 18, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015–12345 Filed 5–20–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2015–OS–0051]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice to alter a System of Records.

SUMMARY: The Office of the Secretary of Defense proposes to alter a system of records, DCIO 01, entitled ''Defense Industrial Base (DIB) Cyber Security/Information Assurance Records'' to facilitate the sharing of DIB cybersecurity threat information and best practices to DIB companies to enhance and supplement DIB participant capabilities to safeguard DoD information that resides on, or transits, DIB unclassified information systems. When incident reports are received, DoD Cyber Crime Center (DC3) personnel analyze the information reported for cyber threats and vulnerabilities in order to develop response measures as well as improve U.S. Government and DIB understanding of advanced cyber threat activity. DoD may work with a DIB company on a more detailed, digital forensics analysis or damage assessment, which may include sharing of additional electronic media/files or information regarding the incident or the affected systems, networks, or information.

DATES: Comments will be accepted on or before June 22, 2015. This proposed action will be effective the date 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 the Defense Privacy and Civil Liberties Division Web site at *http://dpcld.defense.gov/.*

The proposed system report, as required by U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on May 15, 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: May 18, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DCIO 01

Defense Industrial Base (DIB) Cyber Security/Information Assurance Records (May 18, 2012, 77 FR 29616).

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with ''Defense Industrial Base (DIB) Cybersecurity (CS) Activities Records.''

SYSTEM LOCATION:

Delete entry and replace with ''Defense Industrial Base (DIB) Cybersecurity Program, 6000 Defense Pentagon, ATTN: DIB CS Program, Washington, DC 20301–6000.

DoD Cyber Crime Center, 911 Elkridge Landing Road, Linthicum, MD 21090–2991.''

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''DIB company point of contact information includes name, company name and mailing address, work division/group, work email, and work telephone number.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 2224, Defense Information Assurance Program; 44 U.S.C. 3544, Federal Agency Responsibilities; Public Law 113–58, National Defense Authorization Act for Fiscal Year 2015, Section 1632, Reporting on Cyber Incidents with Respect to Networks and Information Systems of Operationally Critical Contractors (10 U.S.C. Chapter 19, Cyber Matters); Presidential Policy Directive PPD–21, Critical Infrastructure, Security and Resilience; DoD Directive (DoDD) 3020.40, DoD Policy and Responsibilities for Critical Infrastructure; DoDD 5505.13E, DoD Executive Agent (EA) for the DoD Cyber Crime Center (DC3); DoD Manual 3020.45, Defense Critical Infrastructure Program (DCIP): DoD Mission-Based Critical Asset Identification Process (CAIP); and DoD Instruction 5205.13, Defense Industrial Base (DIB) Cyber Security/Information Assurance (CS/IA) Activities.''

PURPOSE(S):

Delete entry and replace with ''To facilitate the sharing of DIB cybersecurity threat information and best practices to DIB companies to enhance and supplement DIB participant capabilities to safeguard DoD information that resides on, or transits, DIB unclassified information systems. When incident reports are received, DoD Cyber Crime Center (DC3) personnel analyze the information reported for cyber threats and vulnerabilities in order to develop response measures as well as improve U.S. Government and DIB understanding of advanced cyber threat activity. DoD may work with a DIB company on a more detailed, digital forensics analysis or damage assessment, which may include sharing of additional electronic media/files or information regarding the incident or the affected systems, networks, or information.''

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with ''In addition to the 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:

DIB company point of contact information may be provided to other participating DIB companies to facilitate the sharing of information and expertise related to the DIB CS Program including cyber threat information and best practices, and mitigation strategies.

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.

Counterintelligence Purpose Routine Use: A record from a system of records maintained by a DoD Component may be disclosed as a routine use outside the DoD or the U.S. Government for the purpose of counterintelligence activities authorized by U.S. Law or Executive Order or for the purpose of enforcing laws which protect the national security of the United States.

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.

The DoD Blanket Routine Uses set forth at the beginning of the Office of the Secretary of Defense/Joint Staff compilation of systems of records notices may apply to this system. The complete list of the DoD blanket routine uses can be found online at: *http://dpcld.defense.gove/Privacy/SORNsIndex/BlanketRoutineUses.aspx*

Any release of information contained in this system of records outside the DoD will be compatible with the purpose(s) for which the information is collected and maintained.''

* * * * *

RETRIEVABILITY:

Delete entry and replace with ''DIB Company POC information is retrieved primarily by company name and work division/group and secondarily by individual POC name.

DIB cyber incident reports are primarily retrieved by incident number but may also be retrieved by company name. They are not retrieved by the individual name.''

SAFEGUARDS:

Delete entry and replace with ''Records are accessed by personnel with security clearances who are properly screened, trained, under a signed confidentiality agreement, and determined to have 'need to know'. Access to records requires DoD Common Access Card (CAC) and PIN. Physical access controls include security guards, identification badges, key cards, cipher locks, and combination locks.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Director, DIB Cybersecurity, 6000 Defense Pentagon, ATTN: DIB CS Program, Washington, DC 20301–6000.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to Director, DIB Cybersecurity Office, 6000 Defense Pentagon, ATTN: DIB CS Program, Washington, DC 20301–6000.

Signed, written requests should contain the individual's name, and company name and work division/group.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system of records should address a written request to the Office of the Secretary of Defense/Joint Staff (OSD/JS), Freedom of Information Act (FOIA) Requester Service Center, 1155 Defense Pentagon, Washington, DC 20301–1155.

Signed, written requests should contain the individual's name, company name and work division/group, and the name and number of this system of records notice.''

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with ''The individual and participating DIB companies.''

* * * * *

[FR Doc. 2015–12324 Filed 5–20–15; 8:45 am]

BILLING CODE 5001–06–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act Notice

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the provisions of the Government in the Sunshine Act, 5 U.S.C. 552b, notice is hereby given of the Defense Nuclear Facilities Safety Board's (Board) public business meeting described below. The Board invites any interested persons or groups to present any comments, technical information, or data concerning issues related to the matters to be considered.

DATES: 9:00 a.m.–3:00 p.m., June 3, 2015.

ADDRESSES: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Room 352, Washington, DC 20004.

STATUS: Open. The Board has determined that an open meeting furthers the public interest underlying the Board's mission and the Government in the Sunshine Act.

MATTERS TO BE CONSIDERED: The meeting will proceed in accordance with the meeting agenda, which is posted on the Board's public Web site at *www.dnfsb.gov.* The Board is expected to open the meeting with Board Member statements. The Board will then hear testimony from the three Office Directors. First, the General Manager will provide testimony on the existing Board performance metrics. Next, the Acting General Counsel will discuss existing Board policies and their underlying basis. Finally, the Technical Director will examine the Board's technical organizational structure and basis. The General Manager is then expected to provide an overview of planned responses to matters raised in recent organizational assessments conducted by outside entities. These include assessments by LMI and by the Nuclear Regulatory Commission Office of the Inspector General, which serves as the Board's inspector general. The Board will then entertain comments, if any, from the public. Following a lunch break, the Board is then expected to engage in deliberations in accordance with the Board's procedures concerning meetings. The open meeting will adjourn at 3:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mark Welch, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Suite 700, Washington, DC 20004–2901, (800) 788–4016. This is a toll-free number.

SUPPLEMENTARY INFORMATION: Public participation in the meeting is invited from 11:45 a.m. to 12:30 p.m. Requests to speak may be submitted in writing or by telephone. The Board asks that commenters describe the nature and scope of their oral presentations. Those who contact the Board prior to close of business on June 2, 2015, will be scheduled to speak. At the beginning of the meeting, the Board will post a schedule for speakers at the entrance to the meeting room. Anyone who wishes to comment or provide technical information or data may do so in writing, either in lieu of, or in addition to, making an oral presentation. Documents will be accepted at the meeting. The meeting record will close when the meeting is adjourned at 3:00 p.m. The meeting will be presented live through Internet video streaming. A link to the meeting will be available on the Board's Web site (*www.dnfsb.gov*). A transcript of the meeting, along with a DVD video recording, will be made available by the Board for viewing on the Board's public Web site, and in the reading room of the Board's Washington, DC office.

Date: May 18, 2015.

Jessie H. Roberson,

Vice Chairman.

[FR Doc. 2015–12393 Filed 5–19–15; 4:15 pm]

BILLING CODE 3670–01–P

DEPARTMENT OF EDUCATION

National Board for Education Sciences; Announcement of an Open Meeting

AGENCY: Institute of Education Sciences, U.S. Department of Education.

ACTION: Announcement of an open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming meeting of the National Board for Education Sciences (NBES). The notice also describes the functions of the Committee. Notice of this meeting is required by Section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend the meeting.

DATES: The NBES meeting will be held on June 8, 2015, from 9:00 a.m. to 4:15 p.m. Eastern Standard Time.

ADDRESSES: 80 F Street NW., Large Board Room, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Ellie Pelaez, Designated Federal Official, NBES, U.S. Department of Education, 555 New Jersey Avenue NW., Room 600 E, Washington, DC 20208; phone: (202) 219–0644; fax: (202) 219–1402; email: *Ellie.Pelaez@ed.gov.*

SUPPLEMENTARY INFORMATION:

NBES's Statutory Authority and Function

The National Board for Education Sciences is authorized by Section 116 of the Education Sciences Reform Act of 2002 (ESRA), *20 U.S.C. 9516.* The Board advises the Director of the Institute of Education Sciences (IES) on, among other things, the establishment of activities to be supported by the Institute and the funding for applications for grants, contracts, and cooperative agreements for research after the completion of peer review. The Board also reviews and evaluates the work of the Institute.

Meeting Agenda

On June 8, 2015, starting at 9:00 a.m., the Board meeting will commence and members will approve the agenda. From 9:05 a.m. to 10:00 a.m., the Board will hear presentations from the Commissioners of the IES Centers for Education Research, Special Education Research, Education Evaluation and Regional Assistance, and Education Statistics. This session will be followed by a question and answer period regarding the Commissioners' reports. A break will take place from 10:00 a.m. to 10:15 a.m.

The Board meeting will resume from 10:15 a.m. to 12:00 p.m. when the Board will discuss ''Improving Education: The Research Road Ahead.'' Susanna Loeb, Vice Chairperson of NBES, will provide opening remarks followed by a panel discussion with Anthony Bryk, NBES member and President, Carnegie Foundation for the Advancement of Teaching; Tom Kane, Walter H. Gale Professor of Education and Economics, Harvard University; and James Kemple, The Research Alliance for New York City Schools. Roundtable discussion by board members will take place after the panel discussion. The meeting will

break for lunch from 12:00 p.m. to 1:00 p.m.

From 1:00 p.m. to 2:45 p.m., the board will participate in a discussion on the Regional Educational Laboratories (RELs). Ruth Neild, Commissioner, National Center on Educational Evaluation and Regional Assistance, will provide opening remarks, followed by a panel discussion with Barbara Foorman, Francis Eppes Professor of Education and Director of the REL Southeast, Florida State University; Nikola Filby, Director of the REL West, WestEd; and Neal Finkelstein, Associate Director of the REL West, WestEd. Roundtable discussion by board members will take place after the panel discussion. A break will take place from 2:45 p.m. to 3:00 p.m.

The meeting will resume at 3:00 p.m. to 4:00 p.m. when the Board will discuss the ''Nexus between Student Drug Use and Students Achievement.'' Thomas Brock, Commissioner, National Center for Education Research, will provide opening remarks, followed by a panel discussion.

Closing remarks will take place from 4:00 p.m. to 4:15 p.m., with adjournment scheduled for 4:15 p.m.

Submission of Comments Regarding the Board's Policy Recommendations

There will not be an opportunity for public comment. However, members of the public are encouraged to submit written comments related to NBES to Ellie Pelaez (see contact information above). A final agenda is available from Ellie Pelaez (see contact information above) and is posted on the Board Web site *http://ies.ed.gov/director/board/agendas/index.asp.*

Access to Records of the Meeting

The Department will post the official report of the meeting on the NBES Web site no later than 90 days after the meeting. Pursuant to the FACA, the public may also inspect the materials at 555 New Jersey Avenue NW., 6th Floor, Washington, DC, by emailing *Ellie.Pelaez@ed.gov* or by calling (202) 219–0644 to schedule an appointment.

Reasonable Accommodations

The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (*e.g.,* interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice by or before June 1, 2015. Although we will attempt to meet a request received after June 1, 2015, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

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.

Authority: Section 116 of the Education Sciences Reform Act of 2002 (ESRA), *20 U.S.C. 9516.*

Sue Betka,

Acting Director, Institute of Education Science.

[FR Doc. 2015–12320 Filed 5–20–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF EDUCATION

Announcement of an Open Public Meeting

AGENCY: National Advisory Council on Indian Education (NACIE or Council), U.S. Department of Education.

ACTION: Announcement of an Open Public Meeting.

SUMMARY: This notice sets forth the schedule of an upcoming public meeting conducted by the National Advisory Council on Indian Education (NACIE). Notice of the meeting is required by section 10(a)(2) of the Federal Advisory Committee Act and intended to notify the public of its opportunity to attend.

DATES: The NACIE meeting will be held on June 1–2, 2015; June 1, 2015—9:00 a.m.–5:00 p.m. Eastern Daylight Saving Time, June 2, 2015—9:00 a.m.–1:00 p.m. Eastern Daylight Saving Time.

The meeting location is in Washington, DC.

ADDRESSES: U.S. Department of Education, Office of Elementary and Secondary Education, 400 Maryland Ave. SW., Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Tina Hunter, Designated Federal Official, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202. Telephone: 202–205–8527. Fax: 202–205–0310.

SUPPLEMENTARY INFORMATION: NACIE's Statutory Authority and Function: The National Advisory Council on Indian Education is authorized by § 7141 of the Elementary and Secondary Education Act. The Council is established within the Department of Education to advise the Secretary of Education on the funding and administration (including the development of regulations, and administrative policies and practices) of any program over which the Secretary has jurisdiction and includes Indian children or adults as participants or programs that may benefit Indian children or adults, including any program established under Title VII, Part A of the Elementary and Secondary Education Act. The Council submits to the Congress, not later than June 30 of each year, a report on the activities of the Council that includes recommendations the Council considers appropriate for the improvement of Federal education programs that include Indian children or adults as participants or that may benefit Indian children or adults, and recommendations concerning the funding of any such program.

One of the Council's responsibilities is to develop and provide recommendations to the Secretary of Education on the funding and administration (including the development of regulations, and administrative policies and practices) of any program over which the Secretary has jurisdiction that can benefit Indian children or adults participating in any program which could benefit Indian children.

All attendees must RSVP for the meeting and sign up to provide a public comment no later than May 29, 2015. Speakers will be allowed to provide comments for no more than five (5) minutes. Members of the public interested in submitting written comments may do so via email at *oese@ed.gov.* Comments should pertain to the work of NACIE and/or the Office of Indian Education.

Meeting Agenda: The purpose of the meeting is to convene the Council to continue its responsibilities for developing recommendations to the Secretary of Education on the funding and administration (including the development of regulations, and administrative policies and practices) of any program over which the Secretary has jurisdiction and includes Indian

children or adults as participants or programs that may benefit the Indian children or adults, including any programs under Title VII, Part A of the Elementary and Secondary Education Act, and conduct discussions on the development of the report to Congress that should be submitted no later than June 30, 2015.

Access to Records of the Meeting: The Department will post the official report of the meeting on the OESE Web site at: *http://www2.ed.gov/about/offices/list/oese/index.html?src=oc* 21 days after the meeting. Pursuant to the FACA, the public may also inspect the materials at the Office of Indian Education, United States Department of Education, 400 Maryland Avenue SW., Washington, DC 20202, Monday–Friday, 8:30 a.m. to 5:00 p.m. Eastern Daylight Saving Time or by emailing *TribalConsultation@ed.gov* or by calling Terrie Nelson on (202) 401–0424 to schedule an appointment.

Reasonable Accommodations: The hearing site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (*e.g.,* interpreting service, assistive listening device, or materials in an alternate format), notify Terrie Nelson no later than May 25, 2015. Although we will attempt to meet a request received after request due date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to make arrangements.

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.

Authority: The National Advisory Council on Indian Education is authorized by Section 7141 of the Elementary and Secondary Education Act.

Deborah S. Delisle,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2015–12265 Filed 5–20–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC15–141–000.
Applicants: Vantage Commodities Financial Services II, LLC, Iron Energy LLC.
Description: Application for disposition of jurisdictional facilities of Iron Energy, LLC.
Filed Date: 5/14/15.
Accession Number: 20150514–5227.
Comments Due: 5 p.m. ET 6/4/15.

Docket Numbers: EC15–142–000.
Applicants: energy.me midwest llc, Agera Energy LLC.
Description: Joint Application for Authorization Under Section 203 of the Federal Power Act and Request for Confidential Treatment and Waivers of energy.me midwest llc and Agera Energy LLC.
Filed Date: 5/15/15.
Accession Number: 20150515–5130.
Comments Due: 5 p.m. ET 6/5/15.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2137–012; ER15–103–003; ER14–2799–004; ER14–2798–004; ER14–25–008; ER14–2187–006; ER12–645–012; ER12–164–010; ER12–161–011; ER11–4046–011; ER11–4044–012; ER11–3872–013; ER10–2764–011; ER10–2141–012; ER10–2140–012; ER10–2139–012; ER10–2138–012; ER10–2136–009; ER10–2135–009; ER10–2134–009; ER10–2133–012; ER10–2132–011; ER10–2131–012; ER10–2130–011; ER10–2129–009; ER10–2128–011; ER10–2127–011; ER10–2125–012; ER10–2124–011.
Applicants: Beech Ridge Energy LLC, Beech Ridge Energy II LLC, Beech Ridge Energy Storage LLC, Bishop Hill Energy LLC, Bishop Hill Energy III LLC, California Ridge Wind Energy LLC, Forward Energy LLC, Grand Ridge Energy LLC, Grand Ridge Energy II LLC, Grand Ridge Energy III LLC, Grand Ridge Energy IV LLC, Grand Ridge Energy V LLC, Grand Ridge Energy Storage LLC, Gratiot County Wind LLC, Gratiot County Wind II LLC, Grays Harbor Energy LLC, Hardee Power Partners Limited, Invenergy Cannon Falls LLC, Invenergy Nelson LLC, Invenergy TN LLC, Judith Gap Energy LLC, Prairie Breeze Wind Energy LLC, Sheldon Energy LLC, Spindle Hill Energy LLC, Spring Canyon Energy LLC, Stony Creek Energy LLC, Willow Creek Energy LLC, Wolverine Creek Energy LLC, Vantage Wind Energy LLC.
Description: Notification of Change in Facts of Beech Ridge Energy LLC, et. al.
Filed Date: 5/14/15.
Accession Number: 20150514–5219.
Comments Due: 5 p.m. ET 6/4/15.

Docket Numbers: ER10–3071–005; ER10–3074–005; ER10–3075–005; ER10–3076–005; ER10–3077–005; ER15–876–002; ER14–1342–002.
Applicants: CalPeak Power—Border LLC, CalPeak Power—Enterprise LLC, CalPeak Power—Panoche LLC, CalPeak Power—Vaca Dixon LLC, CalPeak Power LLC, Malaga Power, LLC, Midway Peaking, LLC.
Description: Notice of Non-Material Change in Status of the CalPeak Project Companies.
Filed Date: 5/15/15.
Accession Number: 20150515–5122.
Comments Due: 5 p.m. ET 6/5/15.

Docket Numbers: ER12–91–009.
Applicants: Duke Energy Ohio, Inc., Duke Energy Kentucky, Inc., PJM Interconnection, L.L.C.
Description: Compliance filing per 35: Compliance Filing ER12–91 and ER12–92 to be effective 1/1/2012.
Filed Date: 5/15/15.
Accession Number: 20150515–5191.
Comments Due: 5 p.m. ET 6/5/15.

Docket Numbers: ER14–2852–001.
Applicants: Westar Energy, Inc.
Description: Compliance filing per 35: Compliance Filing, Revising Formula Rate Protocols, TFR to be effective 3/1/2015.
Filed Date: 5/14/15.
Accession Number: 20150514–5198.
Comments Due: 5 p.m. ET 6/4/15.

Docket Numbers: ER15–1012–001.
Applicants: L'Anse Warden Electric Company.
Description: Compliance filing per 35: Tariff Amendment to be effective 4/7/2015.
Filed Date: 5/15/15.
Accession Number: 20150515–5085.
Comments Due: 5 p.m. ET 6/5/15.

Docket Numbers: ER15–1718–000.
Applicants: Chanarambie Power Partners, LLC, Condon Wind Power, LLC, Storm Lake Power Partners II, LLC, Storm Lake Power Partners I LLC, Lake Benton Power Partners LLC, ALLETE Clean Energy, Inc., ALLETE, Inc.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): Notice of Non-Material Change in Status to be effective 7/13/2015.
Filed Date: 5/14/15.
Accession Number: 20150514–5195.
Comments Due: 5 p.m. ET 6/4/15.

Docket Numbers: ER15–1719–000.
Applicants: R.E. Ginna Nuclear Power Plant, LLC.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Normal filing to be effective 4/1/2015.
Filed Date: 5/14/15.
Accession Number: 20150514–5199.
Comments Due: 5 p.m. ET 6/4/15.

Docket Numbers: ER15–1720–000.
Applicants: Southern California Edison Company.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): GIA and Distribution Service Agreement with Golden Solar to be effective 5/16/2015.
Filed Date: 5/15/15.
Accession Number: 20150515–5002.
Comments Due: 5 p.m. ET 6/5/15.

Docket Numbers: ER15–1721–000.
Applicants: energy.me midwest llc.
Description: Initial rate filing per 35.12 Market Based Rate Tariff to be effective 7/15/2015.
Filed Date: 5/15/15.
Accession Number: 20150515–5046.
Comments Due: 5 p.m. ET 6/5/15.

Docket Numbers: ER15–1722–000.
Applicants: Longview Power, LLC.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Seller Category and Miscellaneous Tariff Revisions to be effective 5/16/2015.
Filed Date: 5/15/15.
Accession Number: 20150515–5081.
Comments Due: 5 p.m. ET 6/5/15.

Docket Numbers: ER15–1723–000.
Applicants: Lost Hills Solar, LLC.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Lost Hills Solar Tariff Amendment Filing to be effective 5/16/2015.
Filed Date: 5/15/15.
Accession Number: 20150515–5114.
Comments Due: 5 p.m. ET 6/5/15.

Docket Numbers: ER15–1724–000.
Applicants: Blackwell Solar, LLC.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Blackwell Solar Tariff Amendment Filing to be effective 5/16/2015.
Filed Date: 5/15/15.
Accession Number: 20150515–5119.
Comments Due: 5 p.m. ET 6/5/15.

Docket Numbers: ER15–1725–000.
Applicants: WSPP Inc.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Normal filing Schedule Q to be effective 7/15/2015.
Filed Date: 5/15/15.
Accession Number: 20150515–5121.
Comments Due: 5 p.m. ET 6/5/15.

Docket Numbers: ER15–1726–000.
Applicants: Geodyne Energy, LLC.
Description: Tariff Withdrawal per 35.15: Geodyne Tariff Cancellation to be effective 5/31/2015.
Filed Date: 5/15/15.
Accession Number: 20150515–5176.
Comments Due: 5 p.m. ET 6/5/15.

Docket Numbers: ER15–1727–000.
Applicants: Nevada Power Company.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): OATT Revisions to Schedule 7 to be effective 7/14/2015.
Filed Date: 5/15/15.
Accession Number: 20150515–5188.
Comments Due: 5 p.m. ET 6/5/15.

Docket Numbers: ER15–1728–000.
Applicants: BIF II Safe Harbor Holdings, LLC.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): BIF II Safe Harbor MBR Filing to be effective 5/16/2014.
Filed Date: 5/15/15.
Accession Number: 20150515–5192.
Comments Due: 5 p.m. ET 6/5/15.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 15, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–12297 Filed 5–20–15; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2013–0677; FRL–9927–42]

Receipt of Test Data Under the Toxic Substances Control Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing its receipt of test data submitted pursuant to a test rule issued by EPA under the Toxic Substances Control Act (TSCA). As required by TSCA, this document identifies each chemical substance and/or mixture for which test data have been received; the uses or intended uses of such chemical substance and/or mixture; and describes the nature of the test data received. Each chemical substance and/or mixture related to this announcement is identified in Unit I. under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT:
For technical information contact: Kathy Calvo, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8089; email address: *calvo.kathy@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. Chemical Substances and/or Mixtures

Information about the following chemical substances and/or mixtures is provided in Unit IV.:

A. 2-Butenedioic acid (2E)-, di-C8-18-alkyl esters (*CAS RN 68610–90–2*).

B. Phenol, 2,4-bis(1-methyl-1-phenylethyl)-6-[2-(2-nitrophenyl)diazenyl]- (*CAS RN 70693–50–4*).

II. Federal Register Publication Requirement

Section 4(d) of TSCA (15 U.S.C. 2603(d)) requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under TSCA section 4 (15 U.S.C. 2603).

III. Docket Information

A docket, identified by the docket identification (ID) number EPA–HQ–OPPT–2013–0677, has been established for this **Federal Register** document that announces the receipt of data. Upon EPA's completion of its quality assurance review, the test data received will be added to the docket for the TSCA section 4 test rule that required the test data. Use the docket ID number provided in Unit IV. to access the test data in the docket for the related TSCA section 4 test rule.

The docket for this **Federal Register** document and the docket for each related TSCA section 4 test rule is

available electronically at *http://www.regulations.gov* or in person at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

IV. Test Data Received

This unit contains the information required by TSCA section 4(d) for the test data received by EPA.

A. 2-Butenedioic acid (2E)-, di-C8-18-alkyl esters (CAS RN 68610–90–2)

1. *Chemical Use(s):* Industrial manufacturing lubricant.

2. *Applicable Test Rule:* Chemical testing requirements for third group of high production volume chemicals (HIPV3), 40 CFR (799.5089).

3. *Test Data Received:* The following listing describes the nature of the test data received. The test data will be added to the docket for the applicable TSCA section 4 test rule and can be found by referencing the docket ID number provided. EPA reviews of test data will be added to the same docket upon completion.

a. *Physical/Chemical Properties (A1, A2, A3, A3, A4, A4, A5).* The docket ID number assigned to this data is EPA–HQ–OPPT–2009–0112.

b. *Ready Biodegradation (B).* The docket ID number assigned to this data is EPA–HQ–OPPT–2009–0112.

c. *Aquatic Toxicity Studies (Fish) (Daphnid) (Algal) (C1).* The docket ID number assigned to this data is EPA–HQ–OPPT–2009–0112.

d. *Mammalian Toxicity—Acute (D).* The docket ID number assigned to this data is EPA–HQ–OPPT–2009–0112.

e. *Mammalian Toxicity—Genotoxicity Studies (E1, E2).* The docket ID number assigned to this data is EPA–HQ–OPPT–2009–0112.

B. Phenol, 2,4-bis(1-methyl-1-phenylethyl)-6-[2-(2-nitrophenyl)diazenyl]- (*CAS RN 70693–50–4*)

1. *Chemical Use(s):* UV absorber or light stabilizer for plastics.

2. *Applicable Test Rule:* Chemical testing requirements for third group of high production volume chemicals (HIPV3), 40 CFR (799.5089).

3. *Test Data Received:* The following listing describes the nature of the test data received. The test data will be added to the docket for the applicable TSCA section 4 test rule and can be found by referencing the docket ID number provided. EPA reviews of test data will be added to the same docket upon completion.

a. *Aquatic Toxicity (Algal) (C).* The docket ID number assigned to this data is EPA–HQ–OPPT–2009–0112.

b. *Aquatic Toxicity (Chronic Daphnid) (C1).* The docket ID number assigned to this data is EPA–HQ–OPPT–2009–0112.

c. *Mammalian Toxicity—Genotoxicity Acute (E1).* The docket ID number assigned to this data is EPA–HQ–OPPT–2009–0112.

d. *Mammalian Toxicity—Genotoxicity (E2).* The docket ID number assigned to this data is EPA–HQ–OPPT–2009–0112.

e. *Mammalian Toxicity—Repeat Dose/Reproductive/Developmental Studies (F1).* The docket ID number assigned to this data is EPA–HQ–OPPT–2009–0112.

f. *Mammalian Toxicity—Acute (D).* The docket ID number assigned to this data is EPA–HQ–OPPT–2009–0112.

g. *IUCLID Data Summary containing Physical and Chemical Properties, Biodegradation, and Toxicity Endpoints (A1–5) (B) (C) (C).* The docket ID number assigned to this data is EPA–HQ–OPPT–2009–0112.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: May 13, 2015.

Maria J. Doa,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2015–12336 Filed 5–20–15; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under the Home Owners' Loan Act (HOLA) (12 U.S.C. 1461 *et seq.*) and Regulation LL (12 CFR part 238) or Regulation MM (12 CFR part 239) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is described in § 238.53 or 238.54 of Regulation LL (12 CFR 238.53 or 238.54) or § 239.8 of Regulation MM (12 CFR 239.8). Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 10(c)(4)(B) of HOLA (12 U.S.C. 1467a(c)(4)(B)).

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 5, 2015.

A. Federal Reserve Bank of New York (Ivan Hurwitz, Vice President) 33 Liberty Street, New York, New York 10045–0001

1. *Synchrony Financial,* Stamford, Connecticut; to retain the following subsidiaries: Retail Finance Credit Services, LLC, Stamford, Connecticut; Retail Finance International Holdings, Inc., Draper, Utah; Synchrony Holding Company, Mississauga, Ontario, Canada; Synchrony Financial Canada Company, Mississauga, Ontario, Canada; Synchrony Financial Canada, Mississauga, Ontario, Canada; Synchrony International Services Private Limited, Madhapur, India; Synchrony Global Services Philippines, Inc., Muntinlupa City, Philippines; CareCredit LLC, Costa Mesa, California; Retail Finance Servicing, LLC, Draper, Utah; Blue Trademark Holding, LLC, Stamford, Connecticut; Synchrony International Resource Management, LLC, Draper, Utah; RFS Holding, Inc., Stamford, Connecticut; SBFE, LLC, Beachwood, Ohio; and thereby indirectly engage in extending credit and servicing loans; servicing activities; holding or managing properties used by a subsidiary savings association; community development activities; commercial and other banking activities outside the United States; financing, including commercial financing, consumer financing, mortgage banking, and factoring outside the United States; and furnishing or performing management services for a subsidiary savings association; pursuant to sections 238.51(b)(1), (4), and (6) of Regulation LL. Synchrony Financial also proposes to control a mobile commerce software development company that engages in data processing, pursuant to section 238.51(b)(6) of Regulation LL.

Board of Governors of the Federal Reserve System, May 18, 2015.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2015–12319 Filed 5–20–15; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 15, 2015.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Commerce Bank and Trust Holding Company Employee Stock Ownership Plan,* Topeka, Kansas; to acquire up to 30.20 percent of the voting shares of Commerce Bank and Trust Holding Company, and thereby indirectly acquire voting shares of CoreFirst Bank & Trust, both in Topeka, Kansas.

Board of Governors of the Federal Reserve System, May 18, 2015.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2015–12318 Filed 5–20–15; 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 June 5, 2015.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street NE., Atlanta, Georgia 30309:

1. *Anthony J. Burnett, William E. Collins, Sr., William E. Collins, Jr., Martha Sue Collins, Tom J. Eskridge, Jr., and Connie E. Eskridge,* all of Vernon, Alabama, *and J. Steven Roy and Traci L. Roy,* both of Dothan, Alabama; to acquire voting shares of Citizens Southern Bancshares, Inc., and thereby indirectly acquire voting shares of Citizens State Bank, both in Vernon, Alabama.

Board of Governors of the Federal Reserve System, May 18, 2015.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2015–12317 Filed 5–20–15; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[CFDA Number: 93.652]

Announcing the Award of a Single-Source Cooperative Agreement to the American Public Human Services Association for the Association of Administrators of the Interstate Compact on the Placement of Children (AAICPC) in Washington, DC

AGENCY: Children's Bureau, Administration on Children, Youth and Families, ACF, HHS.

ACTION: Notice of the award of a single-source cooperative agreement to the American Public Human Services Association on behalf of its' affiliate, the Association of Administrators of the Interstate Compact On the Placement of Children to scale the successful pilot National Electronic Interstate Compact Enterprise (NEICE) system to a national level.

SUMMARY: The Administration for Children and Families (ACF), Administration on Children, Youth and Families (ACYF), Children's Bureau (CB) announces the award of a single-source cooperative agreement in the amount of $1,200,000 for each of 3 years to the American Public Human Services Association for its affiliate the Association of Administrators of the Interstate Compact on the Placement of Children (AAICPC), Washington, DC, for the national expansion of the NEICE to improve the administrative efficiency in the interstate process of the ICPC nationally. The ICPC establishes uniform legal and administrative procedures governing the interstate placement of children for the purposes of foster care, adoption and residential placement in all 52 member jurisdictions of the ICPC.

Award funds will support the development of the NEICE beyond the original six pilot sites to include all 50 states, the District of Columbia and the U.S. Virgin Islands. The NEICE system was previously developed as a pilot project through the Partnership Fund for Program Integrity Innovation with funding directed through The Administration for Children and Families (ACF), Administration on Children, Youth and Families (ACYF). Implementation of a national inter-jurisdictional Interstate Compact on the Placement of Children (ICPC) electronic system is intended to improve the administrative efficiency in the interstate process via the ICPC.

The AAICPC as an affiliate of the APHSA is uniquely positioned to scale up this project due to their governance of the placement of children across state lines for purposes of foster care, adoption and residential placements.

DATES: The first year of this 3 year project will begin June 1, 2015 and end May 31, 2016. Pending the availability of grant funds, the same level will be made available for 2 subsequent years to complete the expansion of the NEICE.

FOR FURTHER INFORMATION CONTACT: June Dorn, National Adoption Specialist, Division of Capacity Building, 1250 Maryland Avenue SW., Suite 8150, Washington, DC 20024. Telephone: 202–205–9540; Email: *June.Dorn@acf.hhs.gov*

Statutory Authority: The statutory authority is title II, section 203(b) of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978 (42 U.S.C. 5113(b)(3)), as most recently amended by CAPTA Reauthorization Act of 2010.

Mark Greenberg,

Acting Commissioner, Administration on Children, Youth and Families.

[FR Doc. 2015–12418 Filed 5–20–15; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

[CFDA Number: 84.133B–6]

Final Priority. National Institute on Disability, Independent Living, and Rehabilitation Research—Rehabilitation Research and Training Centers

AGENCY: Administration for Community Living, Department of Health and Human Services.

ACTION: Final priority.

SUMMARY: The Administrator of the Administration for Community Living announces a priority for the Rehabilitation Research and Training Center (RRTC) Program administered by the National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR). Specifically, we announce a priority for an RRTC on Outcomes Measurement for Home and Community Based Services. The Administrator of the Administration for Community Living may use this priority for competitions in fiscal year (FY) 2015 and later years. We take this action to focus research attention on an area of national need. We intend for this priority to contribute to improved home and community based services for individuals with disabilities.

DATES: *Effective Date:* This priority is effective June 22, 2015.

FOR FURTHER INFORMATION CONTACT: Marlene Spencer, U.S. Department of Health and Human Services, 400 Maryland Avenue SW., Room 5133, Potomac Center Plaza (PCP), Washington, DC 20202–2700. Telephone: (202) 245–7532 or by email: *marlene.spencer@acl.hhs.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:

Purpose of Program: The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities, to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Rehabilitation Act).

Rehabilitation Research and Training Centers

The purpose of the RRTCs, which are funded through the Disability and Rehabilitation Research Projects and Centers Program, is to achieve the goals of, and improve the effectiveness of, services authorized under the Rehabilitation Act through well-designed research, training, technical assistance, and dissemination activities in important topical areas as specified by NIDILRR. These activities are designed to benefit rehabilitation service providers, individuals with disabilities, family members, policymakers and other research stakeholders. Additional information on the RRTC program can be found at: *http://www2.ed.gov/programs/rrtc/index.html#types.*

Program Authority: 29 U.S.C. 762(g) and 764(b)(2)(A).

Applicable Program Regulations: 34 CFR part 350.

We published a notice of proposed priority (NPP) for this program in the **Federal Register** on February 25, 2015 (80 FR 10099). That notice contained background information and our reasons for proposing the particular priority.

There are differences between the proposed priority and this final priority.

Public Comment: In response to our invitation in the notice of proposed priority, one party submitted comments on the proposed priority.

Generally, we do not address technical and other minor changes. In addition, we do not address general comments that raised concerns not directly related to the proposed priority.

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

Comment: One commenter asked whether the RRTC's work should apply to elderly users of home and community based services (HCBS), as well as people with disabilities who use HCBS.

Discussion: NIDILRR's priority does not specify the age range of people with disabilities who are to be the focus of the RRTC's work. Throughout the priority we refer to people with disabilities, or people with disabilities who use or receive HCBS. NIDILRR's ultimate intent is to build HCBS outcomes measurement capacity that is relevant to HCBS recipients of all ages. Given the early stage of outcomes development work in this area, the limited resources of this RRTC, and the broad populations served by HCBS, it is up to applicants to describe their target population(s) of HCBS users. The peer review process will determine the merits of each application.

Changes: None.

Comment: One commenter agreed with the priority's requirement that measures to be developed by the RRTC should minimize data collection burden on HCBS recipients. At the same time, the commenter noted the critical importance of gathering information directly from HCBS users to determine the impact of those services on the quality of their lives. The commenter cautioned NIDILRR and the eventual RRTC against minimizing data collection burden to such an extent that data on HCBS users' experiences and outcomes aren't available for such quality improvement purposes.

Discussion: NIDILRR agrees with the commenter that gathering outcomes information directly from HCBS recipients is critically important. The priority consistently emphasizes the importance of creating outcome measurement tools that focus on HCBS users' experiences and outcomes. By requiring the RRTC to minimize data collection burden on HCBS end users, NIDILRR is simply recognizing the potential for lengthy, duplicative, and overly burdensome data collection methods. With this requirement we are also highlighting the existence of advanced item-scaling and person-centered measurement techniques such as computerized adaptive tests, as well as the existence of administrative data that can be relevant to the measurement of person-centered outcomes.

Changes: None.

Comment: One commenter noted that different groups of HCBS users have different needs, and that the importance placed on different outcome domains may vary across subgroups of HCBS users. The commenter questioned whether the measures developed by the RRTC should be tailored to the needs of subgroups of HCBS users.

Discussion: NIDILRR agrees with the commenter that different subgroups of HCBS users may have outcome domains

that are particularly important to them. Given the early stage of outcomes development work in this area, the limited resources of this RRTC, and the broad populations served by HCBS, it is up to applicants to describe their target population(s) of HCBS users. It is also up to applicants to describe the extent to which their proposed outcomes development work will address potential variation in how subgroups prioritize different HCBS outcome domains. The peer review process will determine the merits of each application.

Changes: None.

Comment: One commenter asked whether NIDILRR intends the RRTC to evaluate interventions to determine whether they are associated with positive HCBS outcomes.

Discussion: NIDILRR does not intend the RRTC to evaluate interventions to determine whether they are associated with positive HCBS outcomes. The primary intent of the research requirements under paragraph (a) is the development and testing of HCBS outcome measures—which will serve as infrastructure for future testing of interventions.

Changes: NIDILRR has made minor modifications to paragraph (a) to clarify that our intent for this RRTC is the development and testing of HCBS outcome measures—and not the testing of HCBS interventions.

Comment: One commenter recommended that the RRTC be required to provide technical assistance to a range of stakeholders, with the aim of promoting the use of new HCBS outcomes measures and resulting data for HCBS system improvement.

Discussion: NIDILRR agrees that technical assistance toward promoting the use of new HCBS outcomes measures is an important task for the RRTC. In the opening paragraph of the priority we state that ''Ultimately, the RRTC's development of non-medical, person-centered outcome measures is intended to inform the design, implementation, and continuous improvement of Federal and state policies and programs related to the delivery of HCBS to people with disabilities.'' Paragraph (b)(3) requires direct collaboration with a wide range of stakeholder groups to develop, evaluate, or implement strategies to increase the use of new HCBS outcomes measures. Similarly, paragraph (c)(1) requires the provision of technical assistance related to HCBS outcome and measurement.

Changes: None.

Comment: One commenter recommended that the RRTC develop data formats that are accessible to a range of stakeholders.

Discussion: The primary aim of this priority is the development and testing of person-centered HCBS outcome measures that generate data that is reliable, valid, and usable. This foundational work of creating reliable and valid HCBS outcomes measures precedes the development of databases and multiple data formats. While some applicants may choose to specify the formats of data that new outcomes measures can generate, the RRTC has no basis for requiring all applicants to take this step.

Changes: None.

Final Priority

The Administrator of the Administration for Community Living establishes a priority for the RRTC on Outcomes Measurement for Home and Community Based Services. The RRTC will engage in research, development, and testing of measures to assess the quality of HCBS in terms of the person-centered outcomes achieved by people with disabilities who use the services in home and community settings. The RRTC will also engage in knowledge translation, development of informational products, and dissemination to enhance the field's capacity to measure the extent to which HCBS leads to improved outcomes in community living and independent living areas that are important to people with disabilities and other stakeholders.

Ultimately, the RRTC's development of non-medical, person-centered outcome measures is intended to inform the design, implementation, and continuous improvement of Federal and state policies and programs related to the delivery of HCBS to people with disabilities. The RRTC must contribute to these outcomes by:

(a) Identifying or developing measures, and then testing the reliability, validity, and usability of those proposed measures to assess the person-centered outcomes of individuals with disabilities who are receiving home and community-based services. HCBS measures developed under this priority must be non-medical and must focus on the end-users' experience of community living, independent living, social integration, community participation, and other similar outcomes. The measures developed under this priority must also be designed to minimize data collection burden on HCBS recipients. Possible methods for minimizing this burden include, but are not limited to, use of relevant administrative data, modifying administrative data to include person-centered goals as well as fields to assess progress toward those goals, and use of advanced item-scaling and person-centered measurement techniques that can be implemented as computerized adaptive tests (CAT).

(b) Increasing incorporation of the RRTC's HCBS outcome measures into practice and policy. The RRTC must contribute to this outcome by—

(1) Working closely with NIDILRR and the Administration for Community Living (ACL) at each stage of the measure development and testing processes to ensure that its activities are informing and informed by other HCBS quality initiatives taking place within ACL and other relevant Federal and state agencies. This specifically includes the work taking place under the National Quality Forum's work with the Department of Health and Human Services (*http://www.qualityforum.org/ProjectDescription.aspx?projectID=77692*).

(2) Developing procedures and mechanisms for applying HCBS outcome measures in policy and service delivery settings to maximize quality and appropriateness of HCBS from the end-user perspective.

(3) Collaborating with stakeholder groups to develop, evaluate, or implement strategies to increase utilization of new HCBS outcome measures. Stakeholder groups include but, are not limited to, people with disabilities, Federal- and state-level policymakers; home and community based service providers; advocacy organizations; and Centers for Independent Living.

(4) Collaborating with relevant NIDILRR-sponsored knowledge translation grantees to help promote the uptake of RRTC products by relevant stakeholders and embed the outcome measures into the overall health care measurement system.

(c) Serving as a national resource center related to person-centered measurement of HCBS outcomes:

(1) Disseminating information and providing technical assistance related to HCBS outcome and quality measurement to policymakers, service providers, people with disabilities and their representatives, and other key stakeholders; and

(2) Providing relevant and appropriate training, including graduate, pre-service, and in-service training, to HCBS providers, researchers and quality-measurement personnel, and other disability service providers, to facilitate more effective delivery of HCBS to people with disabilities. This training may be provided through conferences, workshops, public education programs,

in-service training programs, and similar activities.

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (45 CFR part 75); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (45 CFR part 75).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (45 CFR part 75).

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866 and 13563

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 ACL published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: May 18, 2015.

John Tschida,

Director, National Institute on Disability, Independent Living, and Rehabilitation Research.

[FR Doc. 2015–12308 Filed 5–20–15; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Notice of Intent To Award a Single Source Non-competing Continuation Cooperative Agreement for Eight Grant Projects Under the ''Part A: The Enhanced ADRC Options Counseling Program'' Funded in 2012

AGENCY: Administration for Community Living, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In 2012, ACL, in partnership with the Centers for Medicare & Medicaid Services (CMS) and the Veterans Health Administration (VHA), issued a special funding opportunity known as the ''Part A: The Enhanced ADRC Options Counseling Program'' (Part A). The Part A grants were awarded to eight states (CT, MA, MD, NH, OR, VT, WI and WA) to develop a NWD System in their state so the federal partners could leverage the experience and models emerging in these states to serve as the basis for the development of national standards. The one year extension will enable the 8 Part A state grantees to continue their work with ACL, CMS and VHA specifically to further refine the tools, metrics and key elements of a NWD System and pilot the Person Centered Counseling training program.

DATES: Estimated Project Period—September 30, 2015 through September 30, 2016.

SUPPLEMENTARY INFORMATION:

Program Name: No Wrong Door System/Aging and Disability Resource Centers

Award Amount:

- $135,000 to Connecticut Department of Social Services
- $135,000 to Maryland Department of Aging
- $135,000 to Massachusetts Executive Office of Elder Affairs
- $135,000 to New Hampshire Department of Health & Human Services
- $135,000 to State of Oregon
- $135,000 to Vermont Agency of Human Services
- $135,000 to Washington State Department of Social & Health Services
- $135,000 to Wisconsin Department of Health Services

Project Period: 9/30/2015 to 9/30/2016

Award Type: Cooperative Agreement

Statutory Authority: The statutory authority for grants under this funding opportunity is contained in Title IV of the Older Americans Act (OAA) (42U.S.C. 3032), as amended by the Older Americans Act Amendments of 2006, P.L. 109–365. Title II Section 202b of the OAA (Pub. L. 109–365) specifically authorizes the Assistant Secretary for Aging to work with the Administrator of the Centers for Medicare & Medicaid Services to: ''implement in all states Aging and Disability Resource Centers.''

Catalog of Federal Domestic Assistance (CFDA) Number: 93.048 Discretionary Projects

I. Program Description

ACL, in partnership with the Centers for Medicare & Medicaid Services (CMS) and the Veterans Health Administration (VHA) have supported state efforts to create ''one-stop-shop'' access programs for people seeking long term services and supports (LTSS) through a No Wrong Door (NWD) System. A NWD System makes it easy for people of all ages, disabilities and income levels to learn about and access the services and supports they need. A NWD System also provides states with a vehicle for better coordinating and integrating existing multiple access functions associated with their various state administered programs that pay for LTSS.

Justification: In order to achieve original goals of the funding opportunity, ACL with its federal partners will utilize this additional time and funds to continue to work with the Part A grantees using a learning collaborative approach to pilot the Person Centered Counseling training program and further refine the key elements for the NWD System, along with a set of tools, metrics, and best practices, all states could use to develop a single ''high performing'' NWD system of Access to LTSS that would effectively serve all populations.

FOR FURTHER INFORMATION CONTACT: For further information or comments regarding this action, contact Lori Gerhard, U.S. Department of Health and Human Services, Administration for Community Living, Center for Consumer Access and Self-Determination, Office of Integrated Programs, One Massachusetts Avenue, NW. Washington, DC 20001; telephone

(202) 357–3443; fax (202) 357–3469; email *Lori.Gerhard@acl.hhs.gov.*

Dated: May 18, 2015.

Kathy Greenlee,

Administrator and Assistant Secretary for Aging.

[FR Doc. 2015–12312 Filed 5–20–15; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Applications for New Awards; National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR)—Rehabilitation Research and Training Centers

AGENCY: Administration for Community Living, Department of Health and Human Services.

ACTION: Notice.

Overview Information: National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR)—Rehabilitation Research and Training Centers (RRTC)— Outcomes Measurement for Home and Community Based Services.

Notice inviting applications for new awards for fiscal year (FY) 2015.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133B–6.

DATES: *Applications Available:* May 21, 2015.

Note: On July 22, 2014, President Obama signed the Workforce Innovation Opportunity Act (WIOA). WIOA was effective immediately. One provision of WIOA transferred the National Institute on Disability and Rehabilitation Research (NIDRR) from the Department of Education to the Administration for Community Living (ACL) in the Department of Health and Human Services. In addition, NIDRR's name was changed to the National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR). For FY 2015, all NIDILRR priority notices will be published as ACL notices, and ACL will make all NIDILRR awards. During this transition period, however, NIDILRR will continue to review grant applications using Department of Education tools. NIDILRR will post previously-approved application kits to grants.gov, and NIDILRR applications submitted to grants.gov will be forwarded to the Department of Education's G–5 system for peer review. We are using Department of Education application kits and peer review systems during this transition year in order to provide for a smooth and orderly process for our applicants.

Date of Pre-Application Meeting: June 11, 2015.

Deadline for Notice of Intent to Apply: June 25, 2015.

Deadline for Transmittal of Applications: July 20, 2015.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities to develop methods, procedures, and rehabilitation technology. The Program's activities are designed to maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Rehabilitation Act).

Rehabilitation Research and Training Centers

The purpose of the RRTCs, which are funded through the Disability and Rehabilitation Research Projects and Centers Program, is to achieve the goals of, and improve the effectiveness of, services authorized under the Rehabilitation Act through well-designed research, training, technical assistance, and dissemination activities in important topical areas as specified by NIDILRR. These activities are designed to benefit rehabilitation service providers, individuals with disabilities, family members, policymakers and other research stakeholders. Additional information on the RRTC program can be found at: *http://www2.ed.gov/programs/rrtc/index.html#types.*

Priorities: There are two priorities for the grant competition announced in this notice. The General RRTC Requirements priority is from the notice of final priorities for the Rehabilitation Research and Training Centers, published in the **Federal Register** on February 1, 2008 (73 FR 6132). Priority two is from the notice of final priority for this program, published elsewhere in this issue of the **Federal Register**.

Absolute Priorities: For FY 2015 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are absolute priorities. Under 45 CFR part 75 we consider only applications that meet these program priorities.

These priorities are:

Priority 1—General RRTC Requirements.

Note: The full text of this priority is included in the notice of final priorities for the Rehabilitation Research and Training Centers, published in the **Federal Register** on February 1, 2008 (73 FR 6132) and in the application package for this competition.

Priority 2—*RRTC on Outcomes Measurement for Home and Community Based Services.*

Note: The full text of this priority is included in the notice of final priority published elsewhere in this issue of the **Federal Register** and in the application package for this competition.

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Applicable Regulations: (a) The Department of Health and Human Services General Administrative Regulations in 45 CFR part 75 (b) Audit Requirements for Federal Awards in 45 CFR part 75 Subpart F; (c) 45 CFR part 75 Non-procurement Debarment and Suspension; (d) 45 CFR part 75 Requirement for Drug-Free Workplace (Financial Assistance); (e) The regulations for this program in 34 CFR part 350; The notice of final priorities for the RRTC Program published in the **Federal Register** on February 1, 2008 (73 FR 6132); and (g) The notice of final priority for this program, published elsewhere in this issue of the **Federal Register**.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $875,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2015 and any subsequent year from the list of unfunded applicants from this competition.

Maximum Award: $875,000.

We will reject any application that proposes a budget exceeding the Maximum Amount. The Administrator of the Administration for Community Living may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 1.

The Department is not bound by any estimates in this notice.

Project Period: 60 months.

We will reject any application that proposes a project period exceeding 60 months. The Administrator of the Administration for Community Living

may change the project period through a notice published in the **Federal Register**.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via grants.gov, or by contacting Marlene Spencer: U.S. Department of Health and Human Services, 400 Maryland Avenue SW., Room 5133, PCP, Washington, DC 20202–2700. Telephone: (202) 245–7532 or by email: *marlene.spencer@acl.hhs.gov.*

If you request an application from Marlene Spencer, be sure to identify this competition as follows: CFDA number 84.133B–6.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for the competition announced in this notice.

Notice of Intent to Apply: Due to the open nature of the RRTC priority announced here, and to assist with the selection of reviewers for this competition, NIDILRR is requesting all potential applicants submit a letter of intent (LOI). The submission is not mandatory and the content of the LOI will not be peer reviewed or otherwise used to rate an applicant's application.

Each LOI should be limited to a maximum of four pages and include the following information: (1) The title of the proposed project, the name of the applicant, the name of the Project Director or Principal Investigator (PI), and the names of partner institutions and entities; (2) a brief statement of the vision, goals, and objectives of the proposed project and a description of its proposed activities at a sufficient level of detail to allow NIDILRR to select potential peer reviewers; (3) a list of proposed project staff including the Project Director or PI and key personnel; (4) a list of individuals whose selection as a peer reviewer might constitute a conflict of interest due to involvement in proposal development, selection as an advisory board member, co-PI relationships, etc.; and (5) contact information for the Project Director or PI. Submission of a LOI is not a prerequisite for eligibility to submit an application.

NIDILRR will accept the optional LOI via mail (through the U.S. Postal Service or commercial carrier) or email, by June 25, 2015. The LOI must be sent to: Marlene Spencer, U.S. Department of Health and Human Services, 550 12th Street SW., Room 5133, PCP, Washington, DC 20202; or by email to: *marlene.spencer@acl.hhs.gov.*

For further information regarding the LOI submission process, contact Marlene Spencer at (202) 245–7532.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit Part III to the equivalent of no more than 100 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative. You are not required to double space titles, headings, footnotes, references, and captions, or text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the application narrative section (Part III).

Note: Please submit an appendix that lists every collaborating organization and individual named in the application, including staff, consultants, contractors, and advisory board members. We will use this information to help us screen for conflicts of interest with our reviewers.

An applicant should consult NIDRR's Long-Range Plan for Fiscal Years 2013–2017 (78 FR 20299) (Plan) when preparing its application. The Plan is organized around the following research domains: (1) Community Living and Participation; (2) Health and Function; and (3) Employment.

3. *Submission Dates and Times:*

Applications Available: May 21, 2015.

Date of Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting and to receive information and technical assistance through individual consultation with NIDILRR staff. The pre-application meeting will be held on June 11, 2015. Interested parties may participate in this meeting by conference call with NIDILRR staff from the Administration for Community Living between 1:00 p.m. and 3:00 p.m., Washington, DC time. NIDILRR staff also will be available from 3:30 p.m. to 4:30 p.m., Washington, DC time, on the same day, by telephone, to provide information and technical assistance through individual consultation. For further information or to make arrangements to participate in the meeting via conference call or to arrange for an individual consultation, contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Deadline for Notice of Intent to Apply: June 25, 2015.

Deadline for Transmittal of Applications: July 20, 2015.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management:* To do business with the Department of Health and Human Services, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM) (formerly the Central Contractor Registry (CCR)), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one-to-two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow two to five weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data entered into the SAM database by an entity. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

Note: Once your SAM registration is active, you will need to allow 24 to 48 hours for the information to be available in Grants.gov and before you can submit an application through Grants.gov.

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at *www.SAM.gov.* To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a SAM.gov Tip Sheet, which you can find at: *http://www2.ed.gov/fund/grant/apply/sam-faqs.html.*

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/web/grants/register.html.*

7. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under Outcomes Measurement for Home and Community Based Services, CFDA Number 84.133B–6, must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the RRTC on Outcomes Measurement for Home and Community Based Services competition at *www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.133, not 84.133B).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *http://www.G5.gov.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material. Additional, detailed information on how to attach files is in the application instructions.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your

application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that the problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system; *and*
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Marlene Spencer, U.S. Department of Health and Human Services, 400 Maryland Avenue SW., Room 5133, Potomac Center Plaza (PCP), Washington, DC 20202–2700. FAX: (202) 245–7323.

Your paper application must be submitted in accordance with the mail instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133B–6), 550 12th Street SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Administrator of the Administration for Community Living of the U.S. Department of Health and Human Services.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

Note for Mail of Paper Applications: If you mail your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the program under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 350.54 and are listed in the application package.

2. *Review and Selection Process:* Final award decisions will be made by the Administrator, ACL. In making these decisions, the Administrator will take into consideration: Ranking of the review panel; reviews for programmatic and grants management compliance; the reasonableness of the estimated cost to the government considering the available funding and anticipated results; and the likelihood that the proposed project will result in the benefits expected. Under Section 75.205, item (3) history of performance is an item that is reviewed.

In addition, in making a competitive grant award, the Administrator of the Administration for Community Living also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Health and Human Services 45 CFR part 75.

3. *Special Conditions:* Under 45 CFR part 75 the Administrator of the Administration for Community Living may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 45 CFR part 75, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we send you a Notice of Award (NOA); or we may send you an email containing a link to access an electronic version of your NOA. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy

requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the NOA. The NOA also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 45 CFR part 75 should you receive funding under the competition. This does not apply if you have an exception under 45 CFR part 75.

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Administrator of the Administration for Community Living. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Administrator of the Administration for Community Living under 45 CFR part 75. All NIDILRR grantees will submit their annual and final reports through NIDILRR's online reporting system and as designated in the terms and conditions of your NOA. The Administrator of the Administration for Community Living may also require more frequent performance reports under 45 CFR part 75. For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) FFATA and FSRS Reporting

The Federal Financial Accountability and Transparency Act (FFATA) requires data entry at the FFATA Subaward Reporting System (*http://www.FSRS.gov*) for all sub-awards and sub-contracts issued for $25,000 or more as well as addressing executive compensation for both grantee and sub-award organizations.

For further guidance please see the following link: *http://www.acl.gov/Funding_Opportunities/Grantee_Info/FFATA.aspx.*

If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information. Annual and Final Performance reports will be submitted through NIDILRR's online Performance System and as designated in the terms and conditions of your NOA. At the end of your project period, you must submit a final performance report, including financial information.

Note: NIDILRR will provide information by letter to successful grantees on how and when to submit the report.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDILRR assesses the quality of its funded projects through a review of grantee performance and accomplishments. Each year, NIDILRR examines a portion of its grantees to determine:

- The number of products (*e.g.,* new or improved tools, methods, discoveries, standards, interventions, programs, or devices developed or tested with NIDILRR funding) that have been judged by expert panels to be of high quality and to advance the field.
- The average number of publications per award based on NIDILRR-funded research and development activities in refereed journals.
- The percentage of new NIDILRR grants that assess the effectiveness of interventions, programs, and devices using rigorous methods.

NIDILRR uses information submitted by grantees as part of their Annual Performance Reports for these reviews.

5. *Continuation Awards:* In making a continuation award, the Administrator of the Administration for Community Living may consider, under 45 CFR part 75, the extent to which a grantee has made ''substantial progress toward meeting the objectives in its approved application.'' This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Administrator also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department. Continuation funding is also subject to availability of funds.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Marlene Spencer, U.S. Department of Health and Human Services, 400 Maryland Avenue SW., Room 5133, PCP, Washington, DC 20202–2700. Telephone: (202) 245–7532 or by email: *marlene.spencer@acl.hhs.gov.*

If you use a TDD or a TTY, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

VIII. Other Information

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: May 18, 2015.

John Tschida,

Director, National Institute on Disability, Independent Living, and Rehabilitation Research.

[FR Doc. 2015–12311 Filed 5–20–15; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier HHS–OS–0990–New–30D]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, has submitted an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB) for review and approval. The ICR is for a new collection. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public on this ICR during the review and approval period.

DATES: Comments on the ICR must be received on or before June 22, 2015.

ADDRESSES: Submit your comments to *OIRA_submission@omb.eop.gov* or via facsimile to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690–6162.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the Information Collection Request Title and document identifier HHS–OS–0990–New–30D for reference.

Information Collection Request Title: Midwest HIV Prevention and Pregnancy Planning Initiative (MHPPPI)

Abstract: HHS Office of the Assistant Secretary for Health (OASH)/Office of Women's Health (OWH) is seeking an approval on a new information collection request by the Office of Management and Budget (OMB), the program office initiatives on the evaluation of the MHPPPI will be conducted by the AIDS Foundation of Chicago's (AFC) internal Research, Evaluation and Data Services (REDS) department, which specializes in documenting, evaluating and analyzing the process, impact and outcomes of health programs. The evaluation framework for MHPPPI includes process monitoring, impact evaluation, outcome evaluation and dissemination. The impact evaluation will be informed by an initial climate survey of a sample of medical providers within the Midwest to develop a conservative baseline estimate of the counterfactual model. The counterfactual model will postulate what would have happened without the intervention. The impact evaluation will also document and analyze the degree to which services are integrated in medical settings based on change agent surveys administered through participating trainees. The outcome evaluation will assess changes that occurred in each domain as a result of the intervention, including knowledge, attitudes and behaviors related to the specific training content. The overall evaluation goal is to assess whether or not MHPPPI:

(1) Increased the knowledge of providers,

(2) Facilitated the integration of pregnancy planning into the care of HIV-positive women/women with HIV-positive partners, and

(3) Increased access to innovative HIV prevention options in communities with high HIV prevalence.

Likely Respondents:

○ HIV Primary Care Providers

■ Anyone who provides primary HIV care to persons of reproductive age (15–49)

○ Reproductive Health Care Providers

■ Anyone who provides reproductive health care to HIV+ persons or HIV- persons with HIV+ partners.

○ HIV-positive and HIV-negative women receiving reproductive health care

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Provider Survey	300	1	15/60	75
Patient Qualitative Interview	20	1	1	20
Provider Qualitative Interview	20	1	1	20
Total				115

Terry Clark,

Asst Information Collection Clearance Officer.

[FR Doc. 2015–12274 Filed 5–20–15; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development Amended; Notice of Meeting

Notice is hereby given of a change in the meetings of the National Institute of Child Health and Human Development Special Emphasis Panel, June 11, 2015, 2:00 p.m. to June 11, 2015, 4:00 p.m., National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852 which was published in the **Federal Register** on May 15, 2015, 2015–11711 @ 3:00 p.m. Vol 80, 94, page 27978.

The meeting notice is amended to change the date/time from June 11, 2015 @ 2:00 p.m. to June 12, 2015 @ 3:00 p.m. The meeting is closed to the public.

Dated: May 15, 2015.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–12251 Filed 5–20–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[L12200000.AL0000/LLCAC05000]

Notice of Intent To Amend the Resource Management Plan for the California Coastal Monument for the Inclusion of the Point Arena-Stornetta Unit and Prepare an Associated Environmental Assessment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) Ukiah Field Office, Ukiah, California intends to prepare a Resource Management Plan (RMP) amendment with an associated Environmental Assessment (EA) for the California Coastal National Monument (CCNM) and by this notice is announcing the beginning of a scoping process to solicit public comments and identify issues.

DATES: This notice initiates the public scoping process for the RMP amendment and associated EA. The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance through the local news media, newspapers and the BLM Web site at: *http://www.blm.gov/ca/ukiah.* In order to be included in the analysis, all written comments must be received prior to the close of the 30-day scoping period or 15 days after the last public meeting, whichever is later. We will provide additional opportunities for public participation as appropriate.

ADDRESSES: You may submit comments on issues and the planning criteria related to the RMP Amendment and EA by the following methods:

- *Web site: http://www.blm.gov/ca/ukiah.*
- *email:* BLM Ukiah Field Office at *blm_ca_ukiah_point_arena_stornetta_planning@blm.gov.*
- *fax:* 707–468–4027.
- *mail:* Ukiah Field Office, 2550 North State Street, Ukiah, CA 95482.

Documents pertinent to this proposal may be examined at the Ukiah Field Office, 2550 North State Street, Ukiah, CA 95482.

FOR FURTHER INFORMATION CONTACT: Jonna Hildenbrand, Planning and Environmental Coordinator, telephone 707–468–4000; address Bureau of Land Management, 2550 North State Street, Ukiah, CA 95482; or email *blm_ca_ukiah_point_arena_stornetta_planning@blm.gov.* Contact Ms. Hildenbrand to have your name added to our mailing list. Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM approved the Record of Decision (ROD) for the California Coastal National Monument RMP on September 2005. On March 11, 2014, the Point Arena-Stornetta Management Area was included as the first mainland based portion of the California Coastal National Monument by Presidential Proclamation and named the Point Arena-Stornetta Unit of the California Coastal National Monument. The RMP amendment will incorporate relevant new information to provide management goals and objectives, and to identify allowable uses of the area, consistent with current management documents, including the Presidential Proclamation, Deed Restrictions of the transfer of the property, the existing CCNM RMP, and BLM Manual 6620 (National Monuments, National Conservation Areas, and Similar Designations).

The planning area is in Mendocino County and encompasses 1,665 acres of public land. The purpose of the public scoping process is to determine relevant issues that will inform the scope of the environmental analysis, including alternatives, and guide the planning process. Preliminary issues for the plan amendment area have been identified by the BLM; Federal, State, and local agencies; and other stakeholders. The issues include recreation management, travel management, access, livestock grazing and potential new land use authorizations such as rights-of-ways.

Preliminary planning criteria include:

1. The BLM will comply with FLPMA, NEPA, the Presidential Proclamation, Deed Restrictions at the time of transfer of the property and all other applicable laws;
2. The BLM will coordinate with local and county governments for analysis of economic and social impacts;
3. The BLM will conduct government-to-government consultation with federally recognized tribes;
4. The BLM will comply with Rangeland Health Standards and Guidelines; and
5. The BLM will consider the cost-effectiveness of proposed actions and alternatives.

You may submit comments on issues and planning criteria in writing to the BLM at any public scoping meeting, or you may submit them to the BLM using one of the methods listed above in the **ADDRESSES** section.

The BLM will utilize and coordinate the NEPA scoping process to help fulfill the public involvement process under the National Historic Preservation Act (54 U.S.C. 306108) as provided in 36 CFR 800.2(d)(3). The information about historic and cultural resources within the area potentially affected by the proposed action will assist the BLM in identifying and evaluating impacts to such resources. The BLM will consult with Indian tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration. Federal, State, and local agencies, along with tribes and other stakeholders that may be interested in or affected by the proposed action that the BLM is evaluating, are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate in the development of the environmental analysis as a cooperating agency.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. The minutes and list of attendees for each scoping meeting will be available to the public and open for 30 days after the meeting to any participant who wishes to clarify the views he or she expressed.

BLM will evaluate identified issues to be addressed in the plan, and will place them into one of three categories:

1. Issues to be resolved in the plan amendment;
2. Issues to be resolved through policy or administrative action; or
3. Issues beyond the scope of this plan amendment.

The BLM will provide an explanation in the EA as to why an issue was placed in category two or three. The public is also encouraged to help identify any management questions and concerns that should be addressed in the plan. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns.

The BLM will use an interdisciplinary approach to develop the plan amendment in order to consider the variety of resource issues and concerns identified. Specialists with expertise in the following disciplines will be involved in the planning process: Rangeland management, minerals and geology, outdoor recreation, archaeology, wildlife and fisheries, lands and realty, hydrology, soils, and sociology and economics.

Authority: 40 CFR 1501.7 and 43 CFR 1610.2.

Rich Burns,

Ukiah Field Manager.

[FR Doc. 2015–12360 Filed 5–20–15; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO600000.L18200000.XP0000]

2015 Second Call for Nominations for Resource Advisory Councils

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to reopen the request for public nominations for certain Bureau of Land Management (BLM) Resource Advisory Councils (RAC) that have member terms expiring this year. These RACs provide advice and recommendations to the BLM on land use planning and management of the National System of Public Lands within their geographic areas. The RACs covered by this request for nominations are identified below. The BLM will accept public nominations for 30 days after the publication of this notice.

DATE: All nominations must be received no later than June 22, 2015.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for the address of BLM State Offices accepting nominations.

FOR FURTHER INFORMATION CONTACT: Mark Purdy, U.S. Department of the Interior, Bureau of Land Management, WO–630, Division of Regulatory Affairs, 20 M Street SE., Washington, DC 20003–3503; 202–912–7635.

SUPPLEMENTARY INFORMATION: The Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by the BLM. Section 309 of FLPMA (43 U.S.C. 1739) directs the Secretary to establish 10- to 15-member citizen-based advisory councils that are consistent with the Federal Advisory Committee Act (FACA). As required by FACA, RAC membership must be balanced and representative of the various interests concerned with the management of the public lands. The rules governing RACs are found at 43 CFR subpart 1784 and include the following three membership categories:

Category One—Holders of Federal grazing permits and representatives of organizations associated with energy and mineral development, timber industry, transportation or rights-of-way, developed outdoor recreation, off-highway vehicle use, and commercial recreation;

Category Two—Representatives of nationally or regionally recognized environmental organizations, archaeological and historic organizations, dispersed recreation activities, and wild horse and burro organizations; and

Category Three—Representatives of State, county, or local elected office, employees of a State agency responsible for management of natural resources, representatives of Indian tribes within or adjacent to the area for which the council is organized, representatives of academia who are employed in natural sciences, and the public-at-large.

Those who have already submitted a nomination in response to the first call for nominations (published in the **Federal Register** on February 3, 2015, (80 FR 5785)) do not need to resubmit. All nominations from the first and second calls will be considered together during the review process. Individuals may nominate themselves or others. Nominees must be residents of the State in which the RAC has jurisdiction. The BLM will evaluate nominees based on their education, training, experience, and knowledge of the geographical area of the RAC. Nominees should demonstrate a commitment to collaborative resource decision-making. The Obama Administration prohibits individuals who are currently federally registered lobbyists from being appointed or re-appointed to FACA and non-FACA boards, committees, or councils.

This request for public nominations also applies to the Carrizo Plain National Monument Advisory Committee (Committee) in California established under Presidential proclamation. The Committee advises the Secretary of the Interior in managing the Carrizo Plain National Monument.

The following must accompany all nominations for the RACs and Committee:

—Letters of reference from represented interests or organizations;

—A completed Resource Advisory Council application; and

—Any other information that addresses the nominee's qualifications.

Simultaneous with this notice, BLM State Offices will issue press releases providing additional information for submitting nominations, with specifics about the number and categories of member positions available for each RAC in the State and the Carrizo Plain National Monument Advisory Committee. Nominations and completed applications for RACs and the Committee should be sent to the appropriate BLM offices listed below:

Alaska

Alaska RAC

Thom Jennings, Alaska State Office, BLM, 222 West 7th Avenue, #13, Anchorage, AK 99513, (907) 271–3335.

California

Central California RAC; Carrizo Plain National Monument Advisory Committee

David Christy, Mother Lode Field Office, BLM, 5152 Hillsdale Circle, El Dorado Hills, CA 95762, (916) 941–3146.

Colorado

Front Range RAC

Kyle Sullivan, Royal Gorge Field Office, BLM, 3028 East Main Street, Cañon City, CO 81212, (719) 269–8553.

Northwest RAC

Chris Joyner, Grand Junction Field Office, BLM, 2815 H Road, Grand Junction, CO 81506, (970) 244–3097.

Southwest RAC

Shannon Borders, Southwest District Office, BLM, 2465 South Townsend Avenue, Montrose, CO 81401, (970) 240–5399.

Idaho

Boise District RAC

Marsha Buchanan, Boise District Office, BLM, 3948 Development Avenue, Boise, ID 83705, (208) 384–3393.

Coeur d'Alene District RAC

Suzanne Endsley, Coeur d'Alene District Office, BLM, 3815 Schreiber Way, Coeur d'Alene, ID 83815, (208) 769–5004.

Idaho Falls District RAC

Sarah Wheeler, Idaho Falls District Office, BLM, 1405 Hollipark Drive, Idaho Falls, ID 83401, (208) 524–7613.

Twin Falls District RAC

Heather Tiel-Nelson, Twin Falls District Office, BLM, 2536 Kimberly Road, Twin Falls, ID 83301, (208) 736–2352.

Montana and Dakotas

Western Montana RAC

David Abrams, Butte Field Office, BLM, 106 North Parkmont, Butte, MT 59701, (406) 533–7617.

Nevada

Mojave-Southern Great Basin RAC; Northeastern Great Basin RAC; Sierra Front Northwestern Great Basin RAC

Chris Rose, Nevada State Office, BLM, 1340 Financial Boulevard, Reno, NV 89502, (775) 861–6480.

Oregon/Washington

Eastern Washington RAC

Stephen Baker, Oregon State Office, BLM, 333 SW First Avenue, P.O. Box 2965, Portland, OR 97204, (503) 808–6306.

Utah

Utah RAC

Sherry Foot, Utah State Office, BLM, 440 West 200 South, Suite 500, P.O. Box 45155, Salt Lake City, UT 84101, (801) 539–4195.

Authority: (43 CFR 1784.4–1)

Steve Ellis,

Deputy Director, Operations.

[FR Doc. 2015–12358 Filed 5–20–15; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORP00000. L10200000. DF0000. 15XL1109AF. HAG15–0141]

Notice of Public Meeting for the John Day—Snake Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, and the U.S.

Department of the Interior, Bureau of Land Management (BLM), the John Day—Snake Resource Advisory Council (RAC) will meet as indicated below:

DATES: The John Day—Snake RAC will hold a public meeting Thursday, June 18, and Friday, June 19, 2015. The meeting will run from 8:00 a.m. to 4:30 p.m. on June 18th, and from 8 a.m. to 1:00 p.m. on June 19th. The meeting will be held in the Sternwheel Ballroom at the Quality Inn & Suites Conference Center in Clarkston, Washington, and will include a field trip to the Hells Canyon Recreation Area. A public comment period will be available on the second day of the session.

FOR FURTHER INFORMATION CONTACT: Lisa Clark, Public Affairs Specialist, BLM Prineville District Office, 3050 NE. 3rd Street, Prineville, Oregon 97754, (541) 416–6864, or email *lmclark@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, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The John Day—Snake RAC consists of 15 members chartered and appointed by the Secretary of the Interior. Their diverse perspectives are represented in commodity, conservation, and general interests. They provide advice to BLM and Forest Service resource managers regarding management plans and proposed resource actions on public land in central and eastern Oregon. Agenda items for the June 2015 meeting include a field tour of the Hells Canyon Recreation Area, an update on the John Day Basin Resource Management Plan and the Blue Mountain Forest Plan Revision, a presentation of the business plan and request for fee increase for the Lower Deschutes River, committee and member updates, and any other matters that may reasonably come before the John Day—Snake RAC. This meeting is open to the public in its entirety; however, transportation on jet boats during the field tour portion of the meeting on June 18 will not be provided to members of the public. Information to be distributed to the John Day—Snake RAC is requested prior to the start of each meeting. A public comment period will be available on June 19, 2015, at 9:30 a.m. Unless otherwise approved by the John Day—Snake RAC Chair, the public comment period will last no longer than 30 minutes. Each speaker may address the John Day—Snake RAC for a maximum of 5 minutes. A public call-in number is provided on the John Day—Snake RAC Web site at *http://www.blm.gov/or/rac/jdrac.php.* Meeting times and the duration scheduled for public comment periods may be extended or altered when the authorized representative considers it necessary to accommodate business and all who seek to be heard regarding matters before the John Day—Snake RAC.

Carol Benkosky,

Prineville District Manager.

[FR Doc. 2015–12299 Filed 5–20–15; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRSS–18302; PPWONRADW1, PPMRSNR1Y.NW0000 (155)]

Proposed Information Collection; Comment Request; Cape Lookout National Seashore Cultural Resource Values and Vulnerabilities Assessment

AGENCY: National Park Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (National Park Service) will ask the Office of Management and Budget (OMB) to approve the Information Collection (IC) described below. The National Park Service is exploring ways to reduce the risk of damage to structures and natural systems from destructive storm surge and sea level rise. We will collect information from stakeholders' about their values and perceptions of climate change-related vulnerabilities and adaptation strategies for managing cultural resources within the two historic districts (Portsmouth Village and Lookout Village) at Cape Lookout National Seashore (CALO). Stakeholders will be visitors at Portsmouth Village and Lookout Village, partner organizations, local community members with ties to the historic districts, federal, state and private cultural resource experts. This collection will be used to inform cultural resource adaptation planning efforts (*i.e.,* maintenance, sustainability and post-storm recovery of historic structures and cemeteries) related to impacts of extreme weather events. To comply with the Paperwork Reduction Act of 1995, and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC.

DATES: To ensure that your comments on this IC are considered, we must receive them on or before July 20, 2015.

ADDRESSES: Please send your comments to Phadrea Ponds, Information Collections Coordinator, National Park Service, 1201 Oakridge Drive, Fort Collins, CO 80525 (mail); or *phadrea_ponds@nps.gov* (email). Please reference Information Collection 1024—NEW, 2015 CALO SURVEY in the subject line.

FOR FURTHER INFORMATION CONTACT: Janet Cakir, Ph.D., NPS SER Climate Change, Socioeconomics, and Adaptation Coordinator, South Atlantic Landscape Conservation Cooperative, 1751 Varsity Dr., Raleigh, NC 27606 (mail) or *janet_cakir@nps.gov* (email).

I. Abstract

Managers of Cape Lookout National Seashore (CALO) are interested in identifying ways to reduce the risk of damage to coastal buildings and sensitive species from storm surge, sea level rise, and shoreline erosion anticipated over the next 20 to 30 years. Of specific interest to managers are contemporary cultural resource values and perceptions of cultural resource vulnerability and feasible adaptation strategies to sustain its cultural resources for future generations. The National Park Service (NPS) will conduct a survey of visitors to the two historic districts (Portsmouth Village and Lookout Village) at Cape Lookout National Seashore (CALO), a survey with members of CALO's partner organizations, interview local community members with connections to the historic districts, and conduct a survey with cultural resource experts from federal and state agencies and nongovernmental organizations.

The collection will be used to understand the values stakeholders place on cultural resources within the historic districts, and perceptions of strategies to adapt and respond to changes in cultural resource conditions from storms, flooding, and erosion. The information from this collection will provide NPS managers and planners with information that can be used to prepare resource management planning documents.

Lessons learned from this study may be applied to support cultural resource adaptation planning for units across the NPS system.

II. Data

OMB Control Number: None. This is a new collection.

Title: Cape Lookout National Seashore Cultural Resource Values and Vulnerabilities Assessment.

Type of Request: New.

Affected Public: Park Visitors, Local Residents, Partner Organization Members, State Cultural/Historic Resource Personnel, and Nongovernmental Cultural Resource Organization Personnel.

Respondent Obligation: Voluntary.

Frequency of Collection: One-time.

Estimated Number of Responses: 600.

Estimated Annual Burden Hours: 321. We estimate the public reporting burden for this collection will average 10 minutes per response for visitors; 15 minutes per response for partner organizations; 1 hour per response for community members, and 2.5 hours per response for cultural resource experts. This includes the time for reviewing instructions and completing the survey.

	Estimated number of responses	Estimated response time (minutes)	Estimated annual burden (hours)
Visitor Survey	200	10	33
Partner Organization Survey	200	15	50
Community Interviews	50	60	50
Cultural Resource Experts Survey	150	75	188
Total	600		321

Estimated Annual Reporting and Recordkeeping "Non-Hour Cost": None.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that 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 and current expiration date.

III. Request for Comments

We invite comments concerning this IC on:

- Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful;
- The accuracy of the agency's estimate of the burden of the proposed collection of information;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. 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.

Dated: May 14, 2015.

Madonna Baucum,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2015–12306 Filed 5–20–15; 8:45 am]

BILLING CODE 4310–EH–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–PWR–PWRO–17572; PX.P0073969J.00.1]

Record of Decision for General Management Plan, Golden Gate National Recreation Area, California

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: The National Park Service, has prepared and approved a Record of Decision for the Final Environmental Impact Statement for the new General Management Plan (GMP) for Golden Gate National Recreation Area. Approval of the GMP concludes a very extensive public engagement and conservation planning and environmental impact analysis effort that began during 2006. The requisite no-action "wait period" was initiated on April 25, 2014, with the Environmental Protection Agency's **Federal Register** announcement of the filing and release of the Final EIS.

ADDRESSES: Those wishing to review the Record of Decision for the GMP may obtain a copy by contacting the General Superintendent, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, CA 94123, or via telephone request at (415) 561–4930.

FOR FURTHER INFORMATION CONTACT: Brian Aviles, Senior Planner, Golden Gate National Recreation Area, (415) 561–4942.

SUPPLEMENTARY INFORMATION: The National Park Service (NPS) has approved the Record of Decision for the GMP/Final Environmental Impact Statement which will guide management of park lands within Golden Gate National Recreation Area (GGNRA) over the next 20 years. Following establishment in 1972, the GGNRA has been operating under a 1980 GMP. Since then GGNRA has doubled in size and visitation now approaches 16 million annually.

The NPS has selected Alternative 1 *Connecting People With Parks* for implementation on park lands in Marin, San Francisco, and San Mateo Counties. Park management will focus on ways to attract and welcome people; connect visitors with the resources; and promote enjoyment, understanding, preservation, and health for diverse populations now and in the future. To achieve these objectives, management zones will be applied in all areas, enhancements will be made to park programs, and a number of projects will be carried out to preserve, restore, and/or improve cultural and natural resources as well as park facilities and infrastructure.

The NPS has selected Alternative 3 *Focusing on National Treasures* for implementation at Alcatraz Island and Muir Woods National Monument. Park management will showcase nationally important cultural and natural resources at each site. These fundamental resources will be managed at the highest level of preservation to protect the resources in perpetuity and to promote appreciation, understanding, and enjoyment of those resources—all other resources will be managed to complement the nationally significant resources and the associated visitor experience.

Four alternatives, including a no-action alternative, were described and evaluated in the Final Environmental Impact Statement, the full range of foreseeable environmental consequences was assessed, and

appropriate mitigation measures were identified. The selected alternatives were determined to be the ''environmentally preferred'' course of action.

Dated: January 30, 2015.

Christine S. Lehnertz,

Regional Director, Pacific West Region.

[FR Doc. 2015–12376 Filed 5–20–15; 8:45 am]

BILLING CODE 4312–FF–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–940]

Certain Snowmobiles With Engines Having Exhaust Temperature-Controlled Engine Technology and Components Thereof; Termination of an Investigation on the Basis of Withdrawal of the Complaint

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ'') initial determination (''ID'') (Order No. 11) granting the complainant's motion to terminate the above-captioned investigation in its entirety on the basis of withdrawal of the complaint. The Commission has terminated the investigation.

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's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on December 24, 2014, based on a complaint filed by Arctic Cat Inc. of Plymouth, MN (''Arctic Cat''). 79 FR 77526 (Dec. 24, 2014). The complaint alleged violations of section 337 of the Tariff Act of 1930, *as amended,* 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain snowmobiles with engines having exhaust temperature-controlled engine technology and components thereof by reason of infringement of certain claims of three United States patents. The Commission's notice of investigation named as respondents Bombardier Recreational Products, Inc. of Québec, Canada; and BRP US Inc. of Sturtevant, Wisconsin.

On April 23, 2015, Arctic Cat filed an unopposed motion to terminate the investigation in its entirety based upon withdrawal of the complaint. On April 24, 2015, the ALJ granted the motion as an ID (Order No. 11).

No petitions for review were filed. The Commission has determined not to review the ID. The Commission has terminated the investigation.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: May 18, 2015.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015–12301 Filed 5–20–15; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Bulk Manufacturer of Controlled Substances Application: PCAS–NANOSYN, LLC

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes and applicants therefore may file written comments or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.33(a) on or before July 20, 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 11, 2014, PCAS-Nanosyn, LLC, 3331–B Industrial Drive, Santa Rosa, California 95403 applied to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Controlled substance	Schedule
Oxycodone (9143)	II
Oripavine (9330)	II
Oxymorphone (9652)	II
Fentanyl (9801)	II

The company is a contract manufacturer. At the request of the company's customers, it manufactures derivatives of controlled substances in bulk form.

Dated: May 15, 2015.

Joseph T. Rannazzisi,

Deputy Assistant Administrator.

[FR Doc. 2015–12330 Filed 5–20–15; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Registration: Myoderm

ACTION: Notice of registration.

SUMMARY: Myoderm applied to be registered as an importer of certain basic classes of controlled substances. The Drug Enforcement Administration (DEA) grants Myoderm registration as an importer of those controlled substances.

SUPPLEMENTARY INFORMATION: By notice dated February 5, 2015, and published in the **Federal Register** on February 11,

2015, 80 FR 7633, Myoderm, 48 East Main Street, Norristown, Pennsylvania 19401 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 Myoderm 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 controlled substances:

Controlled substance	Schedule
Amphetamine (1100)	II
Lisdexamfetamine (1205)	II
Methylphenidate (1724)	II
Pentobarbital (2270)	II
Nabilone (7379)	II
Codeine (9050)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Levomethorphan (9210)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Morphine (9300)	II
Oxymorphone (9652)	II
Fentanyl (9801)	II

The company plans to import the listed controlled substances in finished dosage form for clinical trials, and research.

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 sale.

Dated: May 15, 2015.

Joseph T. Rannazzisi,

Deputy Assistant Administrator.

[FR Doc. 2015–12329 Filed 5–20–15; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Registration: Mylan Pharmaceuticals, Inc.

ACTION: Notice of registration.

SUMMARY: Mylan Pharmaceuticals, Inc. applied to be registered as an importer of certain basic classes of controlled substances. The Drug Enforcement Administration (DEA) grants Mylan Pharmaceuticals, Inc. registration as an importer of those controlled substances.

SUPPLEMENTARY INFORMATION: By notice dated January 9, 2015, and published in the **Federal Register** on January 26, 2015, 80 FR 3980, Mylan Pharmaceuticals, Inc., 781 Chestnut Ridge Road, Morgantown, West Virginia 26505 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 Mylan Pharmaceuticals, 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
Methadone (9250)	II
Morphine (9300)	II
Fentanyl (9801)	II

The company plans to import the listed controlled substances 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: May 15, 2015.

Joseph T. Rannazzisi,

Deputy Assistant Administrator.

[FR Doc. 2015–12327 Filed 5–20–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Registration: Noramco, Inc.

ACTION: Notice of registration.

SUMMARY: Noramco, Inc. applied to be registered as an importer of certain basic classes of controlled substances. The Drug Enforcement Administration (DEA) grants Noramco, Inc. registration as an importer of those controlled substances.

SUPPLEMENTARY INFORMATION: By notice dated January 9, 2015, and published in the **Federal Register** on January 26, 2015, 80 FR 3980, Noramco, Inc., 500 Swedes Landing Road, Wilmington, Delaware 19801–4417 applied to be registered as an importer of certain basic classes of controlled substances. No comments or objections were submitted for this notice. Comments and request for hearings on applications to import narcotic raw material are not appropriate. 72 FR 3417 (January 25, 2007).

The DEA has considered the factors in 21 U.S.C. 823, 952(a) and 958(a) and determined that the registration of Noramco, 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
Phenylacetone (8501)	II

Controlled substance	Schedule
Opium, raw (9600)	II
Poppy Straw Concentrate (9670)	II
Tapentadol (9780)	II

The company plans to import raw Opium (9600) and Poppy Straw concentrate (9670) to bulk manufacture other controlled substances for distribution to its customers. The company plans to import an intermediate form of tapentadol (9780) to bulk manufacture tapentadol (9780) for distribution to its customers. The company plans to import Phenylacetone (8501) in bulk for the manufacture of a controlled substance.

Dated: May 15, 2015.

Joseph T. Rannazzisi,

Deputy Assistant Administrator.

[FR Doc. 2015–12323 Filed 5–20–15; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Registration: Mallinckrodt, LLC

ACTION: Notice of registration.

SUMMARY: Mallinckrodt, LLC applied to be registered as an importer of certain basic classes of controlled substances. The Drug Enforcement Administration (DEA) grants Mallinckrodt, LLC registration as an importer of those controlled substances.

SUPPLEMENTARY INFORMATION: By notice dated February 5, 2015, and published in the **Federal Register** on February 11, 2015, 80 FR 7634, Mallinckrodt, LLC, 3600 North Second Street, St. Louis, Missouri 63147 applied to be registered as an importer of certain basic classes of controlled substances. No comments or objections were submitted for this notice. Comments and requests for hearings on applications to import narcotic raw material are not appropriate. 72 FR 3417 (January 25, 2007).

The DEA has considered the factors in 21 U.S.C. 823, 952(a) and 958(a) and determined that the registration of Mallinckrodt, LLC 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 controlled substances:

Controlled substance	Schedule
Phenylacetone (8501)	II
Coca Leaves (9040)	II
Opium, raw (9600)	II
Poppy Straw Concentrate (9670)	II

The company plans to import the listed controlled substances for the manufacture of controlled substances in bulk for distribution to its customers.

In reference to Phenylacetone (8501), the company plans to import the controlled substance for the bulk manufacture of amphetamine products for sale to its customers.

Dated: May 15, 2015.

Joseph T. Rannazzisi,

Deputy Assistant Administrator.

[FR Doc. 2015–12325 Filed 5–20–15; 8:45 am]

BILLING CODE

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Registration: Fisher Clinical Services, Inc.

ACTION: Notice of registration.

SUMMARY: Fisher Clinical Services, Inc. applied to be registered as an importer of certain basic classes of controlled substances. The Drug Enforcement Administration (DEA) grants Fisher Clinical Services, Inc. registration as an importer of those controlled substances.

SUPPLEMENTARY INFORMATION: By notice dated January 9, 2015, and published in the **Federal Register** on January 26, 2015, 80 FR 3979, Fisher Clinical Services, Inc.,7554 Schantz Road, Allentown, Pennsylvania 18106 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 Fisher Clinical Services, 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
Methylphenidate (1724)	II
Levorphanol (9220)	II
Noroxymorphone (9668)	II
Tapentadol (9780)	II

The company plans to import the listed substances for analytical research, 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.

The company plans to import an intermediate form of tapentadol (9780) to bulk manufacture tapentadol for distribution to its customers.

Dated: May 15, 2015.

Joseph T. Rannazzisi,

Deputy Assistant Administrator.

[FR Doc. 2015–12328 Filed 5–20–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

[OMB Number 1140–0062]

Agency Information Collection Activities: Proposed eCollection eComments Requested; Identification of Imported Explosive Materials

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. This proposed information collection was previously published in the 80 FR 13892 on March 17, 2015, allowing for a 60 day comment period.

DATES: The purpose of this notice is to allow for an additional 30 days for public comment until June 22, 2015.

FOR FURTHER INFORMATION CONTACT: If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Anita Scheddel at *eipb-informationcollection@atf.gov.* Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or send email to *OIRA_submission@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this Information Collection 1140–0062:

(1) Type of Information Collection: Extension of an existing collection.

(2) Title of the Form/Collection: Identification of Imported Explosive Materials.

(3) Agency form number, if any, and the applicable component of the Department sponsoring the collection:

Form number: None.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract:

Primary: Business or other for-profit.

Other: None.

Abstract: The information is necessary to ensure that explosive materials can be effectively traced. All licensed importers are required to identify by marking all explosive materials they import for sale or distribution. The process provides valuable information in explosion and bombing investigations.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: An estimated 15 respondents will spend 1 hour placing marks of identification on imported explosives 3 times annually.

(6) An estimate of the total public burden (in hours) associated with the collection: The estimated annual public burden associated with this collection is 45 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3E–405B, Washington, DC 20530.

Dated: May 18, 2015.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2015–12309 Filed 5–20–15; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

[OMB Number 1125–0006]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Executive Office for Immigration Review, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until July 20, 2015.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Jean King, Acting General Counsel, Executive Office for Immigration Review, U.S. Department of Justice, Suite 2600, 5107 Leesburg Pike, Falls Church, Virginia 20530; telephone: (703) 305–0470.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Executive Office for Immigration Review, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Revision and extension of a currently approved collection.

2. *The Title of the Form/Collection:* Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is EOIR–28, Executive Office for Immigration Review, United States Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Attorneys and qualified representatives notifying the Immigration Court that they are representing an alien in immigration proceedings. Other: None. Abstract: This information collection is necessary to allow an attorney or representative to notify the Immigration Court that he or she is representing an alien before the Immigration Court.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 175,101 respondents will complete the form annually with an average of 6 minutes per response.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 17,510 hours. It is estimated that respondents will take 6 minutes to complete the form.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: May 18, 2015.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2015–12310 Filed 5–20–15; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF JUSTICE

[OMB Number: 1125–NEW]

Agency Information Collection Activities; Proposed eCollection; eComments Requested; Unfair Immigration-Related Employment Practices Complaint Form

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Executive Office for Immigration Review, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until July 20, 2015.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Jean King, Acting General Counsel, Executive Office for Immigration Review, U.S. Department of Justice, Suite 2600, 5107 Leesburg Pike, Falls Church, Virginia 20530; telephone: (703) 305–0470.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Executive Office for Immigration Review, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* New Voluntary Collection.

2. *The Title of the Form/Collection:* Unfair Immigration-Related Employment Practices Complaint Form.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form EOIR–58. The applicable component within the Department of Justice is the Office of the Chief Administrative Hearing Officer (OCAHO), Executive Office for Immigration Review.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals who wish to file a complaint alleging unfair immigration-related employment practices under section 274B of the Immigration and Nationality Act (INA). Other: None. Abstract: Section 274B of the INA prohibits: Employment discrimination on the basis of citizenship status or national origin; retaliation or intimidation by an employer against an individual seeking to exercise his or her rights under this section; and ''document abuse'' or overdocumentation by the employer, which occurs when the employer asks an applicant or employee for more or different documents than required for employment eligibility verification under INA section 274A, with the intent of discriminating against the employee in violation of section 274B. Individuals who believe that they have suffered discrimination in violation of section 274B may file a charge with the Department of Justice, Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC). The OSC then has 120 days to determine whether to file a complaint with OCAHO on behalf of the individual charging party. If the OSC chooses not to file a complaint, the individual may then file his or her own complaint directly with OCAHO. This information collection may be used by an individual to file his or her own complaint with OCAHO. The Form EOIR–58 will elicit, in a uniform manner, all of the required information for OCAHO to assign a section 274B complaint to an Administrative Law Judge for adjudication.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 22 respondents will complete the form annually; each response will be completed in approximately 30 minutes.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 11 hours. It is estimated that 22 forms will be received, taking 30 minutes to complete.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: May 18, 2015.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2015–12313 Filed 5–20–15; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2012–0016]

Marine Terminals and Longshoring Standards; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements contained in the Standards on Marine Terminals (29 CFR part 1917) and Longshoring (29 CFR part 1918).

DATES: Comments must be submitted (postmarked, sent, or received) by July 20, 2015.

ADDRESSES: *Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2012–0016, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and the OSHA docket number (OSHA–2012–0016) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download from the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accord with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The Standards on Marine Terminals and Longshoring contain a number of collections of information which are used by employers to ensure that employees are informed properly about the safety and health hazards associated with marine terminals and longshoring operations. OSHA uses the records developed in response to the collection of information requirements to find out if the employer is complying adequately with the provisions of the standards.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirements contained in the Standards on Marine Terminals (29 CFR part 1917) and Longshoring (29 CFR part 1918). The Agency is requesting an increase in its current burden hour estimate from 47,398 hours to 65,694 hours, a difference of 18,296 hours. This increase in the burden hours is due to an increase in longshoring operations from 808 to 871 establishments and an increase in the number of establishments in port and habor operations from 212 to 525. The Agency will summarize any comments submitted in response to this notice and will include this summary in its request to OMB.

Type of Review: Extension of currently approved collections.

Title: Marine Terminals (29 CFR part 1917) and Longshoring (29 CFR part 1918).

OMB Number: 1218–0196.

Affected Public: Business or other for-profits; Not-for-profit organizations; Federal Government; State, Local, or Tribal Government.

Number of Respondents: 1,396.

Frequency of Response: On occasion.

Average Time per Response: Varies from one minute (.02 hour) to 50 hours.

Estimated Total Burden Hours: 65,694.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://*

www.regulations.gov, which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2012–0016). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download from this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available from the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on May 15, 2015.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2015–12245 Filed 5–20–15; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2009–0026]

Curtis-Straus LLC: Application for Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the application of Curtis-Straus LLC for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL) and presents the Agency's preliminary finding to grant the application.

DATES: Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before June 5, 2015.

ADDRESSES: Submit comments by any of the following methods:

1. *Electronically:* Submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for making electronic submissions.

2. *Facsimile:* If submissions, including attachments, are not longer than 10 pages, commenters may fax them to the OSHA Docket Office at (202) 693–1648.

3. *Regular or express mail, hand delivery, or messenger (courier) service:* Submit comments, requests, and any attachments to the OSHA Docket Office, Docket No. OSHA–2009–0026, Technical Data Center, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–2625, Washington, DC 20210; telephone: (202) 693–2350 (TTY number: (877) 889–5627). Note that security procedures may result in significant delays in receiving comments and other written materials by regular mail. Contact the OSHA Docket Office for information about security procedures concerning delivery of materials by express mail, hand delivery, or messenger service. The hours of operation for the OSHA Docket Office are 8:15 a.m.–4:45 p.m., e.t.

4. *Instructions:* All submissions must include the Agency name and the OSHA docket number (OSHA–2009–0026). OSHA places comments and other materials, including any personal information, in the public docket without revision, and these materials will be available online at *http://www.regulations.gov.* Therefore, the Agency cautions commenters about submitting statements they do not want made available to the public, or submitting comments that contain personal information (either about themselves or others) such as Social Security numbers, birth dates, and medical data.

5. *Docket:* To read or download submissions or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection at the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions.

6. *Extension of comment period:* Submit requests for an extension of the comment period on or before June 5, 2015 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3655, Washington, DC 20210, or by fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3647, Washington, DC 20210; telephone: (202) 693–1999; email: *Meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3655, Washington, DC 20210; phone: (202) 693–2110 or email: *robinson.kevin@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Notice of the Application for Expansion

The Occupational Safety and Health Administration is providing notice that

Curtis-Straus LLC (CSL) is applying for expansion of its current recognition as an NRTL. CSL requests the addition of nine test standards to its NRTL scope of recognition.

OSHA recognition of an NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition. Each NRTL's scope of recognition includes (1) the type of products the NRTL may test, with each type specified by its applicable test standard; and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The Agency processes applications by an NRTL for initial recognition and for an expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding. In the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational Web page for each NRTL, including CSL, which details the NRTL's scope of recognition. These pages are available from the OSHA Web site at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

CSL currently has one facility (site) recognized by OSHA for product testing and certification, with its headquarters located at: Curtis-Straus LLC, One Distribution Center Circle, Suite #1, Littleton, Massachusetts 01460. A complete list of CSL's scope of recognition is available at *http://www.osha.gov/dts/otpca/nrtl/csl.html.*

II. General Background on the Application

CSL submitted two applications, one dated August 9, 2014, and one dated February 25, 2015 (CSL Exhibit 1—Expansion Application for Eight Standards and CSL Exhibit 2—Expansion Application for One Standard), to expand its recognition to include nine additional test standards. These two applications were combined. OSHA staff performed a comparability analysis and reviewed other pertinent information. OSHA performed an on-site review in relation to these applications on January 27, 2015 to January 28, 2015.

Table 1 below lists the appropriate test standards found in CSL's applications for expansion for testing and certification of products under the NRTL Program.

TABLE 1—PROPOSED APPROPRIATE TEST STANDARD FOR INCLUSION IN CSL'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL 1012	Power Supplies.
UL 1310	Direct Plug-In Transformer Units.
UL 60065	Audio, Video and Similar Electronic Apparatus.
UL 60950–21	Information Technology Equipment—Safety—Part 21: Remote Power Feeding.
UL 60950–22	Information Technology Equipment—Safety—Part 22: Equipment to be Installed Outdoors.
UL 60950–23	Information Technology Equipment—Safety—Part 23: Large Data Storage Equipment.
UL 62368–1	Audio/video, information and communication technology equipment—Part 1: Safety requirements.
UL 61010–2–030	Safety requirements for electrical equipment for measurement, control, and laboratory use—Part 2–030: Particular requirements for testing and measuring circuits.
UL 61010B–2–031	Electrical Equipment for Measurement, Control, and Laboratory Use; Part 2: Particular Requirements for Hand-Held Probe Assemblies for Electrical Measurement and Test.

III. Preliminary Findings on the Application

CSL submitted acceptable applications for expansion of its scope of recognition. OSHA's review of the application file, and on-site review, indicates that CSL can meet the requirements prescribed by 29 CFR 1910.7 for expanding its recognition to include the addition of the test standards for NRTL testing and certification listed above. This preliminary finding does not constitute an interim or temporary approval of CSL's applications.

OSHA welcomes public comment as to whether CSL meets the requirements of 29 CFR 1910.7 for expansion of its recognition as an NRTL. Comments should consist of pertinent written documents and exhibits. Commenters needing more time to comment must submit a request in writing, stating the reasons for the request. Commenters must submit the written request for an extension by the due date for comments. OSHA will limit any extension to 10 days unless the requester justifies a longer period. OSHA may deny a request for an extension if the request is not adequately justified. To obtain or review copies of the exhibits identified in this notice, as well as comments submitted to the docket, contact the Docket Office, Room N–2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address. These materials also are available online at *http://www.regulations.gov* under Docket No. OSHA–2009–0026.

OSHA staff will review all comments to the docket submitted in a timely manner and, after addressing the issues raised by these comments, will recommend to the Assistant Secretary for Occupational Safety and Health whether to grant CSL's application for expansion of its scope of recognition. The Assistant Secretary will make the final decision on granting the application. In making this decision, the Assistant Secretary may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7.

OSHA will publish a public notice of its final decision in the **Federal Register**.

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, DC 20210, authorized the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on May 15, 2015.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2015–12287 Filed 5–20–15; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2012–0009]

The Asbestos in Shipyards Standard; Extension of the Office of Management and Budget's Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the Asbestos in Shipyards Standard (29 CFR 1915.1001).

DATES: Comments must be submitted (postmarked, sent, or received) by July 20, 2015.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal e-Rulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2012–0009, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and the OSHA docket number (OSHA–2012–0009) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download from the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accord with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)).

This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The information collection requirements specified in the Asbestos in Shipyards Standard protect workers from the adverse health effects that may result from occupational exposure to asbestos. The major information collection requirements in the standard include: implementing an exposure-monitoring program that informs workers of their exposure-monitoring results; ensuring notification of on-site employers, at multi-employer worksites, when establishing regulated areas for work performed with asbestos-containing materials (ACMs) and/or presumed asbestos-containing materials (PACMs), of the requirements for such regulated areas, and the measures necessary to protect workers from overexposure; providing medical surveillance for workers potentially exposed to ACMs and/or PACMs, including administering a worker medical questionnaire, providing information to the examining physician, and providing the physician's written opinion to the worker; and maintaining records of objective data used for exposure determinations, worker exposure monitoring and medical surveillance records, training records, the record (*i.e.,* information, data, and analyses) used to demonstrate that PACMs do not contain asbestos, and notifications made, as well as received by building or facility owners regarding the content of ACMs and/or PACMs.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is proposing a reduction in the information collection requirements contained in the Asbestos in Shipyards Standard (29 CFR 1915.1001). The adjustment is primarily the result of the removal of the training requirements from the ICR, which is not considered a paperwork burden for employers as associated training is conducted and documented by an EPA-approved or state-approved provider. Thus, despite a

four-fold increase in the number of shipyards that may have workers exposed to asbestos, the Agency is requesting a 424 hour decrease in its current burden hour total from 1,613 hours to 1,189 hours. The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

Type of Review: Extension of a currently approved collection.

Title: Asbestos in Shipyards Standard (29 CFR 1915.1001).

OMB Control Number: 1218–0195.

Affected Public: Businesses or other for-profits; Federal Government; State, Local or Tribal Government.

Frequency: On occasion.

Average Time per Response: Varies from 5 minutes (.08 hour) to provide information to the examining physician to 1.83 hours to develop alternative control methods.

Estimated Total Burden Hours: 1,189.

Estimated Cost (Operation and Maintenance): $43,003.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2012–0009). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as their social security number and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download from this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available from the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on May 15, 2015.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2015–12289 Filed 5–20–15; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–H022k–2006–0062]

Preparations for the 29th Session of the UN Sub-Committee of Experts on the Globally Harmonized System of Classification and Labelling of Chemicals (UNSCEGHS)

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise interested persons that on Wednesday, June 10, 2015, OSHA will conduct a public meeting to discuss proposals in preparation for the 29th session of the United Nations Sub-Committee of Experts on the Globally Harmonized System of Classification and Labelling of Chemicals (UNSCEGHS) to be held June 29 to July 1, 2015 in Geneva, Switzerland. OSHA, along with the U.S. Interagency GHS (Globally Harmonized System of Classification and Labelling of Chemicals) Coordinating Group, plans to consider the comments and information gathered at this public meeting when developing the U.S. Government positions for the UNSCEGHS meeting.

Also, on Wednesday, June 10, 2015, the Department of Transportation (DOT), Pipeline and Hazardous Materials Safety Administration (PHMSA) will conduct a public meeting (See Docket No. PHMSA–2015–0101, Notice No. 15–6) to discuss proposals in preparation for the 47th session of the United Nations Sub-Committee of Experts on the Transport of Dangerous Goods (UNSCOE TDG) to be held June 22 to June 26, 2015, in Geneva, Switzerland. During this meeting, PHMSA is also soliciting comments relative to potential new work items which may be considered for inclusion in its international agenda and feedback on issues that PHMSA may put forward for consideration by the Sub-Committee, such as enhanced recognition of alternative test methods relevant to the classification of corrosive materials (see further discussion under the **SUPPLEMENTARY INFORMATION** section below). PHMSA will also provide an update on recent actions to enhance transparency and stakeholder interaction through improvements to the international standards portion of its Web site.

DATES: Wednesday, June 10, 2015.

ADDRESSES: Both meetings will be held at the DOT Headquarters Conference Center, West Building, 1200 New Jersey Avenue SE., Washington, DC 20590.

Times and Locations: PHMSA public meeting: 9:00 a.m. to 12:00 p.m. EDT, Conference Room 4. OSHA public meeting: 1:00 p.m. to 4:00 p.m. EDT, Conference Room 4.

Registration: It is requested that attendees pre-register for these meetings by completing the form at: *https://www.surveymonkey.com/r/3XTD2TB.* Attendees may use the form to pre-register for the OSHA meeting, the PHMSA meeting, or both meetings. Failure to pre-register may delay your access to the DOT building. Participants attending in person are encouraged to arrive early to allow time for security checks necessary to obtain access to the building.

Conference call-in and ''live meeting'' capability will be provided for both meetings. Specific information on call-in and live meeting access will be posted when available at: *http://www.osha.gov/dsg/hazcom/* and at: *http://www.phmsa.dot.gov/hazmat/regs/international.*

FOR FURTHER INFORMATION CONTACT: Maureen Ruskin, Office of Chemical Hazards-Metals, OSHA Directorate of Standards and Guidance, Department of

Labor, Washington, DC 20210: telephone: (202) 693–1950, email: *ruskin.maureen@dol.gov.*

SUPPLEMENTARY INFORMATION:

The OSHA Meeting: OSHA is hosting an open informal public meeting of the U.S. Interagency GHS Coordinating Group to provide interested groups and individuals with an update on GHS-related issues and an opportunity to express their views orally and in writing for consideration in developing U.S. Government positions for the upcoming UNSCEGHS meeting. Interested stakeholders may also provide input on issues related to OSHA's activities in the U.S.-Canada Regulatory Cooperation Council (RCC) at the meeting.

General topics on the agenda include:

- Review of Working papers
- Correspondence Group updates
- Regulatory Cooperation Council (RCC) Update

Information on the work of the UNSCEGHS including meeting agendas, reports, and documents from previous sessions, can be found on the United Nations Economic Commission for Europe (UNECE) Transport Division Web site located at the following web address; *http://www.unece.org/trans/main/dgdb/dgsubc4/c4age.html.* The UNSCEGHS bases its decisions on Working Papers. The Working Papers for the 29th session of the UNSCEGHS are located at: *http://www.unece.org/trans/main/dgdb/dgsubc4/c42015.html.*

Informal Papers submitted to the UNSCEGHS provide information for the Sub-committee and are used either as a mechanism to provide information to the Sub-committee or as the basis for future Working Papers. Informal Papers for the 29th session of the UNSCEGHS are not yet posted on the UN Web site but when they become available will be located at: *http://www.unece.org/trans/main/dgdb/dgsubc4/c4inf29.html.*

The PHMSA Meeting: The **Federal Register** notice and additional detailed information relating to PHMSA's public meeting will be available upon publication at *http://www.regulations.gov* (Docket No. PHMSA–2015–0101) and on the PHMSA Web site at: *http://www.phmsa.dot.gov/hazmat/regs/international.*

The primary purpose of PHMSA's meeting will be to prepare for the 47th session of the UNSCE TDG. The 47th session of the UNSCE TDG is the first of four meetings scheduled for the 2015–2016 biennium. The UNSCE will consider proposals for the 20th Revised Edition of the United Nations Recommendations on the Transport of Dangerous Goods Model Regulations, which may be implemented into relevant domestic, regional, and international regulations from January 1, 2019. Copies of working documents, informal documents, and the meeting agenda may be obtained from the United Nations Transport Division's Web site at *http://www.unece.org/trans/danger/danger.html.*

General topics on the agenda for the UNSCE TDG meeting include:

- Explosives and related matters
- Listing, classification and packing
- Electric storage systems
- Transport of gases
- Miscellaneous pending issues
- Global harmonization of transport of dangerous goods regulations with the Model Regulations
- Guiding principles for the Model Regulations
- Electronic data interchange for documentation purposes
- Cooperation with the International Atomic Energy Agency (IAEA)
- New proposals for amendments to the Model Regulations
- Issues relating to the Globally Harmonized System of Classification and Labeling of Chemicals (GHS)

PHMSA specifically solicits comments relative to efforts by the UN TDG and GHS Sub-Committees relevant to enhancing recognition of additional Class 8 (corrosive) classification test methods that are currently included within the GHS but not specifically referenced within the UN Model Regulations for Transport. PHMSA in considering submission of a proposal to include within the UN Model Regulations additional GHS-based methods, such as the additivity method which was discussed by the GHS/TDG Informal Working Group that met during the last biennium. PHMSA sees value in the inclusion of alternative methods which provide an equivalent level of safety provided they are included as an option to provide greater flexibility for example with respect to the classification of mixtures to reduce the need for in-vitro and/or in-vivo testing where practicable.

Following the 47th session of the UNSCE TDG, a copy of the Sub-Committee's report will be available at the United Nations Transport Division's Web site at *http://www.unece.org/trans/main/dgdb/dgsubc3/c3rep.html.* PHMSA's Web site at *http://www.phmsa.dot.gov/hazmat/regs/international* provides additional information regarding the UNSCE TDG and related matters.

Authority and Signature: This document was prepared under the direction of David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), and Secretary's Order 1–2012 (77 FR 3912), (Jan. 25, 2012).

Signed at Washington, DC, on May 15, 2015.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2015–12268 Filed 5–20–15; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2012–0004]

The Cadmium in Construction Standard; Extension of the Office of Management and Budget's (OMB) Approval of Collection of Information (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend the Office of Management and Budget's (OMB) approval of the collection of information requirements contained in the Cadmium in Construction Standard (29 CFR 1926.1127).

DATES: Comments must be submitted (postmarked, sent, or received) by July 20, 2015.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2012–0004, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket

Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and the OSHA docket number (OSHA–2012–0004) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download from the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You also may contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing collection of information requirements in accord with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The collection of information requirements specified in the Cadmium in Construction Standard protect workers from the adverse health effects that may result from their exposure to cadmium. The major collection of information requirements of the Standard include: Conducting worker exposure monitoring, notifying workers of their cadmium exposures, implementing a written compliance program, implementing medical surveillance of workers, providing examining physicians with specific information, ensuring that workers receive a copy of their medical surveillance results, maintaining workers' exposure monitoring and medical surveillance records for specific periods, and providing access to these records by the worker who is the subject of the records, the worker's representative, and other designated parties.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed collection of information requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the collection of information requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

The Agency is requesting an adjustment decrease of 3,511 burden hours (from 37,231 to 33,720 burden hours) to account for the determination, upon further consideration, that neither training delivery nor collection of records during OSHA inspections constitute collections of information under the PRA–95. While OSHA believes exposures likely have decreased, without specific updated data, OSHA has retained the existing estimates regarding the number of construction sites, employers and employees covered by the Standard.

Type of Review: Extension of a currently approved collection.

Title: Cadmium in Construction Standard (29 CFR 1926.1127).

OMB Control Number: 1218–0186.

Affected Public: Businesses or other for-profits.

Number of Respondents: 10,000.

Frequency of Response: On occasion; Quarterly; Semi-annually; Annually.

Total Responses: 258,249.

Average Time per Response: Varies from five minutes (.08 hour) for an employer to notify a worker of exposure monitoring results to 1.5 hours to administer worker medical examinations.

Estimated Total Burden Hours: 33,720.

Estimated Cost (Operation and Maintenance): $2,082,199.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile; or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for this ICR (Docket No. OSHA–2012–0004). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as their social security number and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted

material) is not publicly available to read or download from this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available from the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on May 15, 2015.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2015–12288 Filed 5–20–15; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 15–040]

NASA Advisory Council; Science Committee; Planetary Protection Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Planetary Protection Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The Meeting will be held for the purpose of soliciting, from the scientific community and other persons, scientific and technical information relevant to program planning.

DATES: Monday, June 8, 2015, 1:00 p.m. to 4:00 p.m.; Tuesday, June 9, 2015, 8:30 a.m. to 5:00 p.m.; and Wednesday, June 10, 2015, 9:30 a.m. to 4:00 p.m., Local Time.

ADDRESSES: NASA Headquarters, Room 6H41, 300 E Street SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Ann Delo, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–0750, fax (202) 358–2779.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The meeting will also be available telephonically and by WebEx. Any interested person may call the USA toll free conference call number 844–467–6272, passcode 197792, to participate in this meeting by telephone. The WebEx link is *https://nasa.webex.com/;* the meeting number on June 8 is 999 084 742, passcode pps06082015!. The meeting number on June 9 is 998 176 277, passcode pps06092015!. The meeting number on June 10 is 998 424 135, passcode pps06102015!.

The agenda for the meeting includes the following topics:

—Update on NASA Planetary Protection Activities and Committee on Space Research (COSPAR)
—Updates on NASA Mars missions
—Other related items

Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID to Security before access to NASA Headquarters. Due to the Real ID Act, Public Law 109–13, any attendees with drivers licenses issued from non-compliant states/territories must present a second form of ID [Federal employee badge; passport; active military identification card; enhanced driver's license; U.S. Coast Guard Merchant Mariner card; Native American tribal document; school identification accompanied by an item from LIST C (documents that establish employment authorization) from the ''List of the Acceptable Documents'' on Form I–9]. Non-compliant states/territories are: American Samoa, Arizona, Idaho, Louisiana, Maine, Minnesota, New Hampshire, and New York. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 working days prior to the meeting: Full name; gender; date/place of birth; citizenship; visa information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee; and home address to Ann Delo via email at *ann.b.delo@nasa.gov* or by fax at (202) 358–2779.

U.S. citizens and Permanent Residents (green card holders) are requested to submit their name and affiliation 3 working days prior to the meeting to Ann Delo.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2015–12326 Filed 5–20–15; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[NRC–2014–0002]

Emergency Planning Exemption Requests for Decommissioning Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Interim staff guidance; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing Interim Staff Guidance (ISG) NSIR/DPR–ISG–02, ''Emergency Planning Exemption Requests for Decommissioning Nuclear Power Plants,'' May 11, 2015. This document provides guidance for NRC staff to produce clear and consistent reviews of requests for exemptions and license amendments for defueled station emergency plans submitted by licensees after permanent cessation of operations.

ADDRESSES: Please refer to Docket ID NRC–2014–0002 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0002. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individuals 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 draft NSIR/DPR–ISG–02, the final NSIR/DPR–ISG–02, the public comments, and the NRC staff's responses to public comments are available in ADAMS under Accession Nos. ML13304B442, ML14106A057, ML14225A717, and ML14230A346.

• 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: Michael Wasem, telephone: 301–287–3793, email: *Michael.Wasem@nrc.gov,* or Michael Norris, telephone: 301–287–3754, email: *Michael.Norris@nrc.gov,* both of the Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Discussion

Currently, licensees of permanently shut down and defueled nuclear power plants are required to maintain emergency plans meeting the same requirements as emergency plans for operating nuclear power plants. Nuclear power plants that have permanently ceased operating and permanently removed fuel from the reactor vessel, with spent fuel stored in the spent fuel pool and/or in dry cask storage provide less of a risk of radiological releases than operating nuclear power plants. Licensees of these decommissioning plants have historically submitted requests for exemption from emergency preparedness regulations based on this lower risk. The final ISG will be used by NRC staff for future submittals and reflects the experience of NRC staff in the technical review of exemptions requested for the Kewaunee Power Station (KPS), as documented in SECY–14–0066, ''Request by Dominion Energy Kewaunee, Inc. for Exemptions from Certain Emergency Planning Requirements'' (ADAMS Accession No. ML14072A257), and for the review of proposed changes to the KPS emergency plan and emergency action level (EAL) scheme implementing exemptions as approved by the Commission in Staff Requirements Memorandum (SRM) to SECY–14–0066 ADAMS Accession No. ML14219A366). The final ISG is intended to provide guidance for staff to facilitate the clear and consistent reviews of subsequent requests for exemptions to specific emergency plan requirements of part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR) for a permanently shut down and defueled power reactor, and for license amendments to emergency plans and EAL schemes implementing the specific emergency plan requirements of 10 CFR part 50, as exempted.

Licensees have historically used the exemption process to decrease the burden of maintaining required parts of emergency plans in cases where continued application of the regulation by the licensee is not necessary to achieve the underlying purpose of the regulation. The findings from previous exemption request reviews, along with the results of studies such as NUREG–2161: ''Consequence Study of a Beyond-Design-Basis Earthquake Affecting the Spent Fuel Pool for a U.S. Mark I Boiling Water Reactor'' (ADAMS Accession No. ML14255A365); NUREG–1738, ''Technical Study of Spent Fuel Accident Risk at Decommissioning Nuclear Power Plants'' (ADAMS Accession No. ML010430066); and NUREG–1864, ''A Pilot Probabilistic Risk Assessment of a Dry Cask Storage System at a Nuclear Power Plant'' (ADAMS Accession No. ML071340012), inform the technical review of exemptions to specific emergency plan requirements of 10 CFR part 50, and license amendments to a licensee's emergency plan and EAL scheme, as exempted.

The Commission directed the staff in SRMs to SECY–0066 and SECY–14–0118, ''Request by Duke Energy Florida, Inc., for Exemptions from Certain Emergency Planning Requirements'' (ADAMS Accession No. ML14219A444) to proceed with an integrated rulemaking on decommissioning. It is anticipated that this ISG will be replaced by future guidance developed in conjunction with this rulemaking.

II. Public Comments

A draft ISG was published for public comment in the **Federal Register** on January 10, 2014 (79 FR 1900). The public comment period closed on April 10, 2014. The NRC received 22 comment submissions on the draft ISG from members of the public, non-government organizations, and the nuclear industry. None of the comments received from members of the public supported a reduction in emergency preparedness for decommissioning nuclear power plants. In addition, eight of the submissions from members of the public were directed specifically at decommissioning of a specific licensee. The submission from the Nuclear Energy Institute (NEI) provided editorial comments, comments for clarification, and a request that power reactors undergoing decommissioning need not implement Initiating Conditions PD [permanently defueled]-HU1 and PD–HA1 in the EALs as outlined in NEI 99–01 (Revision 6), ''Development of Emergency Action Levels for Non-Passive Reactors'' (ADAMS Accession No. ML12326A805). The NRC received six comment submissions from representatives of other non-governmental organizations opposing any reduction in emergency planning and expressing dissatisfaction with the NRC's exemption process.

III. Changes to ISG

This ISG was revised from the draft that appeared in the **Federal Register** on January 20, 2014, based on public comments, NRC review of the Kewaunee exemption request, and subsequent Commission direction. A summary of the changes follows:

Section 1.0, Purpose, was expanded to include a description of Table 1 (Exemptions for Consideration) and Attachment 1 (Staff Guidance for Evaluation of Permanently Defueled Emergency Plans), and a discussion on how they are to be used by NRC staff. The NRC also added a description of the process to be used for the review of changes to a decommissioning licensee's EALs.

Section 2.0, Scope, was modified to reflect that licensees may submit exemption requests when they notify the NRC of the intent to permanently cease operation. The draft document incorrectly stated that the ISG could only be used after the licensee had certified that the reactor vessel was defueled.

The NRC deleted the term ''risk factor'' and moved the discussion on risk from Section 3.0, Background, to Section 4.0, Overview of Existing Guidance. A short description of physical security requirements for decommissioning nuclear power reactors was added to Section 3.0.

Table 1 was revised to reflect potential exemption requests based on the Commission's SRM dated August 7, 2014, for SECY–14–0066.

Attachment 1 was replaced in its entirety by a table of the applicable guidance contained in NUREG–0654/FEMA–REP–1 (Revision 1), ''Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants'' (ADAMS Accession No. ML040420012).

IV. Congressional Review Act

NSIR/DPR–ISG–02 is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found

it to be a major rule as defined in the Congressional Review Act.

V. Backfitting and Issue Finality

The NRC is issuing interim guidance for the NRC staff regarding its review of requests from licensees of decommissioning nuclear power plants for exemptions from specific emergency plan requirements in 10 CFR part 50 and license amendments to permanently defueled emergency plans. Issuance of the ISG does not constitute backfitting as defined in 10 CFR 50.109 (the Backfit Rule) and is not otherwise inconsistent with the issue finality provisions in 10 CFR part 52. The NRC's position is based upon the following considerations.

1. *The ISG positions do not constitute backfitting, inasmuch as the ISG is internal guidance to NRC staff.*

The ISG provides interim guidance to the staff on how to review certain requests for exemption or license amendments. Changes in internal staff guidance are not matters for which applicants or licensees are protected under 10 CFR 50.109 or issue finality provisions in 10 CFR part 52.

2. *The staff has no intention to impose the ISG on existing nuclear power plant licenses or holders of regulatory approvals either now or in the future (absent a voluntary request for change from the licensee or holder of a regulatory approval).*

The staff does not intend to impose or apply the positions described in the ISG to existing (already issued) licenses (*e.g.,* operating licenses and combined licenses) and regulatory approvals. Hence, the ISG—even if considered guidance that is within the purview of the issue finality provisions in 10 CFR part 52—need not be evaluated as if it were a backfit or as being inconsistent with issue finality provisions. If, in the future, the staff seeks to impose a position in the ISG on holders of already issued licenses in a manner that does not provide issue finality as described in the applicable issue finality provision, then the staff must make the showing as set forth in the Backfit Rule, or address the criteria for avoiding issue finality as described in the applicable issue finality provision, as applicable.

3. *Backfitting and issue finality do not—with limited exceptions not applicable here—protect current or future applicants.*

Applicants and potential applicants are not, with certain exceptions, protected by either the Backfit Rule or any issue finality provisions under 10 CFR part 52. This is because neither the Backfit Rule nor the issue finality provisions under 10 CFR part 52—with certain exclusions discussed below—were intended to apply to every NRC action that substantially changes the expectations of current and future applicants.

The exceptions to the general principle are applicable whenever an applicant references a 10 CFR part 52 license (*e.g.,* an early site permit) and/or NRC regulatory approval (*e.g.,* a design certification rule) with specified issue finality provisions. The staff does not, at this time, intend to impose the positions represented in the ISG in a manner that is inconsistent with any issue finality provisions.

If, in the future, the staff seeks to impose a position in the ISG in a manner that does not provide issue finality as described in the applicable issue finality provision, then the staff must address the criteria for avoiding issue finality as described in the applicable issue finality provision.

Dated at Rockville, Maryland, this 11th day of May, 2015.

For the Nuclear Regulatory Commission.

Robert J. Lewis,

Director, Division of Preparedness and Response, Office of Nuclear Security and Incident Response.

[FR Doc. 2015–12377 Filed 5–20–15; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2014–0209]

Nonmetallic Thermal Insulation for Austenitic Stainless Steel

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing Revision 1 to Regulatory Guide (RG) 1.36, ''Nonmetallic Thermal Insulation for Austenitic Stainless Steel.'' The RG describes methods and procedures that the staff of the U.S. Nuclear Regulatory Commission (NRC) considers acceptable when selecting and using nonmetallic thermal insulation to minimize any contamination that could promote stress-corrosion cracking in the stainless steel portions of the reactor coolant pressure boundary and other systems important to safety. This guide applies to light-water-cooled reactors.

ADDRESSES: Please refer to Docket ID NRC–2014–0209 when contacting the NRC about the availability of information regarding this document. You may obtain publically-available information related to this document, using any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0209. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individuals 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 available in ADAMS) is provided the first time that a document is referenced. Revision 1 of Regulatory Guide 1.36 is available in ADAMS under Accession No. ML15026A664. The regulatory analysis may be found in ADAMS under Accession No. ML14079A669.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

FOR FURTHER INFORMATION CONTACT: David W. Alley, Office of Nuclear Reactor Regulation, 301–415–2178 email: *Dave.Alley@nrc.gov* and Richard A. Jervey, Office of Nuclear Regulatory Research, 301–251–7404, email: *Richard.Jervey@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is issuing a revision to an existing guide in the NRC's ''Regulatory Guide'' series. Regulatory guides were developed to describe and make available to the public information and methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

Revision 1 of RG 1.36 was issued with a temporary identification as Draft

Regulatory Guide, DG–1312. RG 1.36, Revision 1, updates NRC guidance to approve for use current voluntary consensus standards (specifications) related to thermal insulation in contact with austenitic stainless steel. The standards have been revised and improved in recent years; thus they represent current best practices available for that purpose. Significantly, the current standards offer more than one test method to satisfy the objective of the standard. Additionally, several test methods identified in the previous RG 1.36 are no longer in use and the references to them have been removed.

II. Additional Information

Draft Guide (DG)–1312, was published in the **Federal Register** on October 6, 2014 (79 FR 60188) for a 30-day public comment period. The public comment period closed on November 5, 2014. Public comments on DG–1312 and the staff responses to the public comments are available under ADAMS Accession Number ML15026A678.

III. Congressional Review Act

This regulatory guide is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

IV. Backfitting and Issue Finality

RG 1.36, Revision 1, provides guidance on one acceptable way of meeting the requirements in GDC 1 and GDC 14 with respect to stress-corrosion cracking in austenitic steel portions of the reactor coolant pressure boundary which are caused in part by contact with nonmetallic thermal insulation. This does not constitute backfitting as defined in Section 50.109 of Title 10 of the *Code of Federal Regulations* (10 CFR) (the Backfit Rule), and is not otherwise inconsistent with the issue finality provisions in 10 CFR part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants.'' The NRC's position is based upon the following considerations.

Existing licensees, part 50 construction permit holders and part 50 operating license holders, and applicants of final design certification rules would not be required to comply with the positions set forth in RG 1.36, Revision 1, unless the construction permit or an operating license holder makes a voluntary change to their licensing basis with respect to non-metallic thermal insulation in contact with austenitic stainless steel, and the NRC determines that the safety review must include consideration of the matters addressed in this regulatory guide.

Existing design certification rules would not be required to be amended to comply with the positions set forth in RG 1.36 unless the NRC addresses the issue finality provisions in 10 CFR 52.63(a).

Existing combined license holders (referencing the AP1000 design certification rule in 10 CFR part 52, Appendix D) would not be required to comply with the positions set forth in RG 1.36 unless the NRC addresses the issue finality provisions in 10 CFR 52.63(a).

RG 1.36 may be applied to current applications for operating licenses, combined licenses, and certified design rules docketed by the NRC as of the date of issuance of the revision to the regulatory guide, as well as future applications submitted after the issuance of the revised regulatory guide. Such action would not constitute backfitting as defined in § 50.109(a)(1) or be otherwise inconsistent with the applicable issue finality provision in 10 CFR part 52.

Applicants and potential applicants are not, with certain exceptions, protected by either the Backfit Rule or any issue finality provisions under 10 CFR part 52. This is because neither the Backfit Rule nor the issue finality provisions under part 52—with certain exclusions discussed below—were intended to apply to every NRC action which substantially changes the expectations of current and future applicants.

The exceptions to the general principle are applicable whenever a combined license applicant references a part 52 license (*e.g.,* an early site permit) and/or NRC regulatory approval (*e.g.,* a design certification rule) with specified issue finality provisions. The NRC does not, at this time, intend to impose the positions represented in the RG, on combined license applicants in a manner that is inconsistent with any issue finality provisions. If, in the future, the NRC seeks to impose a position in the RG, in a manner which does not provide issue finality as described in the applicable issue finality provision, then the NRC must address the criteria for avoiding issue finality as described in the applicable issue finality provision.

Dated at Rockville, Maryland, this 15th day of May 2015.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

Chief, Regulatory Guidance and Generic Issues Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2015–12292 Filed 5–20–15; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2015–69; Order No. 2485]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning an additional Global Plus 2C negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* May 22, 2015.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Notice of Commission Action
III. Ordering Paragraphs

I. Introduction

On May 14, 2015, the Postal Service filed notice that it has entered into an additional Global Plus 2C negotiated service agreement (Agreement).[1]

To support its Notice, the Postal Service filed a copy of the Agreement, a copy of the Governors' Decision authorizing the product, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket No. CP2015–69 for consideration of matters raised by the Notice.

[1] Notice of the United States Postal Service of Filing a Functionally Equivalent Global Plus 2C Contract Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, May 14, 2015 (Notice).

The Commission invites comments on whether the Postal Service's filing is consistent with 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than May 22, 2015. The public portions of the filing can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Kenneth R. Moeller to serve as Public Representative in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2015–69 for consideration of the matters raised by the Postal Service's Notice.
2. Pursuant to 39 U.S.C. 505, Kenneth R. Moeller is appointed to serve as an officer of the Commission to represent the interests of the general public in this proceeding (Public Representative).
3. Comments are due no later than May 22, 2015.
4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2015–12270 Filed 5–20–15; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2015–68; Order No. 2484]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning an additional Global Plus 1C negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* May 22, 2015.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction

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II. Notice of Commission Action

The Commission establishes Docket No. CP2015–68 for consideration of matters raised by the Notice.

The Commission invites comments on whether the Postal Service's filing is consistent with 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than May 22, 2015. The public portions of the filing can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Curtis Kidd to serve as Public Representative in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2015–68 for consideration of the matters raised by the Postal Service's Notice.
2. Pursuant to 39 U.S.C. 505, Curtis Kidd is appointed to serve as an officer of the Commission to represent the interests of the general public in this proceeding (Public Representative).
3. Comments are due no later than May 22, 2015.
4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2015–12269 Filed 5–20–15; 8:45 am]

BILLING CODE 7710–FW–P

[1] Notice of the United States Postal Service of Filing a Functionally Equivalent Global Plus 1C Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, May 14, 2015 (Notice).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74973; File No. SR–FICC–2015–002]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of a Proposed Rule Change to the Government Securities Division Rules in Connection With the Extension of the GCF Repo Service Pilot Program

May 15, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 7, 2015, the Fixed Income Clearing Corporation (''FICC'' or the ''Corporation'') 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 FICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule changes consist of modifications to the Rulebook of the Government Securities Division (''GSD'') in connection with the extension of the GCF Repo® service[3] pilot program.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC 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. FICC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(i) Purpose of the Proposed Rule Change

FICC is seeking the Commission's approval to extend the current pilot program (the ''2014 Pilot Program'') that is currently in effect for the GCF Repo® service. FICC is requesting that the 2014

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] GCF Repo is a registered trademark of FICC/DTCC.

Pilot Program be extended for one year following the Commission's approval of the present filing.[4]

By way of background, on July 12, 2011, FICC submitted a rule filing to the Commission (SR–FICC–2011–05) proposing to make certain changes to its GCF Repo service in order to comply with the recommendations that had been made by the Task Force on Triparty Reform (''TPR''), an industry group formed and sponsored by the Federal Reserve Bank of New York.[5] Because the GCF Repo service operates as a triparty mechanism, FICC was requested to incorporate changes to the GCF Repo service to align the service with the other TPR recommended changes for the overall triparty market.

The rule change described in SR–FICC–2011–05 was proposed to be run as a pilot program for one year starting from the date on which the filing was approved by the Commission (the ''2011 Pilot Program'').[6] Throughout 2011 and the earlier half of 2012, FICC implemented a portion of the rule changes that were included in SR–FICC–2011–05. As the expiration date of the 2011 Pilot Program approached, FICC elected to have certain aspects of the 2011 Pilot Program continue, however, FICC also proposed to make certain modifications to the 2011 Pilot Program. As a result, on June 8, 2012, FICC submitted a rule filing for the 2012 Pilot Program (SR–FICC–2012–05).[7] On June 5, 2013, FICC then submitted a rule filing to extend the Pilot Program for an additional year (SR–FICC–2013–06).[8] On May 5, 2014, FICC then submitted a rule filing to extend the Pilot Program for an additional year (SR–FICC–2014–02).[9] Because the latest extension is now approaching its expiry date, FICC is seeking the Commission's approval to extend the Pilot Program for an additional year while the final phase of the tri-party reform is put into place.[10]

Background: Description of the GCF Repo Service and History

(1) Creation of the GCF Repo Service

The GCF Repo service allows GSD dealer members to trade general collateral repos [11] throughout the day without requiring intra-day[sic], trade-for-trade settlement on a delivery-versus-payment (''DVP'') basis. The service allows the dealers to trade such general collateral repos, based on rate and term, throughout the day with inter-dealer broker netting members on a blind basis. Standardized, generic CUSIP numbers have been established exclusively for GCF Repo processing and are used to specify the acceptable type of underlying Fedwire book-entry eligible collateral, which includes Treasuries, Agencies and certain mortgage-backed securities.

The GCF Repo service was developed as part of a collaborative effort among GSCC (FICC's predecessor), its two clearing banks (The Bank of New York Mellon (''BNY'') and JPMorgan Chase Bank, National Association (''Chase''), and industry representatives. GSCC introduced the GCF Repo service on an *intra*-clearing bank basis in 1998.[12] Under the intrabank service, dealers could only engage in GCF Repo transactions with other dealers that cleared at the *same* clearing bank.

(2) Creation of the Interbank Version of the GCF Repo Service

In 1999, GSCC expanded the GCF Repo service to permit dealer participants to engage in GCF Repo trading on an *inter*-clearing bank basis, meaning that dealers using *different* clearing banks could enter into GCF Repo transactions (on a blind brokered basis).[13] Because dealer members that participate in the GCF Repo service do not all clear at the same clearing bank, introducing the service as an interbank service necessitated the establishment of a mechanism to permit after-hours movements of securities between the two clearing banks to deal with the fact that GSCC would likely have unbalanced net GCF securities and cash positions within each clearing bank (that is, it is likely that at the end of GCF Repo processing each business day, the dealers in one clearing bank will be net funds borrowers, while the dealers at the other clearing bank will be net funds lenders). To address this issue, GSCC and its clearing banks established, and the Commission approved, a legal mechanism by which securities would ''move'' across the clearing banks without the use of the securities Fedwire.[14] (Movements of cash do not present the same issue because the cash Fedwire is open later than the securities Fedwire.) Therefore, at the end of the day, after the GCF net results are produced, securities are pledged via a tri-party-like mechanism and the interbank cash component is moved via Fedwire. In the morning, the pledges are unwound, that is, funds are returned to the net funds lenders and securities are returned to the net funds borrowers.

The following simplified example illustrates the manner in which the GCF Repo services works on an *interbank* basis:

Assume that Dealer B clears at BNY and Dealer C clears at Chase. Further assume that: (i) Outside of FICC, Dealer B engages in a triparty repo transaction with Party X to obtain funds and seeks to invest such funds via a GCF Repo transaction, (ii) outside of FICC, Dealer C engages in a DVP repo with Party Y to buy securities and seeks to finance these securities via a GCF Repo transaction, and (iii) Dealer B and Dealer C enter into a GCF Repo transaction (on a blind basis via a GCF Repo broker) and submit the trade details to FICC.

At the end of ''Day 1'', GCF Repo collateral must be allocated, *i.e.,* Dealer B must receive the securities. However, the securities that Dealer B is to receive are at Chase and the securities Fedwire is closed. The after-hours movement mechanism permits the securities to be ''sent'' to Dealer B as follows: FICC will instruct Chase to allocate to a special FICC clearance account at Chase securities in an amount equal to the net short securities position.

FICC has established on its own books and records two ''securities accounts'' as defined in Article 8 of the New York

[4] If FICC determines to change the parameters of the service during the one-year Pilot Program extension period, it will submit a rule filing to the Commission. If FICC seeks to extend the Pilot Program beyond the one-year period or proposes to make the Pilot Program permanent, it will also submit a rule filing to the Commission.

[5] The main purpose of the TPR was to develop recommendations to address the risk presented by triparty repo transactions due to the current morning reversal or ''unwind'' process and to move to a process by which transactions are collateralized all day.

[6] Securities Exchange Act Release No. 34–65213 (August 29, 2011), 76 FR 54824 (September 2, 2011) (SR–FICC–2011–05).

[7] Securities Exchange Release No. 34–67621 (August 8, 2012), 77 FR 48572 (August 14, 2012) (SR–FICC–2012–05).

[8] Securities Exchange Act Release No. 34–70068 (July 30, 2013), 78 FR 47453 (August 5, 2013) (SR–FICC–2013–06).

[9] Securities Exchange Act Release No. 34–72457 (June 24, 2014), 79 FR 36856 (June 30, 2014) (SR–FICC–2014–02).

[10] The final phase includes the development interactive messages for the interbank collateral substitution automation. If FICC determines to change the parameters of the service during the one-year Pilot Program extension period, it will submit a rule filing to the Commission. If FICC seeks to extend the Pilot Program beyond the one-year period or proposes to make the Pilot Program permanent, it will also submit a rule filing to the Commission.

[11] A general collateral repo is a repo in which the underlying securities collateral is nonspecific, general collateral whose identification is at the option of the seller. This is in contrast to a specific collateral repo.

[12] *See* Securities Exchange Act Release No. 34–40623 (October 30, 1998) 63 FR 59831 (November 5, 1998) (SR–GSCC–98–02).

[13] *See* Securities Exchange Act Release No. 34–41303 (April 16, 1999) 64 FR 20346 (April 26, 1999) (SR–GSCC–99–01).

[14] *See id.* for a detailed description of the clearing bank and FICC accounts needed to effect the after-hour movement of securities.

Uniform Commercial Code, one in the name of Chase (''FICC Account for Chase'') and one in the name of BNY (''FICC Account for BNY''). The FICC Account for Chase is comprised of the securities in FICC's special clearance account maintained by BNY (''FICC Special Clearance Account at BNY for Chase''), and the FICC Account for BNY is comprised of the securities in FICC's special clearance account maintained by Chase (''FICC Special Clearance Account at Chase for BNY'').[15] The establishment of these securities accounts by FICC in the name of the clearing banks enables the bank that is in the net long securities position to ''receive'' securities by pledge after the close of the securities Fedwire. Once the clearing bank has ''received'' the securities by pledge, it can credit them by book-entry to a FICC GCF Repo account at that clearing bank and then to the dealers that clear at that bank that are net long the securities in connection with GCF Repo trades.

In our example, Chase, as agent for FICC, will transmit to BNY a description of the securities in the FICC Special Clearance Account at Chase for BNY. Based on this description, BNY will transfer funds equal to the funds borrowed position to the FICC GCF Repo account at Chase. Upon receipt of the funds by Chase, Chase will release any liens it may have on the FICC Special Clearance Account at Chase for BNY, and FICC will release any liens it may have on FICC Account for BNY (both of these accounts being comprised of the same securities). BNY will credit the securities in the FICC Account for BNY to FICC's GCF Repo account at BNY, and BNY will further credit these securities to Dealer B, who, as noted, is in a net long securities position. In the morning of ''Day 2,'' all securities and funds movements occurring on Day 1, are reversed (''unwind'').

(3) Issues With Morning Unwind Process

In 2003, FICC shifted the GCF Repo service back to intrabank status only.[16] By that time, the service had grown significantly in participation and volume. However, with the increase in use of the interbank service, certain payments systems risk issues arose from the inter-bank[sic] funds settlements related to the service, namely, the large interbank funds movement in the morning. FICC shifted the service back to intrabank status to enable management to study the issues presented and identify a satisfactory solution for bringing the service back to interbank status.

(4) The NFE Filing and Restoration of Service to Interbank Status

In 2007, FICC submitted a rule filing to address the issues raised by the interbank morning funds movement and return the GCF Repo service to interbank status (the ''2007 NFE Filing'').[17] The 2007 NFE Filing addressed these issues by using a hold against a dealer's ''net free equity'' (''NFE'') at the clearing bank to collateralize its GCF Repo cash obligation to FICC on an intraday basis.[18]

The 2007 NFE Filing replaced the Day 2 morning unwind process with an alternate process, which is currently in effect. Specifically, in lieu of making funds payments, the interbank dealers grant to FICC a security interest in their NFE-related collateral equal to their prorated share of the total interbank funds amount. FICC, in turn, grants to the other clearing bank (that was due to receive the funds) a security interest in the NFE-related collateral to support the debit in the FICC account at the clearing bank. The debit in the FICC account (''Interbank Cash Amount Debit'') occurs because the dealers who are due to receive funds in the morning must receive those funds at that time in return for their release of collateral. The debit in the FICC account at the clearing bank gets satisfied during the end of day GCF Repo settlement process. Specifically, that day's new activity yields a new interbank funds amount that will move at end of day—however, this amount gets netted with the amount that would have been due in the morning, thus further reducing the interbank funds movement. The NFE holds are released when the interbank funds movement is made at end of day. The 2007 NFE Filing did not involve any changes to the after-hours movement of securities occurring at the end of the day on Day 1. Using our simplified example:

On the morning of Day 2, Dealer C who needs to return funds in the unwind, instead of returning the funds in the morning, grants to FICC a security interest in Dealer C's NFE-related collateral equal to its funds movement (we have assumed only one GCF Repo transaction took place in this simplified example). FICC, in turn, grants BNY (that was due to receive the funds) a security interest in the NFE-related collateral to support the debit in the FICC account at BNY. As noted above, the debit in FICC's account at BNY arises because, under the current processing, Dealer B must receive its funds during the morning unwind. The FICC debit is then satisfied during the end of day GCF Repo settlement process.

As part of the 2007 NFE Filing, FICC imposed certain additional risk management measures with respect to the GCF Repo service. First, FICC imposed a collateral premium (called ''GCF Premium Charge'') on the GCF Repo portion of the Clearing Fund deposits of all GCF participants to further protect FICC in the event of an intra-day[sic] default of a GCF Repo participant. FICC requires GCF Repo participants to submit a quarterly ''snapshot'' of their holdings by asset type to enable Risk Management staff to determine the appropriate Clearing Fund premium. Members who do not submit this required information by the deadlines established by FICC are subject to fine and an increased Clearing Fund premium, as with all other instances of late submission of required information.

Second, the 2007 NFE Filing addressed the situation where FICC becomes concerned about the volume of interbank GCF Repo activity. Such a concern might arise, for example, if market events were to cause dealers to turn to the GCF Repo service for increased funding at levels beyond normal processing. The 2007 NFE Filing provides FICC with the discretion to institute risk mitigation and appropriate disincentive measures in order to bring GCF Repo levels to a comfortable level from a risk management perspective.[19]

[15] FICC has appointed Chase as its agent to maintain FICC's books and records with respect to the BNY securities account, and FICC has appointed BNY as its agent to maintain FICC's books and records with respect to the Chase securities account.

[16] *See* Securities Exchange Act Release No. 34–48006 (June 10, 2003), 66 FR 35745 (June 16, 2003) (SR–FICC–2003–04).

[17] *See* Securities Exchange Act Release No. 34–57652 (April 11, 2008), 73 FR 20999 (April 17, 2008) (SR–FICC–2007–08).

[18] NFE is a methodology that clearing banks use to determine whether an account holder (such as a dealer) has sufficient collateral to enter a specific transaction. NFE allows the clearing bank to place a limit on its customer's activity by calculating a value on the customer's balances at the bank. Bank customers have the ability to monitor their NFE balance throughout the day.

[19] Specifically, the 2007 NFE Filing introduced the term ''GCF Repo Event'', which will be declared by FICC if either of the following occurs: (i) The GCF interbank funds amount exceeds five times the average interbank funds amount over the previous ninety days for three consecutive days; or (ii) the GCF interbank funds amount exceeds fifty percent of the amount of GCF Repo collateral pledged for three consecutive days. FICC reviews these figures on a semi-annual basis to determine whether they remain adequate. FICC also has the right to declare a GCF Repo Event in any other circumstances where it is concerned about GCF Repo volumes and believes it is necessary to declare a GCF Repo Event in order to protect itself and its members. FICC will inform its members about the declaration of the GCF Repo Event via important notice. FICC will also inform the Commission about the declaration of the GCF Repo Event.

2011 Pilot Program—Proposed Changes to the GCF Repo Service To Implement the TPR's Recommendations

In SR–FICC–2011–05, FICC proposed the following rule changes with respect to the GCF Repo service to address the TPR's Recommendations:

(1)(a) To move the Day 2 unwind from 7:30 a.m. to 3:30 p.m., (b) to move the NFE process [20] from morning to a time established by the Corporation as announced by notice to all members,[21] (c) to move the cut-off time of GCF Repo submissions from 3:35 p.m. to 3:00 p.m., and (d) to move the cut-off time for dealer affirmation or disaffirmation from 3:45 p.m. to 3:00 p.m.

(2) To establish rules for intraday GCF Repo collateral substitutions (*i.e.,* SR–FICC–2011–05 stated that with respect to interbank GCF Repo transactions, the substitution process will only permit cash as an initial matter to accommodate current processing systems, however, as noted below, the substitution process will permit cash and/or securities).

During the term of the 2011 Pilot Program, FICC implemented the proposed changes referred to in subsections 1(c) and 1(d) above and during the term of the 2012 Pilot Program, FICC implemented the proposed changes referred to in subsections 1(a), 1(b) and 2 above.

(1) Proposed Change Regarding the Morning Unwind and Related Rule Changes

The TPR recommended that the Day 2 unwind for all triparty transactions be moved from the morning to 3:30 p.m. The TPR made this recommendation in order to achieve the benefit of reducing the clearing banks' intraday exposure to the dealers. As stated, because the GCF Repo service is essentially a triparty mechanism, the TPR requested that FICC accommodate this time change. For the GSD rules, this necessitated a change to the GSD's ''Schedule of GCF Timeframes.'' Specifically, the 7:30 a.m. time in the Schedule was deleted and the language therein was moved to a new time of 3:30 p.m.

Because the Day 2 unwind moved from the morning to 3:30 p.m. and because the NFE process established by the 2007 NFE Filing is tied to the moment of the unwind, the NFE process also was required to move. During 2012, when the systems processing for the tri-party reform effort continued on the part of the clearing banks, the unwind moved to 3:30 p.m. and the funds continued to move between the two clearing banks at 5:00 p.m.; the NFE hold which applies to dealers moved to between 3:30 p.m. and 5:00 p.m. Because the NFE process is a legal process and not an operational process, it is not reflected on the Schedule of GCF Timeframes and therefore no change to the Schedule was required to accommodate the move of the NFE process. A change was needed in Section 3 of GSD Rule 20 to delete the reference to the ''morning'' timeframe on Day 2 with respect to the NFE process and to add language referencing ''at the time established by the Corporation.''

(2) Proposed Change Regarding Intraday GCF Repo Securities Collateral Substitutions

As a result of the time change of the unwind (*i.e.,* the reversal on Day 2 of collateral allocations established by FICC for each netting member's GCF net funds borrower positions and GCF net funds lender positions on Day 1) to 3:30 p.m., the provider of GCF Repo securities collateral in a GCF Repo transaction on Day 1 no longer has possession of such securities at the beginning of Day 2. Therefore, during Day 2 prior to the unwind of the Day 1 collateral allocations, the provider of GCF Repo securities collateral (in our simple example, Dealer C) needs a substitution mechanism for the return of its posted GCF Repo securities collateral in order to make securities deliveries for utilization of such securities in its business activities. (In our example, Dealer C may need to return the securities to Party Y depending upon the terms of their transaction.) In the 2012 Pilot Program, FICC established a substitution process for this purpose in conjunction with its clearing banks. The language for the substitution mechanism was added to Section 3 of GSD Rule 20. It provides that all requests for substitution for the GCF Repo securities collateral must be submitted by the provider of the GCF Repo securities collateral (*i.e.,* Dealer C) by the applicable deadline on Day 2 (the ''substitution deadline'').[22]

Substitutions on Intrabank GCF Repos

If the GCF Repo transaction is between dealer counterparties effecting the transaction through the same clearing bank (*i.e.,* on an intra-clearing bank basis and in our example Dealer C and other dealers clearing at Chase), on Day 2 such clearing bank will process each substitution request of the provider of GCF Repo securities collateral (*i.e.,* Dealer C) submitted prior to the substitution deadline promptly upon receipt of such request. The return of the GCF Repo securities collateral in exchange for cash and/or eligible securities of equivalent value can be effected by simple debits and credits to the accounts of the GCF Repo dealer counterparties at the clearing agent bank (*i.e.,* in our example, Chase). Eligible securities for this purpose will be the same as what is currently permitted under the GSD rules for collateral allocations, namely, Comparable Securities,[23] (ii) Other Acceptable Securities,[24] or (iii) U.S. Treasury bills, notes or bonds maturing in a time frame no greater than that of the securities that have been traded (except where such traded securities are U.S. Treasury bills, substitution may be with Comparable Securities and/or cash only).

Substitutions on Interbank GCF Repos

For a GCF Repo that was processed on an interbank basis and to accommodate a potential substitution request, FICC initiates a debit of the securities in the account of the lender through the FICC GCF Repo accounts at the clearing bank of the lender and the FICC GCF Repo

[20] No other changes are being proposed to the NFE process that was in place by the 2007 NFE Filing; the risk management measures that were put in place by the 2007 NFE Filing remain in place with the present proposal.

[21] SR–FICC–2011–05 noted that the possible time range would be 8 a.m. to 1 p.m. to coincide with the collateral substitution mechanism that was being developed between FICC and its clearing banks. In rule filing SR–FICC–2012–05, FICC clarified that the 8:00 a.m. to 1:00 p.m. proposed time range in SR–FICC–2011–05 referred to the clearing bank hold on the FICC interest in the NFE (*i.e.,* as part of the NFE process, FICC grants to the other clearing bank (that was due to receive the funds) a security interest in the NFE—related collateral to support the debit in the FICC account at the clearing bank). At present, given the move of the NFE process (as discussed in more detail below), this proposed time range has now moved from 8:00 a.m. to 3:30 p.m.

[22] As noted in SR–FICC–2012–05, FICC will establish such deadline prior to the implementation of the changes to this service in conjunction with the clearing banks and the Federal Reserve in light of market circumstances. As noted in Important Notice GOV088.12, once delivery has been made to GSD on the new obligations for that business day, no substitutions will be permitted for the remainder of the day.

[23] The GSD rules define ''Comparable Securities'' as follows: The term ''Comparable Securities'' means, with respect to a security or securities that are represented by a particular Generic CUSIP Number, any other security or securities that are represented by the same Generic CUSIP Number.

[24] The GSD rules define ''Other Acceptable Securities'' as follows:

The term ''Other Acceptable Securities'' means, with respect to: (an) adjustable-rate mortgage-backed security or securities issued by Ginnie Mae, any fixed-rate mortgage-backed security or securities issued by Ginnie Mae, or (an) adjustable-rate mortgage-backed security or securities issued by either Fannie Mae or Freddie Mac: (a) Any fixed-rate mortgage-backed security or securities issued by Fannie Mae and Freddie Mac, (b) any fixed-rate mortgage-backed security or securities issued by Ginnie Mae, or (c) any adjustable-rate mortgage-backed security or securities issued by Ginnie Mae.

account at the clearing bank of the borrower (''Interbank Movement''). This Interbank Movement is done so that a borrower who elects to substitute collateral will have access to the collateral for which it is substituting. The Interbank Movement occurs in the morning, though the clearing banks and FICC have the capability to have the Interbank Movement occur at any point during the day up until 2:30 p.m. During the 2012 Pilot Program, FICC and the clearing banks implemented a change to unwind the intrabank GCF Repo transactions at 3:30 p.m.

In the example above, the GCF Repo securities collateral will be debited from the securities account of the receiver of the collateral (*i.e.,* Dealer B) at its clearing bank (*i.e.,* BNY), and from the FICC Account for BNY. If a substitution request is received by the clearing bank (*i.e.,* Chase) of the provider of GCF Repo securities collateral, prior to the substitution deadline at a time specified in FICC's procedures,[25] that clearing bank will process the substitution request by releasing the GCF Repo securities collateral from the FICC GCF Repo account at Chase and crediting it to the account of the provider of GCF Repo securities collateral (*i.e.,* Dealer C). All cash and/or securities substituted for the GCF Repo securities collateral being released will be credited to FICC's GCF Repo account at the clearing bank (*i.e.,* Chase).

Simultaneously, with the debit of the GCF Repo securities collateral from the account at the clearing bank (*i.e.,* BNY) of the original receiver of GCF Repo securities collateral (*i.e.,* Dealer B), for purposes of making payment to the original receiver of securities collateral (*i.e.,* Dealer B), such clearing bank will effect a cash debit equal to the value of the securities collateral in FICC's GCF Repo account at such clearing bank and will credit the account of the original receiver of securities collateral (*i.e.,* Dealer B) at such clearing bank with such cash amount. (This is because when Dealer B is debited the securities, Dealer B must receive the funds.) In order to secure FICC's obligation to repay the balance in FICC's GCF Repo account at such clearing bank (*i.e.,* BNY), FICC will grant to such clearing bank a security interest in the cash and/or securities substituted for the GCF securities collateral in FICC's GCF repo account at the other clearing bank (*i.e.,* Chase).

Using the example from above, assume the Dealer C submits a substitution notification—it requires the securities collateral that has been pledged to Dealer B and will substitute cash and/or securities. BNY will debit the securities from Dealer B's account and the relevant liens will be released so that the securities are in FICC's account at Chase. Chase will credit the securities to Dealer C's account and the cash and/or securities that Dealer C uses for its collateral substitution will be credited by Chase to FICC's account at Chase. From Dealer B's perspective, when BNY debits the securities from Dealer B's account, Dealer B is supposed to receive the funds—but as noted, the funds are at Chase. BNY will credit the funds to Dealer B's account and debit FICC's account at BNY.

At this point in our example, FICC is running a credit at Chase and a debit at BNY. In order to secure FICC's debit at BNY, FICC will grant a security interest in the funds in the FICC account at Chase.

For substitutions that occur with respect to GCF Repo transactions that were processed on an inter-clearing bank basis, FICC and the clearing banks permit cash and/or securities for the substitutions. The proposed rule change provided FICC with flexibility in this regard by referring to FICC's procedures.

As noted above, each of the above-referenced changes were approved in connection with SR–FICC–2011–05,[26] SR–FICC–2012–05 [27] and SR–FICC–2013–06.[28] FICC proposes to extend the pilot program reflecting these changes for an additional one year. The changes referenced above are reflected in Exhibit 5.

(ii) Statutory Basis for the Proposed Rule Change

The proposed rule change is consistent with the Securities and Exchange Act of 1934, as amended (the ''Act'') and the rules and regulations promulgated thereunder because it will align the GCF Repo service with recommendations being made by the TPR to address risks in the triparty market overall and therefore will serve to further safeguard the securities and funds for which FICC is responsible.

B. Clearing Agency's Statement on Burden on Competition

FICC does not believe that the proposed rule change will have any negative impact, or impose any burden, on competition.

C. Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule changes have not yet been solicited or received. FICC will notify the Commission of any written comments received by FICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change; or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FICC–2015–002 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FICC–2015–002. 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

[25] Rule filing SR–FICC–2012–05 noted that this timeframe would also be established in consultation with the clearing banks and the Federal Reserve. At that time, the parties were considering whether to have the substitution process be accomplished in two batches during the day depending upon the time of submission of the notifications for substitution. The clearing banks, however, developed a real-time substitution mechanism for both tri-party and GCF collateral making batch processing unnecessary.

[26] Securities Exchange Act Release No. 34–65213 (August 29, 2011) 76 FR 54824 (September 2, 2011).

[27] Securities Exchange Act Release No. 34–67277 (June 20, 2012) 77 FR 38108 (June 26, 2012).

[28] Securities Exchange Act Release No. 34–70068 (July 30, 2013) 78 FR 47453 (August 5, 2013).

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 filings also will be available for inspection and copying at the principal office of FICC and on FICC's Web site at *http://www.dtcc.com/legal/sec-rule-filings.aspx.*

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–FICC–2015–002 and should be submitted on or before June 11, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–12281 Filed 5–20–15; 8:45 am]

BILLING CODE 8011–01–P

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74974; File No. SR–ICC–2015–008]

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Related to Settlement Finality

May 15, 2015.

I. Introduction

On April 1, 2015, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] to provide additional clarity regarding settlement finality with respect to Mark-to-Market Margin. The proposed rule change was published for comment in the **Federal Register** on April 14, 2015.[3] The Commission did not receive comments regarding the proposed change. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Description of the Proposed Rule Change

ICC proposes revising ICC Clearing Rule 401 (''Rule 401'') in order to provide additional clarity regarding settlement finality with respect to Mark-to-Market Margin (as defined in ICC Rule 401). Specifically, the proposed rule change would add new subsections (k) and (l) to Rule 401. ICC states that the new subsections are not intended to change any current ICC practices; rather, such changes are intended to provide additional clarity regarding settlement finality with respect to Mark-to-Market Margin. All capitalized terms not defined herein are defined in the ICC Rules.

ICC proposes adding language in Rule 401(k) to clarify that each Transfer of Mark-to-Market Margin shall constitute a settlement (within the meaning of U.S. Commodity Futures Trading Commission Rule 39.14[4]) and shall be final as of the time ICC's accounts are debited or credited with the relevant payment. Further, ICC proposes adding language in Rule 401(l) to state that once settlement of a Transfer of Mark-to-Market Margin in respect of the Margin Requirements for a Mark-to-Market Margin Category is final, the fair value of the outstanding exposures for the relevant Contracts in that Mark-to-Market Margin Category (taking into account the Margin provided in respect of such Margin Requirement) will be reset to zero. ICC states that such additional language is consistent with ICC's current practices and is intended to provide further clarity regarding ICC's settlement cycle.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act[5] directs the Commission to approve a proposed rule change of a self-regulatory organization if the Commission finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such self-regulatory organization. Section 17A(b)(3)(F) of the Act[6] requires, among other things, that the rules of a clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions.

[3] Securities Exchange Act Release No. 34–74676 (Apr. 8, 2015), 80 FR 20047 (Apr. 14, 2015) (SR–ICC–2015–008).

[4] 17 CFR 39.14.

[5] 15 U.S.C. 78s(b)(2)(C).

[6] 15 U.S.C. 78q–1(b)(3)(F).

The Commission finds that the proposed rule change is consistent with Section 17A of the Act[7] and the rules thereunder applicable to ICC. The proposed rule change would provide additional clarity and transparency regarding ICC's settlement cycle, specifically with regard to the time at which Transfers of Mark-to-Market Margin are final and the time at which the fair value of the outstanding exposures for relevant Contracts in a Mark-to-Market Margin Category is reset to zero. The Commission therefore finds that the proposed rule change is designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions in accordance with Section 17A(b)(3)(F) of the Act.[8]

IV. 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[9] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (File No. SR–ICC–2015–008) be, and hereby is, approved.[11]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–12282 Filed 5–20–15; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78q–1.

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 15 U.S.C. 78q–1.

[10] 15 U.S.C. 78s(b)(2).

[11] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74975; File No. SR–ISE–2015–17]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees

May 15, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 1, 2015, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission the proposed rule change, as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to amend the Schedule of Fees to introduce tiered Market Maker Plus rebates based on the time quoting at the national best bid or offer (''NBBO'') in specified series. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

[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

In order to promote and encourage liquidity in Select Symbols,[3] the Exchange currently offers Market Makers[4] that meet the quoting requirements for Market Maker Plus[5] enhanced rebates for adding liquidity in those symbols. In particular, Market Makers that qualify for Market Maker Plus are currently provided a maker rebate of $0.20 per contract in Select Symbols instead of the $0.10 per contract maker fee that applies to orders from other Market Makers in those symbols.[6] The Exchange now proposes to introduce three tiers of Market Maker Plus rebates based on time quoting at the NBBO. As proposed, a Market Maker will qualify for a ''Tier 1'' Market Maker Plus rebate of $0.10 per contract if the Market Maker is on the NBBO *at least 80% but lower than 85% of the time* for series trading between $0.03 and $3.00 (for options whose underlying stock's previous trading day's last sale price was less than or equal to $100) and between $0.10 and $3.00 (for options whose underlying stock's previous trading day's last sale price was greater than $100) in premium in each of the front two expiration months. If the Market Maker is instead on the NBBO *at least 85% but lower than 95% of the time* for applicable series described above, that Market Maker will qualify for a ''Tier 2'' Market Maker Plus rebate of $0.18 per contract. Finally, a Market Maker that is on the NBBO *at least 95% of the time,* will qualify for a ''Tier 3'' Market Maker Plus rebate of $0.22 per contract.

In addition, the Exchange notes that Market Makers that qualify for Market Maker Plus and execute a total affiliated Priority Customer average daily volume (''ADV'')[7] of 200,000 contracts or more are currently provided an increased Market Maker Plus rebate of $0.22 per contract. The Exchange now proposes to eliminate this enhanced rebate based on affiliated Priority Customer volume.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[8] in general, and Section 6(b)(4) of the Act,[9] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

The Exchange believes that it is reasonable and equitable to offer tiered Market Maker Plus rebates as these rebates would reward members based on maintaining tight markets in series that they quote on ISE. The Exchange believes that maintaining tight markets benefits all market participants that trade on ISE, and has therefore determined to reflect this more fully in the rebates offered. With this proposal, Market Makers that qualify for Market Maker Plus will receive rebates that reflect the liquidity that they provide at the NBBO. The Exchange notes that it already provides a Market Maker Plus rebate for Market Makers that quote at the NBBO. The proposed rule change merely allows the Exchange to further incentivize Market Makers by reserving the very best rebates for Market Makers that maintain quotes that are at the NBBO the vast majority of the time. In this regard, the Exchange notes that Market Makers that are on the lower end of the current Market Maker Plus requirement will receive lower rebates than they do today, while Market Makers that routinely quote at the NBBO will receive higher rebates than currently offered. The Exchange does not believe that this is unfairly

[3] ''Select Symbols'' are options overlying all symbols listed on the ISE that are in the Penny Pilot Program.

[4] The term ''Market Makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. See ISE Rule 100(a)(25).

[5] A Market Maker Plus is a Market Maker that is on the National Best Bid or National Best Offer at least 80% of the time for series trading between $0.03 and $3.00 (for options whose underlying stock's previous trading day's last sale price was less than or equal to $100) and between $0.10 and $3.00 (for options whose underlying stock's previous trading day's last sale price was greater than $100) in premium in each of the front two expiration months. A Market Maker's single best and single worst quoting days each month based on the front two expiration months, on a per symbol basis, are excluded in calculating whether a Market Maker qualifies for this rebate, if doing so will qualify a Market Maker for the rebate.

[6] A $0.10 per contract fee applies when trading against Priority Customer complex orders that leg into the regular order book. There will be no fee charged or rebate provided when trading against non-Priority Customer complex orders that leg into the regular order book.

[7] Priority Customer ADV includes all volume in all symbols and order types. All eligible volume from affiliated Members will be aggregated in determining total affiliated Priority Customer ADV, provided there is at least 75% common ownership beween the Members as reflected on each Member's Form BD, Schedule A.

For purposes of determining Priority Customer ADV, any day that the regular order book is not open for the entire trading day may be excluded from such calculation; provided that the Exchange will only remove the day for members that would have a lower ADV with the day included.

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4).

discriminatory as all Market Makers are eligible to receive the higher tier Market Maker Plus rebates based on the percentage of time that they maintain quotes at the NBBO. Furthermore, the Exchange does not believe that it is unfairly discriminatory to offer these rebates only to Market Makers as Market Makers, and, in particular, those Market Makers that achieve Market Maker Plus status, are subject to additional requirements and obligations (such as quoting requirements) that other market participants are not.

The Exchange further believes that it is reasonable, equitable, and not unfairly discriminatory to eliminate the higher Market Maker Plus rebate currently provided to Market Makers that qualify for Market Maker Plus and execute a total affiliated Priority Customer ADV of 200,000 contracts or more as this incentive is no longer needed. Market Makers that wish to receive higher rebates may continue to do so by qualifying for the new highest tier of Market Maker Plus rebate offered to Market Makers that are on the NBBO in applicable series at least 95% of the time. The Exchange believes that this will be a more effective incentive for Market Makers to actively participate in the Market Maker Plus program as it is based on the quality of markets quoted and not tied to affiliated member volume.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[10] the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed Market Maker Plus rebates provide a valuable incentive for Market Makers to maintain tight markets on ISE and will thereby help the Exchange maintain its competitive standing. The Exchange operates in a highly competitive market in which market participants can readily direct their order flow to competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and rebates to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed fee changes reflect this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[11] and subparagraph (f)(2) of Rule 19b–4 thereunder,[12] because it establishes a due, fee, or other charge imposed by ISE.

At any time within 60 days of the filing of such 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 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–ISE–2015–17 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File No. SR–ISE–2015–17. 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 changes 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 ISE. 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–ISE–2015–17 and should be submitted on or before June 11, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–12283 Filed 5–20–15; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78f(b)(8).

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 240.19b–4(f)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74979; File No. SR–NASDAQ–2015–049]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change Relating to the Listing and Trading of the Shares of the PowerShares DB Optimum Yield Diversified Commodity Strategy Portfolio, PowerShares Agriculture Commodity Strategy Portfolio, PowerShares Precious Metals Commodity Strategy Portfolio, PowerShares Energy Commodity Strategy Portfolio, PowerShares Base Metals Commodity Strategy Portfolio and PowerShares Bloomberg Commodity Strategy Portfolio, Each a Series of PowerShares Actively Managed Exchange-Traded Commodity Fund Trust

May 15, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(''Act''),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on April 30, 2015, The NASDAQ Stock Market LLC (''Nasdaq'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in in Items I and II 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 Substance of the Proposed Rule Change

Nasdaq proposes a rule change with respect to PowerShares DB Optimum Yield Diversified Commodity Strategy Portfolio, PowerShares Agriculture Commodity Strategy Portfolio, PowerShares Precious Metals Commodity Strategy Portfolio, PowerShares Energy Commodity Strategy Portfolio, PowerShares Base Metals Commodity Strategy Portfolio and PowerShares Bloomberg Commodity Strategy Portfolio (each, a ''Fund,'' and collectively, the ''Funds''), each a series of PowerShares Actively Managed Exchange-Traded Commodity Fund Trust (the ''Trust'').

The rule change is being filed to reflect a proposed change to the current principal investment strategies of each Fund (which are set forth in detail in an order previously granted by the Commission[3]) to permit each Fund to invest in additional instruments and asset types as part of their principal investment strategies, in addition to the investments permitted by the Prior Order.

Except for the changes discussed below, all other facts presented and representations made in the Prior Release remain unchanged and in full effect. All capitalized terms referenced but not defined herein have the same meaning as in the Prior Release.

The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com/,* at Nasdaq'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.

[3] *See* Securities Exchange Act Release No. 73078 (Sept. 11, 2014), 79 FR 55851 (Sept. 17, 2014) (SR–NASDAQ–2014–80) (the ''Prior Notice''); *see also* Securities Exchange Act Release No. 73471 (October 30, 2014), 79 FR 65751 (Nov. 5, 2014) (SR–NASDAQ–2014–080) (the ''Prior Order,'' and, together with the Prior Notice, the ''Prior Release'').

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. 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.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Each Fund is an actively managed exchange-traded fund (''ETF'') whose shares (''Shares'') are offered, or will be offered, by the Trust, a statutory trust organized under the laws of Delaware. The Trust is registered with the Commission as an investment company and has filed a registration statement on Form N–1A with the Commission.[4] The Commission previously approved the listing and trading on the Exchange of the Shares of each Fund[5] under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares[6] on the Exchange.[7] Shares of PowerShares DB Optimum Yield Diversified Commodity Strategy Portfolio have commenced listing and trading on the Exchange; Shares of the other Funds have not.

In this proposed rule change, the Exchange proposes to permit the listing or continued listing of the Shares if the Funds revise their investment strategies to include additional instruments in their portfolios to implement their investment objectives.[8]

Principal Investments

As stated in the Prior Release, each Fund's investment objective is to seek long-term capital appreciation. The Prior Release states that each Fund seeks to achieve its investment objective by investing, under normal circumstances,[9] in a combination of: (i) A wholly-owned subsidiary organized under the laws of the Cayman Islands (each, a ''Subsidiary,'' and collectively, the ''Subsidiaries''), (ii) ''exchange-traded products or exchange-traded commodity pools,''[10] and (iii) U.S. Treasury Securities, money market mutual funds, high quality commercial paper and similar instruments (''Collateral Instruments'').[11]

The Prior Release also states that each Subsidiary will invest in exchange-traded futures contracts linked to commodities (''Commodities Futures'') to provide its parent Fund with additional indirect exposure to the commodities markets. Each Fund's investment in its Subsidiary is designed to help the Fund obtain exposure to Commodities Futures returns in a

[4] A description of each Fund's investment strategy is set forth in the Trust's registration statement on Form N–1A that the Trust filed with the Commission (the ''Registration Statement''). *See* Pre-effective Amendment No. 1 to the Registration Statement for the Trust, dated May 20, 2014 (File Nos. 333–193135 and 811–22927) (for each of PowerShares Agriculture Commodity Strategy Portfolio, PowerShares Precious Metals Commodity Strategy Portfolio, PowerShares Energy Commodity Strategy Portfolio and PowerShares Base Metals Commodity Strategy Portfolio). The descriptions of the Funds and the Shares contained herein are based, in part, on information in the Registration Statement.

[5] *See supra,* note 4 [sic].

[6] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) (the ''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Index Fund Shares, listed and traded on the Exchange under Nasdaq Rule 5705, seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[7] The Commission approved Nasdaq Rule 5735 in Securities Exchange Act Release No. 57962 (June 13, 2008), 73 FR 35175 (June 20, 2008) (SR-NASDAQ–2008–039).

[8] The changes described herein will be effective contingent upon effectiveness of a post-effective amendment to the Registration Statement of the Trust, on behalf of each Fund. The changes described herein will not be implemented until such proposed rule change is declared operative.

[9] The term ''under normal circumstances'' includes, but is not limited to, the absence of extreme volatility or trading halts in the equity, commodities and futures 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 manmade disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

[10] Specifically, the Prior Release noted that the Funds will invest in: (1) ETFs that provide exposure to commodities as would be listed under Nasdaq Rules 5705 and 5735; (2) exchange-traded notes (''ETNs'') that provide exposure to commodities as would be listed under Nasdaq Rule 5710; or (3) exchange-traded pooled investment vehicles that invest primarily in commodities and commodity-linked instruments as would be listed under Nasdaq Rules 5711(b), (d), (f), (g), (h), (i), and (j) (''Commodity Pool'' or ''Commodity Pools'').

[11] For a Fund's purposes, money market instruments will include: Short-term, high quality securities issued or guaranteed by non-U.S. governments, agencies, and instrumentalities; non-convertible corporate debt securities with remaining maturities of not more than 397 days that satisfy ratings requirements under Rule 2a-7 of the 1940 Act; money market mutual funds; and deposits and other obligations of U.S. and non-U.S. banks and financial institutions.

manner consistent with the federal tax requirements applicable to regulated investment companies, such as the Funds, which limit the ability of investment companies to invest directly in derivative instruments such as the Commodities Futures.

In this proposed rule change, the Funds seek the ability for the Funds and the Subsidiaries, as applicable, to also invest in a variety of other securities and instruments beyond those set forth in the Prior Release, as follows:

- Each Fund, which already may invest in ETFs, ETNs and Commodity Pools, seeks to also invest in: (i) Other investment companies,[12] to the extent permitted under the 1940 Act,[13] and (ii) exchange-traded commodity-linked equity securities [14] (collectively, these are ''Commodity-Related Assets'').
- Each Subsidiary, which already may invest in Commodities Futures, now also seeks to invest in: (i) Exchange traded futures contracts on commodity indices, (ii) commodity-linked notes,[15] (iii) ETNs, (iv) exchange-traded options on Commodities Futures (''Options''),[16] (v) centrally-cleared or over the counter (''OTC'') swaps on commodities (''Swaps'') and (vi) commodity-related forward contracts (''Forwards'') (collectively, these are ''Commodity-Linked Instruments''), which provide exposure to the investment returns of the commodities markets, without investing directly in physical commodities.
- In addition, each Fund may hold instruments that its respective Subsidiary is entitled to hold, and vice versa, to the extent consistent with federal tax requirements.

The Prior Release noted that all of the exchange-traded securities held by a Fund will be traded in a principal trading market that is a member of ISG or a market with which the Exchange has a comprehensive surveillance sharing agreement. The Funds propose to invest in Equity Securities, closed-end funds, ETFs, ETNs, Commodity Pools and non-U.S. investment companies that are not traded in a principal trading market that is a member of ISG or a market with which the Exchange has a comprehensive surveillance sharing agreement; however, not more than 10% of each Fund's investments in these investments (in the aggregate) will be invested in instruments that trade in markets that are not members of the ISG or that are not parties to a comprehensive surveillance sharing agreement with the Exchange.

These additional instruments are intended to support each Fund's principal investment strategy by providing each Fund with the flexibility to obtain additional exposure to the investment returns of the commodities markets within the limits of applicable federal tax requirements and without investing directly in physical commodities. Each Fund, either directly or through its respective Subsidiary, will only invest in those commodity-linked notes, OTC Swaps, Forwards, or other over-the-counter instruments that are based on the price of relevant Commodities Futures, as applicable, and tend to exhibit trading prices or returns that correlate with any Commodities Futures and that will further the investment objective of such Fund.[17] The Funds represent that the descriptions of the original asset types included in the Prior Release remain unchanged, and that the Funds and their Subsidiaries will adhere to all investment restrictions set forth in the Prior Release as they apply to the original asset types. The Funds also represent that the investments in these additional asset types will be consistent with each Fund's investment objective.

In conjunction with this proposed change to add various instruments to the Funds' principal investment strategies, the following information supplements or updates, as applicable, the information contained in the Prior Release. Except for these changes, all other facts presented and representations made in the Prior Release remain unchanged and in full effect.

Net Asset Value

As stated in the Prior Release, the Funds' administrator will calculate each Fund's net asset value (''NAV'') per Share as of the close of regular trading (normally 4:00 p.m., Eastern time (''E.T.'')) on each day Nasdaq is open for business. NAV per Share is calculated by taking the market price of a Fund's total assets, including interest or dividends accrued but not yet collected, less all liabilities, and dividing such amount by the total number of Shares outstanding. The Prior Release describes how various securities and instruments held by each Fund or its Subsidiary—including ETFs, ETNs and Commodities Futures—will be valued to calculate each Fund's NAV.

The Funds now represent that, in addition to the foregoing as set forth in the Prior Release: (i) Equity Securities, ETNs, and futures on commodity indices will be valued at the last sales price or the official closing price on the exchange where such securities principally trade; (ii) investment companies will be valued using such company's end of the day NAV per share, unless the shares are exchange-traded, in which case they will be valued at the last sales price or official closing price on the exchanges on which they primarily trade; (iii) Options generally will be valued at the closing price (and, if no closing price is available, at the mean of the last bid/ask quotations) generally from the exchange where such instruments principally

[12] In addition to ETFs, the other investment companies will consist of non-exchange traded U.S. registered open-end investment companies (mutual funds), closed-end investment companies traded on U.S. exchanges, or exchange-traded non-U.S. investment companies traded on foreign exchanges.

[13] Each Fund's investment in securities of other investment companies may exceed the limits permitted under the 1940 Act, in accordance with certain terms and conditions set forth in a Commission exemptive order issued to an affiliate of the Trust (which applies equally to the Trust) pursuant to Section 12(d)(1)(J) of the 1940 Act. *See* Investment Company Act Release No. 30029 (Apr. 10, 2012) (File No. 812–13795) or, in the case of non-U.S. investment companies, pursuant to SEC No-Action relief. *See* Red Rocks Capital, LLC (pub. avail. June 3, 2011).

[14] Exchange-traded commodity-linked equity securities (''Equity Securities'') will be comprised of exchange-traded common stocks of companies that operate in commodities, natural resources and energy businesses, and in associated businesses, as well as companies that provide services or have exposure to such businesses.

[15] Such commodity-linked notes generally will not be exchange-traded; however it is possible that in the future some of those instruments could be listed for trading on an exchange.

[16] The Prior Release noted that with respect to Commodities Futures held indirectly through a Subsidiary, not more than 10% of the weight of such Commodities Futures in the aggregate shall consist of instruments whose principal trading market is not a member of the Intermarket Surveillance Group (''ISG'') or a market with which the Exchange does not have a comprehensive surveillance sharing agreement. The Funds now clarify that Options and commodity index futures will be subject to the same restrictions as Commodities Futures, and that Options and commodity index futures will be considered in the aggregate with Commodities Futures. Therefore, with respect to Commodities Futures, commodity index futures and Options, not more than 10% of the weight of such Commodities Futures, commodity index futures, and Options, in the aggregate, shall consist of instruments whose principal trading market is not a member of the ISG or a market with which the Exchange does not have a comprehensive surveillance sharing agreement. This 10% limitation applicable to Commodities Futures, commodity index futures, and Options, in the aggregate, is separate from the 10% limitation applicable to exchange traded equity securities described infra, and is determined separately from this other limitation.

[17] Each Fund will enter into swap agreements and other over-the-counter transactions only with large, established and well capitalized financial institutions that meet certain credit quality standards and monitoring policies. Each Fund will use various techniques to minimize credit risk, including early termination, or reset and payment of such investments, the use of different counterparties or limiting the net amount due from any individual counterparty.

trade; and (iv) Swaps, commodity-linked notes and Forwards generally will be valued based on quotations from a pricing vendor (such quotations being derived from available market- and company-specific data), all in accordance with valuation procedures adopted by the Board of Trustees of the Trust.

All other valuation procedures pertaining to the Funds, and as set forth in the Prior Release, are unchanged.

Availability of Information

The Prior Release states that, on each business day, before commencement of trading in Shares in the Regular Market Session [18] on the Exchange, each Fund will disclose on its Web site the identities and quantities of its portfolio of securities and other assets (the ''Disclosed Portfolio'' as defined in Nasdaq Rule 5735(c)(2)) held by such Fund and its Subsidiary, which will form the basis for each Fund's calculation of NAV at the end of the business day. The Prior Release also stated that the Disclosed Portfolio will include, as applicable, the names, quantity, percentage weighting, and other characteristics of securities and other assets held by a Fund and its Subsidiary. Additionally, the Prior Release includes information on where investors may obtain quotation and last sale information for the various securities and instruments held by a Fund, including that quotation and last sale information for any underlying Commodities Futures is available via the quote and trade service of such Commodities Futures' primary exchanges.

In addition to the foregoing, the Funds will disclose on a daily basis on the Funds' Web site the following information regarding each portfolio holding, as applicable to the type of holding: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding), the identity of the security or other asset or instrument underlying the holding, if any; for options, the option strike price; for Swaps, a description of the type of Swap; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and percentage weighting of the holding in the Fund's portfolio. The Web site information will be publicly available at no charge.

Intra-day price information on the exchange-traded assets held by the Fund and the Subsidiary, including the Equity Securities, ETNs, Options, exchange-traded investment companies (including closed-end funds) and exchange-traded futures contracts on commodity indices will be available via the quote and trade service of the respective exchanges on which they principally trade. Additionally, price information on Swaps, commodity-linked notes, Forwards and non-exchange traded investment companies will be available from major broker-dealer firms or through subscription services, such as Bloomberg, Markit and Thomson Reuters, which can be accessed by entities that have entered into an authorized participant agreement with the Trust and other investors.

Surveillance

First, as noted in the Prior Release, trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and also the Financial Industry Regulatory Authority (''FINRA''), on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[19] FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Commodities Futures, ETFs, ETNs and Commodity Pools held by a Fund or a Fund's Subsidiary, as applicable, with other markets and other entities that are members of the ISG.[20] FINRA and the Exchange each may obtain trading information regarding trading in the Commodities Futures, ETFs, ETNs and Commodity Pool held by such Fund or its Subsidiary, as applicable, from such markets and other entities (as long as, for the Exchange, such markets and other entities are members of ISG or have in place a comprehensive surveillance sharing agreement with the Exchange). FINRA and the Exchange will similarly be able to obtain information regarding the spot market prices of the commodities underlying any commodity-linked notes, OTC Swaps, or forward contracts.

In addition to the foregoing: (i) FINRA, on behalf of the Exchange, will communicate as needed regarding trading information it can obtain relating to exchange-traded or centrally-cleared equity securities and assets held by a Fund or its Subsidiary, as applicable, which include exchange-traded Commodity-Related Assets and exchange-traded or centrally-cleared Commodity-Linked Instruments, with other markets and other entities that are members of the ISG; (ii) FINRA may obtain trading information regarding trading in exchange-traded equity securities and other assets held by each Fund and each Subsidiary, as applicable, from such markets and other entities; and (iii) the Exchange may obtain information regarding trading in exchange-traded equity securities and other assets held by each Fund and each Subsidiary from such markets and other entities (as long as such markets and other entities are members of ISG or have in place a comprehensive surveillance sharing agreement with the Exchange). The Exchange has a general policy prohibiting the distribution of material, non-public information by its employees.

Second, the Prior Release states that all of the exchange-traded equity securities held by a Fund will be traded in a principal trading market that is a member of the ISG or a market with which the Exchange has a comprehensive surveillance sharing agreement, and that with respect to Commodities Futures held indirectly through a Subsidiary, not more than 10% of the weight of such Commodities Futures, in the aggregate, shall consist of instruments whose principal trading market is not a member of the ISG or a market with which the Exchange does not have a comprehensive surveillance sharing agreement. The Funds now clarify that Options and commodity index futures will be subject to the same restrictions as Commodities Futures, and that Options and commodity index futures will be considered in the aggregate with Commodities Futures. Therefore, with respect to Commodities Futures, commodity index futures and Options, not more than 10% of the weight [21] of such Commodities Futures, commodity index futures, and Options, in the aggregate, shall consist of instruments whose principal trading market is not a member of the ISG or a market with which the Exchange does not have a comprehensive surveillance sharing agreement. Additionally, not more than 10% of each Fund's investments in Equity Securities, closed-end funds, ETFs, ETNs,

[18] *See* Nasdaq Rule 4120(b)(4) (describing the three trading sessions on the Exchange: (1) Pre-Market Session from 4 a.m. to 9:30 a.m. E.T.; (2) Regular Market Session from 9:30 a.m. to 4 p.m. or 4:15 p.m. E.T.; and (3) Post-Market Session from 4 p.m. or 4:15 p.m. to 8 p.m. E.T.).

[19] FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[20] 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.

[21] To be calculated as the value of the contract divided by the total absolute notional value of a Subsidiary's instruments.

Commodity Pools and non-U.S. investment companies (in the aggregate) will be invested in securities that trade in markets that are not members of the ISG or that are not parties to a comprehensive surveillance sharing agreement with the Exchange.

Beyond the changes described above, there are no changes to any other information included in the Prior Release, and all other facts presented and representations made in the Prior Release remain true and in effect. The Trust confirms that each Fund will continue to comply with all initial and continued listing requirements under Nasdaq Rule 5735.

2. Statutory Basis

Nasdaq believes that the proposal is consistent with Section 6(b) of the Act in general, and Section 6(b)(5) of the Act 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, and to remove impediments to and perfect the mechanism of a free and open market and in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will continue to be listed and traded on the Exchange pursuant to the initial and continued listing criteria in Nasdaq Rule 5735. The Exchange represents that 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 are adequate to properly monitor trading in the Shares in all trading sessions. In addition, paragraph (g) of Nasdaq Rule 5735 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the open-end fund's portfolio. Each Fund's and its Subsidiary's investments will be consistent with such Fund's investment objective.

FINRA may obtain information via ISG from other exchanges that are members of ISG. In addition, the Exchange may obtain information regarding trading in the Shares, Equity Securities, Commodities Futures, ETFs, ETNs, and Commodity Pools held by each Fund or its Subsidiary, as applicable, 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. In addition, as noted in the Prior Release, the Exchange may obtain information from TRACE, which is the FINRA-developed vehicle that facilitates mandatory reporting of over-the-counter secondary market transactions in eligible fixed income securities. With respect to Commodities Futures held indirectly through a Subsidiary, not more than 10% of the weight of such Commodities Futures, in the aggregate, shall consist of instruments whose principal trading market is not a member of ISG or a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

Options and commodity index futures will be subject to the same restrictions as Commodities Futures, and Options and commodity index futures will be considered in the aggregate with Commodities Futures. Therefore, with respect to Commodities Futures, commodity index futures and Options, not more than 10% of the weight [22] of such Commodities Futures, commodity index futures, and Options, in the aggregate, shall consist of instruments whose principal trading market is not a member of the ISG or a market with which the Exchange does not have a comprehensive surveillance sharing agreement. Additionally, not more than 10% of each Fund's investments in Equity Securities, closed-end funds, ETFs, ETNs, Commodity Pools and non-U.S. investment companies (in the aggregate) will be invested in securities that trade in markets that are not members of the ISG or that are not parties to a comprehensive surveillance sharing agreement with the Exchange.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information will be publicly available regarding the Funds and the Shares, thereby promoting market transparency. Moreover, as noted in the Prior Release, the Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Regular Market Session. On each business day, before commencement of trading in Shares in the Regular Market Session on the Exchange, each Fund will disclose on its Web site the Disclosed Portfolio of the Fund and the Subsidiary that will form the basis for such Fund's calculation of NAV at the end of the business day. 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, and 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 plans for the Shares. Intra-day price information on the exchange-traded assets held by a Fund and its Subsidiary, including the Equity Securities, ETFs, exchange traded investment companies (including closed-end funds) and exchange-traded futures contracts on commodity indexes will be available via the quote and trade service of the respective exchanges on which they primarily trade, as well as in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association plans. Quotation and last sale information for any underlying Commodities will be available via the quote and trade service of their respective primary exchanges. Intra-day price information on the exchange-traded assets held by the Fund and the Subsidiary, including the Equity Securities, ETNs, Options, exchange-traded investment companies (including closed-end funds) and exchange-traded futures contracts on commodity indices will be available via the quote and trade service of the respective exchanges on which they principally trade. Additionally, price information on Swaps, commodity-linked notes, Forwards and non-exchange traded investment companies will be available from major broker-dealer firms or through subscription services, such as Bloomberg, Markit and Thomson Reuters, which can be accessed by entities that have signed authorized participant agreements with a Fund and other investors.

As noted above and in the Prior Release, the Funds' Web site will include a form of the prospectus for each Fund and additional data relating to NAV and other applicable

[22] To be calculated as the value of the contract divided by the total absolute notional value of a Subsidiary's instruments.

quantitative information. Moreover, 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. Trading in Shares of a Fund will be halted under the conditions specified in Nasdaq Rules 4120 and 4121 or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to Nasdaq Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of a Fund may be halted. In addition, as noted above, investors will have ready access to information regarding each Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the continued listing and trading of additional types of actively-managed exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace.

For the above reasons, Nasdaq believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

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 instruments and asset types proposed to be added by this rule change, in connection with those approved in the Prior Order, are consistent with the instruments and asset types utilized by other actively managed funds in the marketplace. The investment strategies utilized by the Funds, however, remain different from other issues of Managed Fund Shares traded on the Exchange, and therefore provide investors with another choice of Managed Fund Shares. Moreover, the Exchange believes that the proposed changes will enhance competition among existing issues of Managed Fund Shares and will facilitate the trading of additional types of actively-managed exchange-traded funds, all to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (a) By order approve or disapprove such proposed rule change; or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2015–049 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, Station Place, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File Number SR–NASDAQ–2015–049. 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 Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2015–049 and should be submitted on or before June 11, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Robert W. Errett,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74980; File No. SR–OCC–2015–009]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change To Establish Procedures Regarding the Monthly Resizing of Its Clearing Fund and the Addition of Financial Resources

May 15, 2015.

On March 13, 2015, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–OCC–2015–009 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 April 2, 2015.[3] The Commission did not receive any comments on the proposed rule change. This order approves the proposed rule change.

[23] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4. OCC also filed this change as an advance notice under Section 806(e)(1) of the Payment, Clearing, and Settlement Supervision Act of 2010. 12 U.S.C. 5465(e)(1). *See* Securities Exchange Act Release No. 74713 (April 10, 2015), 80 FR 20534 (April 16, 2015) (SR–OCC–2014–811).

[3] Securities Exchange Act Release No. 74603 (March 27, 2015), 80 FR 17808 (April 2, 2015) (SR–OCC–2015–009).

I. Description

The proposal establishes new procedures to govern: (i) OCC's resizing of the clearing fund on a monthly basis pursuant to OCC Rule 1001(a) (''Monthly Clearing Fund Sizing Procedure''); and (ii) the addition of Financial Resources [4] through an intra-day margin call on one or more Clearing Members [5] pursuant to OCC Rule 609 and, if necessary, an intra-month increase of the clearing fund pursuant to OCC Rule 1001(a) to ensure that OCC maintains adequate Financial Resources in the event of a default of a Clearing Member or Clearing Member Group [6] presenting the largest exposure to OCC (''Financial Resource Monitoring and Call Procedure'').[7]

a. Monthly Clearing Fund Sizing Procedure

According to OCC, under the Monthly Clearing Fund Sizing Procedure, OCC will continue to use its daily stress test exposures under simulated default scenarios (as described in the first sentence of OCC Rule 1001(a)) to calculate the size of the clearing fund and resize the clearing fund on the first business day of each month. However, instead of resizing the clearing fund based on the *average of the daily calculations* during the preceding calendar month, OCC intends to resize the clearing fund using a new formula, which is the sum of: (i) An amount equal to the peak five-day rolling average of clearing fund draws observed over the preceding three calendar months using the daily idiosyncratic default and minor systemic default scenario calculations based on OCC's daily Monte Carlo simulations (''Base Amount''); and (ii) a prudential margin of safety determined by OCC that is currently set at $1.8 billion.[8]

OCC believes that the Monthly Clearing Fund Sizing Procedure provides a sound and prudent approach to ensure that it maintains adequate Financial Resources to protect against a default of a Clearing Member or Clearing Member Group presenting the largest exposure to OCC. By sizing the Base Amount of the clearing fund using the peak five-day rolling average over the preceding three month look-back period, rather than an average over the preceding month, OCC believes that the new resizing formula should be more responsive to sudden increases in exposure and less sensitive to short-run reductions in exposures that could inappropriately reduce the overall size of the clearing fund. OCC further asserts that the prudential margin of safety provides an additional buffer to absorb potential future exposures not previously observed during the look-back period. The Monthly Clearing Fund Sizing Procedure will be supplemented by the Financial Resource Monitoring and Call Procedure, which is described below, to provide further assurance that the Financial Resources are adequate to protect against such risk of loss.

b. Financial Resource Monitoring and Call Procedure

According to OCC, under the Financial Resource Monitoring and Call Procedure, OCC will use the same daily idiosyncratic default calculation that is currently used under the Monthly Clearing Fund Sizing Procedure to monitor daily the adequacy of the Financial Resources to withstand a default by the Clearing Member or Clearing Member Group presenting the largest exposure under extreme but plausible market conditions.[9] If such a daily idiosyncratic default calculation projected a draw on the clearing fund (''Projected Draw'') that is at least 75% of the clearing fund maintained by OCC, OCC will be required to issue an intra-day margin call pursuant to OCC Rule 609 against the Clearing Member or Clearing Member Group that caused such a draw (''Margin Call Event'').[10] The amount of the intra-day margin call made pursuant to a Margin Call Event will be the difference between the Projected Draw and the Base Amount of the clearing fund (''Exceedance Above Base Amount'').

In the case of a Clearing Member Group that causes the Exceedance Above Base Amount, the Exceedance Above Base Amount will be pro-rated among the individual Clearing Members that compose the Clearing Member Group based on each individual Clearing Member's proportionate share of the total risk for such Clearing Member Group as defined in OCC Rule 1001(b) (*i.e.,* the margin requirement with respect to all accounts of the Clearing Member Group exclusive of the net asset value of the positions in such accounts aggregated across all such accounts). In the case of an individual Clearing Member or a Clearing Member Group, the intra-day margin call will be subject to a limitation under which it cannot exceed the lower of: (a) $500 million; or (b) 100% of the net capital of a Clearing Member (the ''500/100 Limitation'').[11] This limitation will apply in aggregate to all Margin Call Events within the same monthly period. Therefore, if the same Clearing Member or Clearing Member Group is subject to more than one Margin Call Event in the same month, the total amount of funds

[4] For purposes of this proposed rule change, ''Financial Resources'' means, with respect to a projected loss that is attributable to a particular Clearing Member or Clearing Member Group, as defined hereinafter, the sum of (i) the margin deposits (less any excess margin a Clearing Member or Clearing Member Group may have on deposit at OCC) and deposits in lieu of margin with respect to the accounts of such Clearing Members or Clearing Member Groups, and (ii) the value of OCC's clearing fund, including both the Base Amount, as defined hereinafter, and the prudential margin of safety, as described below.

[5] ''Clearing Member'' is defined, in relevant part, as a person or organization that has been admitted to membership in the Corporation pursuant to the provisions of the By-Laws and Rules. *See* OCC By-Laws, Article I.

[6] ''Clearing Member Group'' is defined as a Clearing Member and any Member Affiliates of such Clearing Member. ''Member Affiliate'' is defined as an affiliated entity of a Clearing Member that controls, is controlled by, or under common control with, the Clearing Member. *See* OCC By-Laws, Article I.

[7] According to OCC, the procedures described herein will be in effect until the development of a new standard clearing fund sizing methodology and a revised methodology for the intra-month increase of Financial Resources. Following such development, OCC has stated that it will file a separate rule change and advance notice with the Commission that will include a description of the new and revised methodologies as well as a revised Monthly Clearing Fund Sizing Procedure and Financial Resource Monitoring and Call Procedure.

[8] According to OCC, it computes its exposure under the idiosyncratic default scenario and minor systemic default scenario on a daily basis. The greater of these two exposures will be that day's peak exposure. To calculate the rolling five-day average, OCC will compute the average of the peak exposure for each consecutive five-day period observed over the prior three-month period. To determine the Base Amount, OCC will use the largest five-day rolling average observed over the past three-months.

[9] According to OCC, since the minor systemic default scenario contemplates the simultaneous default of two Clearing Members and OCC maintains Financial Resources sufficient to cover a default by a Clearing Member or Clearing Member group presenting the greatest exposure to OCC, OCC does not use the minor systemic default scenario to determine the adequacy of the Financial Resources under the Financial Resource Monitoring and Call Procedure.

[10] OCC Rule 609 authorizes OCC to require the deposit of additional margin in any account at any time during any business day by any Clearing Member for, among other reasons, the protection of OCC, other Clearing Members or the general public. Under OCC Rule 609, a Clearing Member must meet a required deposit of intra-day margin in immediately available funds at a time prescribed by OCC or within one hour of OCC's issuance of debit settlement instructions against the bank account of the applicable Clearing Member.

[11] According to OCC, implementing the 500/100 Limitation on the intra-day margin call avoids placing a ''liquidity squeeze'' on the subject Clearing Member or Clearing Member Group based on exposures presented by a hypothetical stress test, which otherwise could cause a default on the intra-day margin call. OCC back-testing results determined that intra-day margin calls resulting from a Margin Call Event would have been made against Clearing Members or Clearing Member Groups that are large, well-capitalized firms, with more than sufficient resources to satisfy the call for additional margin subject to the 500/100 Limitation.

that are collected cannot exceed the 500/100 Limitation. The 500/100 Limitation will remain in place until OCC has collected all funds to satisfy the next monthly clearing fund resizing.[12]

Additionally, OCC will rely on OCC Rule 608 to preclude the withdrawal of such additional margin amount until all of the funds from the next monthly clearing fund resizing have been collected. Based on three years of back-testing data, OCC determined that a Margin Call Event would have occurred in 10 of the months during this period. During each of these 10 months, the maximum call amount would have been equal to $500 million.[13] After giving effect to the intra-day margin calls (*i.e.,* increasing the Financial Resources by $500 million), there was only one Margin Call Event where there was still an observed stress test exceedance of Financial Resources.

To address this one observed instance, the Financial Resource Monitoring and Call Procedure will require OCC to increase the size of the clearing fund, if a Projected Draw exceeds 90% of the clearing fund (''Clearing Fund Intra-month Increase Event''), after applying any funds then on deposit with OCC from the applicable Clearing Member or Clearing Member Group pursuant to a Margin Call Event. The amount of such increase (''Clearing Fund Increase'') will be the greater of: (a) $1 billion; or (b) 125% of the difference between (i) the Projected Draw, as reduced by the deposits resulting from the Margin Call Event, and (ii) the clearing fund. Each Clearing Member's proportionate share of the Clearing Fund Increase will equal its proportionate share of the variable portion of the clearing fund for the month in question as calculated pursuant to OCC Rule 1001(b).

According to OCC, it will notify the Risk Committee, Clearing Members and appropriate regulatory authorities of the Clearing Fund Increase on the business day that the Clearing Fund Intra-month Increase Event occurs. OCC believes that this will ensure that OCC management maintains authority to address any potential Financial Resource deficiencies when compared to its Projected Draw estimates. The Risk Committee will then determine whether the Clearing Fund Increase is sufficient, and will retain authority under the Risk Committee charter to increase the Clearing Fund Increase or the intra-day margin call made pursuant to a Margin Call Event in its discretion. Clearing Members will be required to meet the call for additional clearing fund assets by 9:00 a.m. CT on the second business day following the Clearing Fund Intra-Month Increase Event. OCC believes that this collection process ensures that additional clearing fund assets are promptly deposited by Clearing Members following notice of a Clearing Fund Increase, while also providing Clearing Members with a reasonable period of time to source such assets. According to OCC, based on its back-testing results, after giving effect to the intra-day margin call in response to a Margin Call Event plus the prudential margin of safety, the Financial Resources would have been sufficient upon implementing the one instance of a Clearing Fund Intra-month Increase Event.

OCC believes the Financial Resource Monitoring and Call Procedure strikes a prudent balance between mutualizing the burden of requiring additional Financial Resources and requiring the Clearing Member or Clearing Member Group causing the increased exposure to bear such burden. In the event a Projected Draw exceeds 75% of the clearing fund, the Clearing Member or Clearing Member Group that triggers the exceedance will be assessed an intra-day margin call to address the increase in exposure. However, where a Projected Draw exceeds 90% of OCC's clearing fund, OCC determined that it should mutualize the burden of the additional Financial Resources at this threshold through a Clearing Fund Increase. OCC believes that this balance will provide OCC with sufficient Financial Resources without increasing the likelihood that its procedures, based solely on stress testing results, will cause a liquidity strain that could result in the default of a Clearing Member or Clearing Member Group.

II. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act[14] 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, which requires the rules of a registered clearing agency be designed to, among other things, assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest.[15] By establishing procedures that govern the monthly resizing of the clearing fund and the addition of Financial Resources, as proposed in OCC's rule change, OCC should be in a better position to ensure that it maintains sufficient financial resources to withstand a default of the Clearing Member or Clearing Member Group to which it has the largest exposure, thereby reducing the likelihood that a default would create losses that disrupt OCC's operations and adversely affect the clearing agency's non-defaulting participants. In so doing, the rule change, as approved, should enhance OCC's ability to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest.

The Commission finds that the proposed rule change is consistent with Rule 17Ad–22(b)(3), promulgated under the Act,[16] which requires, among other things, registered clearing agencies that perform central counterparty services to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain sufficient financial resources to withstand, at a minimum, a default by the participant family to which it has the largest exposure in extreme but plausible market conditions. By using a peak five-day rolling average and extending the look-back period from one to three calendar months, the Monthly Clearing Fund Sizing Procedure should be more responsive than OCC's existing clearing fund resizing formula to sudden increases in exposure and less sensitive to short-run reductions in exposure that could inappropriately reduce the overall size of the clearing

[12] The Risk Committee of the Board of Directors (''Risk Committee'') will be notified, and can take action to address potential Financial Resource deficiencies, in the event that a Projected Draw resulted in a Margin Call Event and, as a result of the 500/100 Limitation, the intra-day margin call is less than the Exceedance Above Base Amount, but the Projected Draw is not large enough to result in an increase in the clearing fund as discussed below.

[13] The back-testing analysis performed by OCC assumed that a single Clearing Member caused the Exceedance Above Base Amount.

[14] 15 U.S.C. 78s(b)(2)(C).

[15] 15 U.S.C. 78q–1(b)(3)(F).

[16] 17 CFR 240.17Ad–22(b)(3).

fund. Furthermore, the prudential margin of safety, which is currently $1.8 billion, will provide an additional buffer to absorb potential future exposures that may not be observed during the look-back period. In addition, the Financial Resource Monitoring and Call Procedure will establish a process by which OCC will be able to respond to increases in exposure on an intra-month basis. As a result, the Monthly Clearing Fund Sizing Procedure and Financial Resource Monitoring and Call Procedure should ensure that OCC is capable of obtaining sufficient financial resources in a timely manner to withstand a default of the Clearing Member or Clearing Member Group presenting it the largest exposure.

III. Conclusion

On the basis of the foregoing, the Commission finds that the rule change is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act [17] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (SR–OCC–2015–009) be, and it hereby is, approved as of the date of this order or the date of an order by the Commission authorizing OCC to implement OCC's advance notice proposal that is consistent with this proposed rule change (SR–OCC–2014–811), whichever is later.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Robert W. Errett,

Deputy Secretary.

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[17] 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).

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74981; File No. SR–OCC–2014–811]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of No Objection to an Advance Notice, as Modified by Amendment No. 1 and Amendment No. 2, To Establish Procedures Regarding the Monthly Resizing of Its Clearing Fund and the Addition of Financial Resources

May 15, 2015.

On December 1, 2014, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') advance notice SR–OCC–2014–811 (''Advance Notice'') pursuant to Section 806(e)(1) of the Payment, Clearing, and Settlement Supervision Act of 2010 (''Payment, Clearing and Settlement Supervision Act'') [1] and Rule 19b–4(n)(1)(i) under the Securities Exchange Act of 1934 (''Exchange Act'').[2] On December 16, 2014, OCC filed amendment number 1 to the Advance Notice (''Amendment No. 1''), which amended and replaced, in its entirety, the Advance Notice as originally filed on December 1, 2014.[3] The Advance Notice, as modified by Amendment No. 1, was published for comment in the **Federal Register** on January 26, 2015.[4] On January 27, 2015, pursuant to section 806(e)(1)(D) of the Payment, Clearing and Settlement Supervision Act,[5] the Commission required OCC to provide additional information concerning the Advance Notice.[6] On March 4, 2015, OCC filed amendment number 2 to the Advance Notice (''Amendment No. 2''), which amended and replaced, in its entirety, Amendment No. 1.[7] Notice of Amendment No. 2 was published for comment in the **Federal Register** on April 16, 2015.[8] The Commission did not receive any comments on the Advance Notice or any of the amendments thereto. This publication serves as a notice of no objection to the Advance Notice.

I. Description of the Advance Notice

The proposal establishes new procedures to govern: (i) OCC's resizing of the clearing fund on a monthly basis pursuant to OCC Rule 1001(a) (''Monthly Clearing Fund Sizing Procedure''); and (ii) the addition of Financial Resources [9] through an intra-day margin call on one or more Clearing Members [10] pursuant to OCC Rule 609 and, if necessary, an intra-month increase of the clearing fund pursuant to OCC Rule 1001(a) to ensure that OCC maintains adequate Financial Resources

[1] 12 U.S.C. 5465(e)(1). The Financial Stability Oversight Council designated OCC a systemically important financial market utility on July 18, 2012. *See* Financial Stability Oversight Council 2012 Annual Report, Appendix A, *http://www.treasury.gov/initiatives/fsoc/Documents/2012%20Annual%20Report.pdf.* Therefore, OCC is required to comply with the Clearing Supervision Act and file advance notices with the Commission. *See* 12 U.S.C. 5465(e).

[2] 17 CFR 240.19b–4(n)(1)(i).

[3] In Amendment No. 1, OCC amended the Advance Notice to include the Monthly Clearing Fund Sizing Procedure and the Financial Resource Monitoring and Call Procedure as exhibits to the filing, both defined hereinafter, as Exhibit 5A and Exhibit 5B, respectively. OCC requested confidential treatment for Exhibit 5A and Exhibit 5B pursuant to the Rule 24b–2 under the Exchange Act.

[4] Securities Exchange Act Release No. 74091 (January 20, 2015), 80 FR 4001 (January 26, 2015) (SR–OCC–2014–811).

[5] 12 U.S.C. 5465(e)(1)(D).

[6] The Commission received a response from OCC with the further information for consideration on March 17, 2015, which, pursuant to Sections 806(e)(1)(E) and (G) of the Payment, Clearing and Settlement Supervision Act, initiated a new 60 day period of review. *See* 12 U.S.C. 5465(e)(1)(E) and 12 U.S.C. 5465(e)(1)(G).

[7] Amendment No. 2 amended and replaced, in its entirety, Amendment No. 1. OCC filed Amendment No. 2 to clarify the operation of a Margin Call Event, as that term is defined and used hereinafter. To accommodate these clarifications, OCC made conforming changes to Exhibit 5B, the Financial Resources Monitoring and Call Procedure, and added the Clearing Fund Intra-Month Re-sizing Procedure as Exhibit 5C to provide additional clarity regarding the resizing of the clearing fund. OCC requested confidential treatment for Exhibit 5A, Exhibit 5B, and Exhibit 5C pursuant to the Rule 24b–2 under the Exchange Act. In Amendment No. 2, OCC also clarified that the definition of Financial Resources, hereinafter defined, takes into account the margin deposits of a Clearing Member or a Clearing Member Group, as applicable.

[8] Securities Exchange Act Release No. 74713 (April 10, 2015), 80 FR 20534 (April 16, 2015) (SR–OCC–2014–811). OCC also filed the proposal contained in the Advance Notice as a proposed rule change under Section 19(b)(1) of the Exchange Act and Rule 19b–4 thereunder. *See* Securities Exchange Act Release No. 73853 (December 16, 2014), 79 FR 76417 (December 22, 2014) (SR–OCC–2014–22). On March 13, 2015, OCC withdrew SR–OCC–2014–22 and filed the proposal previously contained therein as SR–OCC–2015–009. *See* Securities Exchange Act Release No. 74603 (March 27, 2015), 80 FR 17808 (April 2, 2015) (SR–OCC–2015–009). The Commission did not receive any comments on the proposed rule change.

[9] For purposes of this Advance Notice, ''Financial Resources'' means, with respect to a projected loss that is attributable to a particular Clearing Member or Clearing Member Group, as defined hereinafter, the sum of (i) the margin deposits (less any excess margin a Clearing Member or Clearing Member Group may have on deposit at OCC) and deposits in lieu of margin with respect to the accounts of such Clearing Members or Clearing Member Groups, and (ii) the value of OCC's clearing fund, including both the Base Amount, as defined hereinafter, and the prudential margin of safety, as described below.

[10] ''Clearing Member'' is defined, in relevant part, as a person or organization that has been admitted to membership in the Corporation pursuant to the provisions of the By-Laws and Rules. *See* OCC By-Laws, Article I.

in the event of a default of a Clearing Member or Clearing Member Group [11] presenting the largest exposure to OCC (''Financial Resource Monitoring and Call Procedure'').[12]

a. Monthly Clearing Fund Sizing Procedure

According to OCC, under the Monthly Clearing Fund Sizing Procedure, OCC will continue to use its daily stress test exposures under simulated default scenarios (as described in the first sentence of OCC Rule 1001(a)) to calculate the size of the clearing fund and resize the clearing fund on the first business day of each month. However, instead of resizing the clearing fund based on the *average of the daily calculations* during the preceding calendar month, OCC intends to resize the clearing fund using a new formula, which is the sum of: (i) An amount equal to the peak five-day rolling average of clearing fund draws observed over the preceding three calendar months using the daily idiosyncratic default and minor systemic default scenario calculations based on OCC's daily Monte Carlo simulations (''Base Amount''); and (ii) a prudential margin of safety determined by OCC that is currently set at $1.8 billion.[13] OCC believes that the Monthly Clearing Fund Sizing Procedure provides a sound and prudent approach to ensure that it maintains adequate Financial Resources to protect against a default of a Clearing Member or Clearing Member Group presenting the largest exposure to OCC. By sizing the Base Amount of the clearing fund using the peak five-day rolling average over the preceding three month look-back period, rather than an average over the preceding month, OCC believes that the new resizing formula should be more responsive to sudden increases in exposure and less sensitive to short-run reductions in exposures that could inappropriately reduce the overall size of the clearing fund. OCC further asserts that the prudential margin of safety provides an additional buffer to absorb potential future exposures not previously observed during the look-back period. The Monthly Clearing Fund Sizing Procedure will be supplemented by the Financial Resource Monitoring and Call Procedure, which is described below, to provide further assurance that the Financial Resources are adequate to protect against such risk of loss.

b. Financial Resource Monitoring and Call Procedure

According to OCC, under the Financial Resource Monitoring and Call Procedure, OCC will use the same daily idiosyncratic default calculation that is currently used under the Monthly Clearing Fund Sizing Procedure to monitor daily the adequacy of the Financial Resources to withstand a default by the Clearing Member or Clearing Member Group presenting the largest exposure under extreme but plausible market conditions.[14] If such a daily idiosyncratic default calculation projected a draw on the clearing fund (''Projected Draw'') that is at least 75% of the clearing fund maintained by OCC, OCC will be required to issue an intra-day margin call pursuant to OCC Rule 609 against the Clearing Member or Clearing Member Group that caused such a draw (''Margin Call Event'').[15] The amount of the intra-day margin call made pursuant to a Margin Call Event will be the difference between the Projected Draw and the Base Amount of the clearing fund (''Exceedance Above Base Amount'').

In the case of a Clearing Member Group that causes the Exceedance Above Base Amount, the Exceedance Above Base Amount will be pro-rated among the individual Clearing Members that compose the Clearing Member Group based on each individual Clearing Member's proportionate share of the total risk for such Clearing Member Group as defined in OCC Rule 1001(b) (*i.e.,* the margin requirement with respect to all accounts of the Clearing Member Group exclusive of the net asset value of the positions in such accounts aggregated across all such accounts). In the case of an individual Clearing Member or a Clearing Member Group, the intra-day margin call will be subject to a limitation under which it cannot exceed the lower of: (a) $500 million; or (b) 100% of the net capital of a Clearing Member (the ''500/100 Limitation'').[16] This limitation will apply in aggregate to all Margin Call Events within the same monthly period. Therefore, if the same Clearing Member or Clearing Member Group is subject to more than one Margin Call Event in the same month, the total amount of funds that are collected cannot exceed the 500/100 Limitation. The 500/100 Limitation will remain in place until OCC has collected all funds to satisfy the next monthly clearing fund resizing.[17]

Additionally, OCC will rely on OCC Rule 608 to preclude the withdrawal of such additional margin amount until all of the funds from the next monthly clearing fund resizing have been collected. Based on three years of back-testing data, OCC determined that a Margin Call Event would have occurred in 10 of the months during this period. During each of these 10 months, the maximum call amount would have been equal to $500 million.[18] After giving effect to the intra-day margin calls (*i.e.,* increasing the Financial Resources by

[11] ''Clearing Member Group'' is defined as a Clearing Member and any Member Affiliates of such Clearing Member. ''Member Affiliate'' is defined as an affiliated entity of a Clearing Member that controls, is controlled by, or under common control with, the Clearing Member. *See* OCC By-Laws, Article I.

[12] According to OCC, the procedures described herein will be in effect until the development of a new standard clearing fund sizing methodology and a revised methodology for the intra-month increase of Financial Resources. Following such development, OCC has stated that it will file a separate rule change and advance notice with the Commission that will include a description of the new and revised methodologies as well as a revised Monthly Clearing Fund Sizing Procedure and Financial Resource Monitoring and Call Procedure.

[13] According to OCC, it computes its exposure under the idiosyncratic default scenario and minor systemic default scenario on a daily basis. The greater of these two exposures will be that day's peak exposure. To calculate the rolling five-day average, OCC will compute the average of the peak exposure for each consecutive five-day period observed over the prior three-month period. To determine the Base Amount, OCC will use the largest five-day rolling average observed over the past three months.

[14] According to OCC, since the minor systemic default scenario contemplates the simultaneous default of two Clearing Members and OCC maintains Financial Resources sufficient to cover a default by a Clearing Member or Clearing Member Group presenting the greatest exposure to OCC, OCC does not use the minor systemic default scenario to determine the adequacy of the Financial Resources under the Financial Resource Monitoring and Call Procedure.

[15] OCC Rule 609 authorizes OCC to require the deposit of additional margin in any account at any time during any business day by any Clearing Member for, among other reasons, the protection of OCC, other Clearing Members or the general public. Under OCC Rule 609, a Clearing Member must meet a required deposit of intra-day margin in immediately available funds at a time prescribed by OCC or within one hour of OCC's issuance of debit settlement instructions against the bank account of the applicable Clearing Member.

[16] According to OCC, implementing the 500/100 Limitation on the intra-day margin call avoids placing a ''liquidity squeeze'' on the subject Clearing Member or Clearing Member Group based on exposures presented by a hypothetical stress test, which otherwise could cause a default on the intra-day margin call. OCC back-testing results determined that intra-day margin calls resulting from a Margin Call Event would have been made against Clearing Members or Clearing Member Groups that are large, well-capitalized firms, with more than sufficient resources to satisfy the call for additional margin subject to the 500/100 Limitation.

[17] The Risk Committee of the Board of Directors (''Risk Committee'') will be notified, and can take action to address potential Financial Resource deficiencies, in the event that a Projected Draw resulted in a Margin Call Event and, as a result of the 500/100 Limitation, the intra-day margin call is less than the Exceedance Above Base Amount, but the Projected Draw is not large enough to result in an increase in the clearing fund as discussed below.

[18] The back-testing analysis performed by OCC assumed that a single Clearing Member caused the Exceedance Above Base Amount.

$500 million), there was only one Margin Call Event where there was still an observed stress test exceedance of Financial Resources.

To address this one observed instance, the Financial Resource Monitoring and Call Procedure will require OCC to increase the size of the clearing fund, if a Projected Draw exceeds 90% of the clearing fund (''Clearing Fund Intra-month Increase Event''), after applying any funds then on deposit with OCC from the applicable Clearing Member or Clearing Member Group pursuant to a Margin Call Event. The amount of such increase (''Clearing Fund Increase'') will be the greater of: (a) $1 billion; or (b) 125% of the difference between (i) the Projected Draw, as reduced by the deposits resulting from the Margin Call Event, and (ii) the clearing fund. Each Clearing Member's proportionate share of the Clearing Fund Increase will equal its proportionate share of the variable portion of the clearing fund for the month in question as calculated pursuant to OCC Rule 1001(b).

According to OCC, it will notify the Risk Committee, Clearing Members and appropriate regulatory authorities of the Clearing Fund Increase on the business day that the Clearing Fund Intra-month Increase Event occurs. OCC believes that this will ensure that OCC management maintains authority to address any potential Financial Resource deficiencies when compared to its Projected Draw estimates. The Risk Committee will then determine whether the Clearing Fund Increase is sufficient, and will retain authority under the Risk Committee charter to increase the Clearing Fund Increase or the intra-day margin call made pursuant to a Margin Call Event in its discretion. Clearing Members will be required to meet the call for additional clearing fund assets by 9:00 a.m. CT on the second business day following the Clearing Fund Intra-Month Increase Event. OCC believes that this collection process ensures that additional clearing fund assets are promptly deposited by Clearing Members following notice of a Clearing Fund Increase, while also providing Clearing Members with a reasonable period of time to source such assets. According to OCC, based on its back-testing results, after giving effect to the intra-day margin call in response to a Margin Call Event plus the prudential margin of safety, the Financial Resources would have been sufficient upon implementing the one instance of a Clearing Fund Intra-month Increase Event.

OCC believes the Financial Resource Monitoring and Call Procedure strikes a prudent balance between mutualizing the burden of requiring additional Financial Resources and requiring the Clearing Member or Clearing Member Group causing the increased exposure to bear such burden. In the event a Projected Draw exceeds 75% of the clearing fund, the Clearing Member or Clearing Member Group that triggers the exceedance will be assessed an intra-day margin call to address the increase in exposure. However, where a Projected Draw exceeds 90% of OCC's clearing fund, OCC determined that it should mutualize the burden of the additional Financial Resources at this threshold through a Clearing Fund Increase. OCC believes that this balance will provide OCC with sufficient Financial Resources without increasing the likelihood that its procedures, based solely on stress testing results, will cause a liquidity strain that could result in the default of a Clearing Member or Clearing Member Group.

II. Discussion and Commission Findings

Although Title VIII does not specify a standard of review for an advance notice, the Commission believes that the stated purpose of Title VIII is instructive.[19] The stated purpose of Title VIII is to mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for systemically-important financial market utilities and strengthening the liquidity of systemically important financial market utilities.[20]

Section 805(a)(2) of the Payment, Clearing and Settlement Supervision Act[21] authorizes the Commission to prescribe risk management standards for the payment, clearing, and settlement activities of designated clearing entities and financial institutions engaged in designated activities for which it is the supervisory agency or the appropriate financial regulator. Section 805(b) of the Payment, Clearing and Settlement Supervision Act[22] states that the objectives and principles for the risk management standards prescribed under Section 805(a) shall be to:

- Promote robust risk management;
- promote safety and soundness;
- reduce systemic risks; and
- support the stability of the broader financial system.

The Commission has adopted risk management standards under Section 805(a)(2) of the Payment, Clearing and Settlement Supervision Act (''Clearing Agency Standards'').[23] The Clearing Agency Standards became effective on January 2, 2013, and require registered clearing agencies that perform central counterparty (''CCP'') services to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for their operations and risk management practices on an ongoing basis.[24] As such, it is appropriate for the Commission to review advance notices against these Clearing Agency Standards, and the objectives and principles of these risk management standards as described in Section 805(b) of the Payment, Clearing and Settlement Supervision Act.[25]

The Commission believes that the proposal in this Advance Notice is designed to further the objectives and principles of Section 805(b) of the Payment, Clearing and Settlement Supervision Act.[26] The Commission believes that the Monthly Clearing Fund Sizing Procedure and Financial Resource Monitoring and Call Procedure promote robust risk management by setting forth a process that ensures OCC is able to collect funds, in a timely manner, to effectively manage a potential default of a Clearing Member or Clearing Member Group to which it has the greatest exposure. Given that OCC is designated as a systemically-important financial market utility, OCC's ability to effectively manage a default contributes to promoting safety and soundness, reducing systemic risks, and supporting the stability of the broader financial system.

The Commission believes that the proposal in this Advance Notice is consistent with Clearing Agency Standards, in particular, Rule 17Ad–22(b)(3) under the Exchange Act,[27] which, in relevant part, requires registered clearing agencies that perform central counterparty services to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain

[19] *See* 12 U.S.C. 5461(b).

[20] *Id.*

[21] 12 U.S.C. 5464(a)(2).

[22] 12 U.S.C. 5464(b).

[23] 17 CFR 240.17Ad–22.

[24] The Clearing Agency Standards are substantially similar to the risk management standards established by the Board of Governors of the Federal Reserve System governing the operations of designated financial market utilities that are not clearing entities and financial institutions engaged in designated activities for which the Commission or the Commodity Futures Trading Commission is the Supervisory Agency. See Financial Market Utilities, 77 FR 45907 (August 2, 2012).

[25] 12 U.S.C. 5464(b).

[26] 12 U.S.C. 5464(b).

[27] 17 CFR 240.17Ad–22(b)(3).

sufficient financial resources to withstand, at a minimum, a default by the participant family to which it has the largest exposure in extreme but plausible market conditions. The Commission believes that this proposal is consistent with Exchange Act Rule 17Ad–22(b)(3) [28] because the Monthly Clearing Fund Sizing Procedure and Financial Resource Monitoring and Call Procedure should ensure that OCC can obtain sufficient financial resources in a timely manner to withstand a default of the Clearing Member or Clearing Member Group presenting it the largest exposure.

By using a peak five-day rolling average and extending the look-back period from one to three calendar months, the Monthly Clearing Fund Sizing Procedure should be more responsive than OCC's existing resizing formula to sudden increases in exposure and less sensitive to short-run reductions in exposure that could inappropriately reduce the overall size of the clearing fund. Furthermore, the prudential margin of safety, which is currently $1.8 billion, will provide an additional buffer to absorb potential future exposures that may not be observed during the look-back period. In addition, the Financial Resource Monitoring and Call Procedure will establish a process by which OCC will be able to respond to increases in exposure on an intra-month basis. In doing so, the Commission believes the Financial Resource Monitoring and Call Procedure should ensure that a balance is struck between mutualizing the burden of the additional financial resources across all Clearing Members, while also requiring the Clearing Member or Clearing Member Group causing the increased exposure to bear the burden.

III. Conclusion

It is therefore noticed, pursuant to Section 806(e)(1)(I) of the Payment, Clearing and Settlement Supervision Act,[29] that the Commission *does not object* to advance notice proposal (SR–OCC–2014–811) and that OCC is *authorized to* implement the proposal as of the date of this notice or the date of an order by the Commission approving a proposed rule change that reflects rule changes that are consistent with this advance notice proposal (SR–OCC–2015–009), whichever is later.

[28] *Id.*

[29] 12 U.S.C. 5465(e)(1)(I).

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–12293 Filed 5–20–15; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74972; File No. SR–NASDAQ–2015–055]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change Regarding NASDAQ Last Sale Plus

May 15, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that, on May 11, 2015, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7039 (NASDAQ Last Sale Data Feed) with language regarding NASDAQ Last Sale (''NLS'') Plus (''NLS Plus''), a comprehensive data feed offered by NASDAQ OMX Information LLC.[3] NLS Plus allows data distributors to access the three last sale products offered by each of NASDAQ OMX's three U.S. equity markets.[4] NLS Plus also reflects cumulative consolidated volume (''consolidated volume'') of real-time trading activity across all U.S. exchanges for Tape C securities [5] and 15-minute delayed information for Tape A and Tape B securities.[6] Thus, in offering NLS Plus, NASDAQ OMX Information LLC is, as discussed below, acting as a redistributor of last sale products already offered by NASDAQ, BX, and PSX and volume information provided by the securities information processors for Tape A, B, and C. This proposal is being filed by the Exchange to explain the scope of the NLS Plus data feed offering and in light of a recent approval order on behalf of several affiliated exchanges regarding a similar data product.[7]

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NASDAQ OMX Information LLC is a subsidiary of The NASDAQ OMX Group, Inc. (''NASDAQ OMX'').

[4] The NASDAQ OMX U.S. equity markets include The NASDAQ Stock Market (''NASDAQ''), NASDAQ OMX BX (''BX''), and NASDAQ OMX PSX (''PSX'') (together known as the ''NASDAQ OMX equity markets''). PSX and BX will shortly file companion proposals regarding NLS Plus. NASDAQ's last sale product, NASDAQ Last Sale, includes last sale information from the FINRA/NASDAQ Trade Reporting Facility (''FINRA/NASDAQ TRF''), which is jointly operated by NASDAQ and the Financial Industry Regulatory Authority (''FINRA''). Accordingly, NASDAQ expects that FINRA will submit a proposed change to FINRA Rule 7640A with respect to NLS Plus. *See* Securities Exchange Act Release No. 71350 (January 17, 2014), 79 FR 4218 (January 24, 2014) (SR–FINRA–2014–002). For proposed rule changes submitted with respect to NASDAQ Last Sale, BX Last Sale, and PSX Last Sale, *see, e.g.,* Securities Exchange Act Release Nos. 57965 (June 16, 2008), 73 FR 35178, (June 20, 2008) (SR–NASDAQ–2006–060) (order approving NASDAQ Last Sale data feeds pilot); 61112 (December 4, 2009), 74 FR 65569, (December 10, 2009) (SR–BX–2009–077) (notice of filing and immediate effectiveness regarding BX Last Sale data feeds); and 62876 (September 9, 2010), 75 FR 56624, (September 16, 2010) (SR–Phlx–2010–120) (notice of filing and immediate effectiveness regarding PSX Last Sale data feeds).

[5] Tape C securities are disseminated pursuant to the NASDAQ Unlisted Trading Privileges (''UTP'') Plan.

[6] Tape A and Tape B securities are disseminated pursuant to the Security Industry Automation Corporation's (''SIAC'') Consolidated Tape Association Plan/Consolidated Quotation System, or CTA/CQS (''CTA'').

[7] *See* Securities Exchange Act Release No. 73918 (December 23, 2014), 79 FR 78920 (December 31, 2014) (SR–BATS–2014–055; SR–BYX–2014–030; SR–EDGA–2014–25; SR–EDGX–2014–25) (order approving market data product called BATS One Feed being offered by four affiliated exchanges). *See also* Securities Exchange Act Release No. 73553 (November 6, 2014), 79 FR 67491 (November 13, 2014) (SR–NYSE–2014–40) (order granting approval to establish the NYSE Best Quote & Trades (''BQT'') Data Feed).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposal is to amend Rule 7039 by adding new section (d) regarding NLS Plus. NLS Plus allows data distributors to access last sale products offered by each of NASDAQ OMX's three equity exchanges. Thus, NLS Plus includes all transactions from all of NASDAQ OMX's equity markets, as well as FINRA/NASDAQ TRF data that is included in the current NLS product. In addition, NLS Plus features total cross-market volume information at the issue level, thereby providing redistribution of consolidated volume information from the securities information processors (''SIPs'') for Tape A, B, and C securities.[8] Thus, NLS Plus covers all securities listed on NASDAQ and New York Stock Exchange (''NYSE'') (now under the Intercontinental Exchange (''ICE'') umbrella), as well as US ''regional'' exchanges such as NYSE MKT, NYSE Arca, and BATS (also known as BATS/Direct Edge).[9] The Exchange will, as discussed below, file a separate proposal regarding the NLS Plus fee structure.

NASDAQ has offered NLS Plus since 2010 via NASDAQ OMX Information LLC. NASDAQ OMX Information LLC is a subsidiary of NASDAQ OMX Group, Inc., separate and apart from The NASDAQ Stock Market LLC. As such, NASDAQ OMX Information LLC redistributes last sale data that has been the subject of a proposed rule change filed with the Commission at prices that also have been the subject of a proposed rule change filed with the Commission. As discussed below, NASDAQ OMX Information LLC distributes no data that is not equally available to all market data vendors.[10]

The primary purpose of NASDAQ OMX Information LLC is to combine publicly available data from the three filed last sale products of the NASDAQ OMX equity markets and from the network processors for the ease and convenience of market data users and vendors, and ultimately the investing public. In that role, the function of NASDAQ OMX Information LLC is analogous to that of other market data vendors, and it has no competitive advantage over other market data vendors. For example, NASDAQ OMX Information LLC receives data from the exchange that is available to other market data vendors, with the same information distributed to NASDAQ OMX Information LLC at the same time it is distributed to other vendors (that is, NASDAQ OMX Information LLC has neither a speed nor an information differential). Through this structure, NASDAQ OMX Information LLC performs precisely the same functions as Bloomberg, Thomson Reuters, and dozens of other market data vendors.

The contents of NLS Plus in large part mimic those of NLS set forth in NASDAQ Rule 7039. Currently, NLS in Rule 7039 consists of two separate data products containing last sale activity within the NASDAQ market and reported to the jointly-operated FINRA/NASDAQ TRF; these products are available via two separate data channels. First, as described in Rule 7039, the ''NLS for NASDAQ'' data product is a real-time data channel that provides real-time last sale information including execution price, volume, and time for executions occurring within the NASDAQ system as well as those reported to the FINRA/NASDAQ TRF. Second, the product known as ''NLS for NYSE/NYSE MKT'' provides real-time last sale information over a second data channel including execution price, volume, and time for NYSE- and NYSE MKT-securities executions occurring within the NASDAQ system as well as those reported to the FINRA/NASDAQ TRF. By contrast, the SIPs that provide ''core'' data consolidate last sale information from all exchanges and TRFs. Thus, NLS replicates a subset of the information provided by the SIPs. NASDAQ currently maintains several pricing models, for NLS, including an enterprise license. NLS Plus also includes comparable information from BX Last Sale (BX Rule 7039) and PSX Last Sale (NASDAQ OMX PSX Fees Chapter VIII).

The Proposal

The Exchange proposes to add NLS Plus to Rule 7039, which currently describes the NLS data feed offering, to fully reflect NLS Plus. As described more fully below, NLS Plus is a comprehensive data feed offered by NASDAQ OMX Information LLC that disseminates last sale data as well as consolidated volume of NASDAQ equity markets and the TRF in real-time, and consolidated volume for Tape A and Tape B securities on a 15-minute delayed basis. Similar to NLS, NLS Plus offers data for all U.S. equities via two separate data channels: The first data channel reflects NASDAQ, BX, and PSX trades with real-time consolidated volume for NASDAQ-listed securities; and the second data channel reflects NASDAQ, BX, and PSX trades with delayed consolidated volume for NYSE, NYSE MKT, NYSE Arca and BATS-listed securities.[11] NLS Plus, like NLS, is used by industry professionals and retail investors looking for a cost effective, easy-to-administer, high quality market data product with the characteristics of NLS Plus. The provision of multiple options for investors to receive market data was a primary goal of the market data amendments adopted by Regulation NMS.[12] Finally, NLS Plus provides investors with options for receiving market data that parallel products currently offered by BATS and BATS Y, EDGA, and EDGX and NYSE equity exchanges.[13]

In addition to last sale information, NLS Plus also disseminates the following data elements: Trade Price, Trade Size, Sale Condition Modifiers, Cumulative Consolidated Market Volume, End of Day Trade Summary, Adjusted Closing Price, IPO Information, and Bloomberg ID (together the ''data elements''). NLS Plus also features and disseminates the following messages: Market Wide Circuit Breaker, Reg SHO Short Sale Price Test Restricted Indicator, Trading Action, Symbol Directory, Adjusted Closing Price, and End of Day Trade Summary (together the ''messages'').[14] The

[8] This will reflect real-time trading activity for Tape C securities and 15-minute delayed information for Tape A and Tape B securities.

[9] Registered U.S. exchanges are listed at *http://www.sec.gov/divisions/marketreg/mrexchanges.shtml.*

[10] NLS Plus is and has been described online at *http://nasdaqtrader.com/Trader.aspx?id=DPUSdata#ls. See also http://nasdaqtrader.com/content/technicalsupport/specifications/dataproducts/NLSPlusSpecification.pdf,* which provides detail about how NLS Plus functions.

[11] These NLS Plus channels are each made up of a series of sequenced messages so that each message is variable in length based on the message type and is typically delivered using a higher level protocol. NLS Plus Channel 1 contains NASDAQ trades with real time consolidated volume for NASDAQ listed (Tape C) securities. NLS Plus Channel 2 contains NASDAQ trades with delayed (15 minutes) consolidated volume for NYSE, NYSE Market, NYSE Arca, and BATS listed (Tape A and Tape B) securities.

[12] However, the Exchange notes that under Rule 603 of Regulation NMS, *see* 17 CFR 242.603(c), NLS Plus cannot be substituted for consolidated data in all instances in which consolidated data is used and certain subscribers are still required to purchase consolidated data for trading and order-routing purposes. *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, at 37503 (June 29, 2005) (Regulation NMS Adopting Release).

[13] *See* supra note 7.

[14] The Reg SHO Short Sale Price Test Restricted Indicator message is disseminated intra-day when a security has a price drop of 10% or more from the adjusted prior day's NASDAQ Official Closing Price. Trading Action indicates the current trading status of a security to the trading community, and indicates when a security is halted, paused,

Continued

overwhelming majority of these data elements and messages are exactly the same as, and in fact are sourced from, NLS, BX Last Sale, and PSX Last Sale. Only two data elements (consolidated volume and Bloomberg ID) are, as discussed below, sourced from other publicly accessible or obtainable resources.

Consolidated volume reflects the consolidated volume at the time that the NLS Plus trade message is generated, and includes the volume for the issue symbol as reported on the consolidated market data feed. The consolidated volume is based on the real-time trades reported via the UTP Trade Data Feed (''UTDF'') and delayed trades reported via CTA. NASDAQ OMX calculates the real-time trading volume for its trading venues, and then adds the real-time trading volume for the other (non-NASDAQ OMX) trading venues as reported via the UTDF data feed. For non-NASDAQ-listed issues, the consolidated volume is based on trades reported via SIAC's Consolidated Tape System (''CTS'') for the issue symbol. The Exchange calculates the real-time trading volume for its trading venues, and then adds the 15-minute delayed trading volume for the other (non-NASDAQ OMX) trading venues as reported via the CTS data feed.[15] The second data point that is not sourced from NLS, BX Last Sale, and PSX Last Sale is Bloomberg ID. This composite ID is a component of Bloomberg's Open Symbology and acts as a global security identifier that Bloomberg assigns to securities, and is available free of charge.[16]

NLS Plus may be received by itself or in combination with NASDAQ Basic.[17] In the latter case, the subscriber receives all of the elements contained in NLS Plus as well as the best bid and best offer information provided by NASDAQ Basic.

The Exchange believes that market data distributors may use the NLS Plus data feed to feed stock tickers, portfolio trackers, trade alert programs, time and sale graphs, and other display systems.

The Exchange also proposes two housekeeping changes. In the Rule 7039 title, the Exchange adds the phrase ''and NASDAQ Last Sale Plus'' to make it clear that the rule refers to NLS and NLS Plus. And in section (a), the Exchange adds the phrase ''NASDAQ Last Sale'' to make it clear that section (a) ([*sic*] like sections (b) and (c) refers to NLS. These changes are non-substantive.

With respect to latency, the path for distribution by the Exchange of NLS Plus is not faster than the path for distribution that would be used by a market data vendor to distribute an independently created NLS Plus-like product. As such, the proposed NLS Plus data feed is a data product that a competing market data vendor could create and sell without being in a disadvantaged position relative to the Exchange. In recognition that the Exchange is the source of its own market data and with BX and PSX being equity markets owned by NASDAQ OMX, the Exchange represents that the source of the market data it would use to create proposed NLS Plus is available to other vendors. In fact, the overwhelming majority of the data elements and messages[18] in NLS Plus are exactly the same as, and in fact are sourced from, NLS, BX Last Sale, and PSX Last Sale, each of which is available to other market data vendors.[19] The Exchange, BX, and PSX will continue to make available these individual underlying data elements, and thus, the source of the market data that the Exchange would use to create the proposed NLS Plus is the same as what is available to other market data vendors.

In order to create NLS Plus, the system creating and supporting NLS Plus receives the individual data feeds from each of the NASDAQ OMX equity markets and, in turn, aggregates and summarizes that data to create NLS Plus and then distribute it to end users. This is the same process that a competing market data vendor would undergo should it want to create a market data product similar to NLS Plus to distribute to its end users. A competing market data vendor could receive the individual data feeds from each of the NASDAQ OMX equity markets at the same time the system creating and supporting NLS Plus would for it to create NLS Plus. Therefore, a competing market data vendor could, as discussed, obtain the underlying data elements from the NASDAQ OMX equity markets on the same latency basis as the system that would be performing the aggregation and consolidation of proposed NLS Plus, and provide a similar product to its customers with the same latency they could achieve by purchasing NLS Plus from the Exchange. As such, the Exchange would not have any unfair advantage over competing market data vendors with respect to NLS Plus. Moreover, in terms of NLS itself, the Exchange would access the underlying feed from the same point as would a market data vendor; as discussed, the Exchange would not have a speed advantage. Likewise, NLS Plus would not have any speed advantage vis-à-vis competing market data vendors with respect to access to end user customers.

With regard to cost, upon approval of this NLS Plus proposal the Exchange will file a separate proposal with the Commission regarding fees, which would be designed to ensure that vendors could compete with the Exchange by creating a similar product as NLS Plus. The Exchange expects that the pricing will reflect the incremental cost of the aggregation and consolidation function for NLS Plus, and would not be lower than the cost to a vendor creating a competing product, including the cost of receiving the underlying data feeds. The pricing the Exchange would charge clients for NLS Plus would enable a vendor to receive the underlying data feeds and offer a similar product on a competitive basis and with no greater cost than the Exchange. For these reasons, the Exchange believes that vendors could readily offer a product similar to NLS Plus on a competitive basis at a similar cost.

As described in more detail below, the Exchange believes that the NLS Plus data offering benefits the public and investors and that the proposal is consistent with the Act.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[20] in general, and with Section 6(b)(5) of the

released for quotation, and released for trading. Symbol Directory is disseminated at the start of each trading day for all active NASDAQ and non-NASDAQ-listed security symbols. Adjusted Closing Price is disseminated at the start of each trading day for all active symbols in the NASDAQ system, and reflects the previous trading day's official closing price adjusted for any applicable corporate actions; if there were no corporate actions, however, the previous day's official closing price is used. End of Day Trade Summary is disseminated at the close of each trading day, as a summary for all active NASDAQ- and non-NASDAQ-listed securities. IPO Information reflects IPO general administrative messages from the UTP and CTA Level 1 feeds for Initial Public Offerings for all NASDAQ- and non-NASDAQ-listed securities.

[15] In order to distribute data derived from UTDF and CTA, NASDAQ OMX must pay monthly redistributor fees. However, because these fees are paid on an enterprise-wide basis and NASDAQ OMX includes such derived data in other data products, the use of the data in NLS Plus does not result in an additional incremental cost.

[16] *See http://bsym.bloomberg.com/sym/pages/bbgid-fact-sheet.pdf; http://bsym.bloomberg.com/sym/pages/NASDAQ_Adopts_BSYM.pdf.*

[17] As provided in Rule 7047, NASDAQ Basic provides the information contained in NLS, together with NASDAQ's best bid and best offer.

[18] *See* text related to note 14 supra.

[19] Only two data elements are, as discussed above, sourced from other publicly accessible or obtainable resources.

[20] 15 U.S.C. 78f.

Act,[21] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The purpose of the proposed rule change is to add section (d) to Rule 7039 regarding the NLS Plus data offering. NASDAQ believes that the proposal facilitates transactions in securities, removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest by making permanent the availability of an additional means by which investors may access information about securities transactions, thereby providing investors with additional options for accessing information that may help to inform their trading decisions. Given that Section 11A the Act[22] requires the dissemination of last sale reports in core data, NASDAQ believes that the inclusion of the same data in NLS Plus is also consistent with the Act.

NASDAQ notes that the Commission has recently approved a data product on several exchanges that is similar to NLS Plus, and specifically determined that the approved data product was consistent with the Act.[23] NLS Plus simply provides market participants with an additional option for receiving market data that has already been the subject of a proposed rule change and that is available from myriad market data vendors.

In adopting Regulation NMS, the Commission granted SROs and broker-dealers (''BDs'') increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. NASDAQ believes that its NLS Plus market data product is precisely the sort of market data product that the Commission envisioned when it adopted Regulation NMS. 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.[24]

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 BDs at all, it follows that the price at which such data is sold should be set by the market as well.

NASDAQ will file a separate proposal regarding NLS Plus fees.[25] 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). The court agreed with the Commission's conclusion that ''Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.' ''[26]

The Court in *NetCoalition I,* while upholding the Commission's conclusion that competitive forces may be relied upon to establish the fairness of prices, nevertheless concluded that the record *in that case* did not adequately support the Commission's conclusions as to the competitive nature of the market for NYSE Arca's data product at issue in that case. As explained below in NASDAQ's Statement on Burden on Competition, however, NASDAQ believes that there is substantial evidence of competition in the marketplace for data that was not in the record in the *NetCoalition I* case, and that the Commission is entitled to rely upon such evidence in concluding fees are the product of competition, and therefore in accordance with the relevant statutory standards.[27] Moreover, NASDAQ further notes that the product at issue in this filing—a last sale data product that replicates a subset of the information available through ''core'' data products whose fees have been reviewed and approved by the SEC—is quite different from the NYSE Arca depth-of-book data product at issue in *NetCoalition I.* Accordingly, any findings of the court with respect to that product may not be relevant to the product at issue in this filing.

Moreover, data products such as NLS Plus are a means by which exchanges compete to attract order flow. To the extent that exchanges are successful in such competition, they earn trading revenues and also enhance the value of their data products by increasing the amount of data they are able to provide. Conversely, to the extent that exchanges are unsuccessful, the inputs needed to add value to data products are diminished. Accordingly, the need to compete for order flow places substantial pressure upon exchanges to keep their fees for both executions and data reasonable.

The Exchange believes that, for the reasons given, the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ 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. As is true of all NASDAQ's non-core data products, NASDAQ's ability to offer and price NLS Plus is constrained by: (1) Competition between exchanges and other trading platforms that compete with each other in a variety of dimensions; (2) the existence of

[21] 15 U.S.C. 78f(b)(5).

[22] 15 U.S.C. 78k–1.

[23] *See* supra note 7.

[24] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[25] The Exchange expects that the fee structure for NLS Plus will reflect an amount that is no less than the cost to a market data vendor to obtain all the underlying feeds, plus an amount to be determined that would reflect the value of the aggregation and consolidation function.

[26] *NetCoalition I,* at 535.

[27] It should also be noted that Section 916 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act'') has amended paragraph (A) of Section 19(b)(3) of the Act, 15 U.S.C. 78s(b)(3), to make it clear that all exchange fees, including fees for market data, may be filed by exchanges on an immediately effective basis. *See also NetCoalition* v. *SEC,* 715 F.3d 342 (D.C. Cir. 2013) (''*NetCoalition II*'') (finding no jurisdiction to review Commission's non-suspension of immediately effective fee changes).

inexpensive real-time consolidated data and market-specific data and free delayed consolidated data; and (3) the inherent contestability of the market for proprietary last sale data.

In addition, as described in detail above, NLS Plus competes directly with a myriad of similar products and potential products of market data vendors. NASDAQ OMX Information LLC was constructed specifically to establish a level playing field with market data vendors and to preserve fair competition between them. Therefore, NASDAQ OMX Information LLC receives NLS, BX Last Sale, and PSX Last Sale from each NASDAQ-operated exchange in the same manner, at the same speed, and reflecting the same fees as for all market data vendors. Therefore, NASDAQ Information LLC has no competitive advantage with respect to these last sale products and NASDAQ commits to maintaining this level playing field in the future. In other words, NASDAQ will continue to disseminate separately the underlying last sale products to avoid creating a latency differential between NASDAQ OMX Information LLC and other market data vendors, and to avoid creating a pricing advantage for NASDAQ OMX Information LLC.

NLS Plus joins the existing market for proprietary last sale data products that is currently 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. Similarly, with respect to the FINRA/NASDAQ TRF data that is a component of NLS and NLS Plus, allowing exchanges to operate TRFs has permitted them to earn revenues by providing technology and data in support of the non-exchange segment of the market. This revenue opportunity has also resulted in fierce competition between the two current TRF operators, with both TRFs charging extremely low trade reporting fees and rebating the majority of the revenues they receive from core market data to the parties reporting trades.

Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade execution are a paradigmatic example of joint products with joint costs. The decision whether and on which platform to post an order will depend on the attributes of the platform where the order can be posted, including the execution fees, data quality and price, and distribution of its data products. Without trade executions, exchange data products cannot exist. Moreover, data products are valuable to many end users only insofar as they provide information that end users 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 the revenues it receives from both products and the joint costs it incurs. Moreover, the operation of the exchange is characterized by high fixed costs and low marginal costs. This cost structure is common in content and content distribution industries such as software, where developing new software typically requires a large initial investment (and continuing large investments to upgrade the software), but once the software is developed, the incremental cost of providing that software to an additional user is typically small, or even zero (*e.g.,* if the software can be downloaded over the internet after being purchased).[28] In NASDAQ's case, it is costly to build and maintain a trading platform, but the incremental cost of trading each additional share on an existing platform, or distributing an additional instance of data, is very low. Market information and executions are each produced jointly (in the sense that the activities of trading and placing orders are the source of the information that is distributed) and are each subject to significant scale economies. In such cases, marginal cost pricing is not feasible because if all sales were priced at the margin, NASDAQ would be unable to defray its platform costs of providing the joint products. Similarly, data products cannot make use of TRF trade reports without the raw material of the trade reports themselves, and therefore necessitate the costs of operating, regulating,[29] and maintaining a trade reporting system, costs that must be covered through the fees charged for use of the facility and sales of associated data.

An exchange's BD customers view the costs of transaction executions and of data as a unified cost of doing business with the exchange. A BD 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 BD 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 BD will choose not to buy it. Moreover, as a BD chooses to direct fewer orders to a particular exchange, the value of the product to that BD decreases, for two reasons. First, the product will contain less information, because executions of the BD's trading activity will not be reflected in it. Second, and perhaps more important, the product will be less valuable to that BD because it does not provide information about the venue to which it is directing its orders. Data from the competing venue to which the BD is directing orders will become correspondingly more valuable.

Similarly, in the case of products such as NLS Plus that are distributed through market data vendors, the vendors provide price discipline for proprietary data products because they control the primary means of access to end users. Vendors impose price restraints based upon their business models. For example, vendors such as Bloomberg and Reuters that assess a surcharge on data they sell may refuse to offer proprietary products that end users 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 BDs, 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. Exchanges,

[28] *See* William J. Baumol and Daniel G. Swanson, ''The New Economy and Ubiquitous Competitive Price Discrimination: Identifying Defensible Criteria of Market Power,'' *Antitrust Law Journal,* Vol. 70, No. 3 (2003).

[29] It should be noted that the costs of operating the FINRA/NASDAQ TRF borne by NASDAQ include regulatory charges paid by NASDAQ to FINRA.

TRFs, 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. Moreover, NASDAQ believes that products such as NLS Plus can enhance order flow to NASDAQ by providing more widespread distribution of information about transactions in real time, thereby encouraging wider participation in the market by investors with access to the internet or television. Conversely, the value of such products to distributors and investors decreases if order flow falls, because the products contain less content.

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. NASDAQ pays rebates to attract orders, charges relatively low prices for market information and charges relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower liquidity rebates to attract orders, setting relatively low prices for accessing posted liquidity, and setting relatively high prices for market information. Still others may provide most data free of charge and rely exclusively on transaction fees to recover their costs. Finally, some platforms may incentivize use by providing opportunities for equity ownership, which may allow them to charge lower direct fees for executions and data.

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. Such regulation is unnecessary because an ''excessive'' price for one of the joint products will ultimately have to be reflected in lower prices for other products sold by the firm, or otherwise the firm will experience a loss in the volume of its sales that will be adverse to its overall profitability. In other words, an increase in the price of data will ultimately have to be accompanied by a decrease in the cost of executions, or the volume of both data and executions will fall.

The level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including eleven SRO markets, as well as internalizing 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 TRFs compete to attract internalized transaction reports. It is common for BDs to further and exploit this competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market. 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, NYSE, NYSE MKT, NYSE Arca, and BATS/Direct Edge.

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 BDs' production of proprietary data products. The potential sources of proprietary products are virtually limitless. Notably, the potential sources of data include the BDs that submit trade reports to TRFs and that have the ability to consolidate and distribute their data without the involvement of FINRA or an exchange-operated TRF.

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 NYSE Arca did before registering as exchanges by publishing proprietary book data on the internet. Second, because a single order or transaction report can appear in a core data product, an SRO proprietary product, and/or a non-SRO proprietary product, the data available in proprietary products is exponentially greater than the actual number of orders and transaction reports that exist in the marketplace. Indeed, in the case of NLS Plus, the data provided through that product appears both in (i) real-time core data products offered by the SIPs for a fee, (ii) free SIP data products with a 15-minute time delay, and (iii) individual exchange data products, and finds a close substitute in last-sale products of competing venues.

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, BATS Trading and BATS/Direct Edge. 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 BDs have previously published their proprietary data individually, Regulation NMS encourages market data vendors and BDs 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. In Europe, Cinnober aggregates and disseminates data from over 40 brokers and multilateral trading facilities.[30]

In the case of TRFs, the rapid entry of several exchanges into this space in 2006–2007 following the development and Commission approval of the TRF structure demonstrates the contestability of this aspect of the market.[31] Given the demand for trade reporting services that is itself a by-product of the fierce competition for transaction executions—characterized notably by a proliferation of ATSs and BDs offering internalization—any supra-competitive increase in the fees associated with trade reporting or TRF data would shift trade report volumes from one of the existing TRFs to the other[32] and create incentives for other TRF operators to enter the space. Alternatively, because BDs reporting to TRFs are themselves free to consolidate the market data that they report, the market for over-the-counter data itself, separate and apart from the markets for execution and trade reporting services—is fully contestable.

Moreover, consolidated data provides two additional measures of pricing discipline for proprietary data products

[30] *See http://www.cinnober.com/boat-trade-reporting.*

[31] The low cost exit of two TRFs from the market is also evidence of a contestable market, because new entrants are reluctant to enter a market where exit may involve substantial shut-down costs.

[32] It should be noted that the FINRA/NYSE TRF has, in recent weeks, received reports for almost 10% of all over-the-counter volume in NMS stocks.

that are a subset of the consolidated data stream. First, the consolidated data is widely available in real-time at $1 per month for non-professional users. Second, consolidated data is also available at no cost with a 15- or 20-minute delay. Because consolidated data contains marketwide information, it effectively places a cap on the fees assessed for proprietary data (such as last sale data) that is simply a subset of the consolidated data. The mere availability of low-cost or free consolidated data provides a powerful form of pricing discipline for proprietary data products that contain data elements that are a subset of the consolidated data, by highlighting the optional nature of proprietary products.

The competitive nature of the market for products such as NLS Plus is borne out by the performance of the market. In May 2008, the internet portal Yahoo! began offering its Web site viewers real-time last sale data (as well as best quote data) provided by BATS. In response, in June 2008, NASDAQ launched NLS, which was initially subject to an ''enterprise cap'' of $100,000 for customers receiving only one of the NLS products, and $150,000 for customers receiving both products. The majority of NASDAQ's sales were at the capped level. In early 2009, BATS expanded its offering of free data to include depth-of-book data. Also in early 2009, NYSE Arca announced the launch of a competitive last sale product with an enterprise price of $30,000 per month. In response, NASDAQ combined the enterprise cap for the NLS products and reduced the cap to $50,000 (*i.e.,* a reduction of $100,000 per month). Although each of these products offers only a specific subset of data available from the SIPs, NASDAQ believes that the products are viewed as substitutes for each other and for core last-sale data, rather than as products that must be obtained in tandem. For example, while Yahoo! and Google now both disseminate NASDAQ's product, several other major content providers, including MSN and Morningstar, use the BATS product. Moreover, further evidence of competition can be observed in the recently-developed BATS One Feed and BQT feed.[33]

In this environment, a super-competitive 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 I* at 539. The existence of fierce competition for order flow implies a high degree of price sensitivity on the part of BDs with order flow, since they may readily reduce costs by directing orders toward the lowest-cost trading venues. A BD 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. If a platform increases its market data fees, the change will affect the overall cost of doing business with the platform, and affected BDs will assess whether they can lower their trading costs by directing orders elsewhere and thereby lessening the need for the more expensive data. Similarly, increases in the cost of NLS Plus would impair the willingness of distributors to take a product for which there are numerous alternatives, impacting NLS Plus data revenues, the value of NLS Plus as a tool for attracting order flow, and ultimately, the volume of orders routed to NASDAQ and the value of its other data products.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2015–055 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2015–055. 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–NASDAQ–2015–055 and should be submitted on or before June 11, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–12280 Filed 5–20–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

[33] *See* supra note 7.

[34] 17 CFR 200.30–3(a)(12).

Rule 17g–5, SEC File No. 270–581, OMB Control No. 3235–0649.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 17g–5 (17 CFR 240.17g–5) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act'').

The Credit Rating Agency Reform Act of 2006 (Pub. L. 109–291) (''Rating Agency Act''), enacted on September 29, 2006, defines the term ''nationally recognized statistical rating organization,'' or ''NRSRO'' and provides authority for the Commission to implement registration, recordkeeping, financial reporting, and oversight rules with respect to registered credit rating agencies. The Rating Agency Act added a new Section 15E, ''Registration of Nationally Recognized Statistical Rating Organizations'' (15 U.S.C. 78o–7) to the Exchange Act. Exchange Act Section 15E(h)(2) provides the Commission with authority to prohibit, or require the management and disclosure of, any potential conflict of interest relating to the issuance of credit ratings by an NRSRO (15 U.S.C. 78o–7(h)(2)).

The Commission adopted, and subsequently amended, Rule 17g–5 pursuant, in part, to Section 15E(h)(2) of the Exchange Act.[1] Rule 17g–5 requires the disclosure of and establishment of procedures to manage certain NRSRO conflicts of interest, prohibits certain other NRSRO conflicts of interest, and contains requirements regarding the disclosure of information in the case of the conflict of interest of an NRSRO issuing or maintaining a credit rating on an asset-backed security that was paid for by the issuer, sponsor, or underwriter of the security.

On August 27, 2014, the Commission adopted amendments to Rule 17g–5.[2] The amendments modified the collection of information included in Rule 17g–5 in three ways. First, the Commission added paragraph (a)(3)(iii)(E) to Rule 17g–5 to require an NRSRO to obtain a representation from the issuer, sponsor, or underwriter of an asset-backed security that the issuer, sponsor, or underwriter will post on the Web site referred to in paragraph (a)(3)(iii) of Rule 17g–5 (''Rule 17g–5 Web site''), promptly after receipt, any executed Form ABS Due Diligence-15E delivered by a person employed to provide third-party due diligence services with respect to the security or money market instrument.

Second, the Commission added paragraph (c)(8) to Rule 17g–5 to prohibit an NRSRO from issuing or maintaining a credit rating where a person within the NRSRO who participates in determining or monitoring the credit rating, or developing or approving procedures or methodologies used for determining the credit rating, including qualitative and quantitative models, also: (1) Participates in sales or marketing of a product or service of the NRSRO or a product or service of an affiliate of the NRSRO; or (2) is influenced by sales or marketing considerations.

Third, the Commission added paragraph (f) to Rule 17g–5, which provides that upon written application by an NRSRO the Commission may exempt, either unconditionally or on specified terms and conditions, the NRSRO from paragraph (c)(8) of Rule 17g–5 if the Commission finds that due to the small size of the NRSRO it is not appropriate to require the separation of the production of credit ratings from sales and marketing activities and the exemption is in the public interest.

The collection of information obligation imposed by Rule 17g–5 is mandatory for credit rating agencies that are applying to register or are registered with the Commission as NRSROs. Registration with the Commission as an NRSRO is voluntary.

Paragraph (a)(3) of Rule 17g–5 requires disclosures by NRSROs on a transaction by transaction basis. The Commission estimates that the total number of structured finance ratings issued by all NRSROs in a given year is approximately 2,436 and that it would take 1 hour per transaction to make the information publicly available. The Commission therefore estimates that the corresponding annual disclosure burden for NRSROs is approximately 2,436 hours industry-wide.

Paragraph (a)(3) of Rule 17g–5 also requires arrangers to disclose certain information. The Commission previously estimated that there are approximately 200 arrangers subject to the rule. The Commission estimates that it would take approximately 300 hours to develop a system, as well as the policies and procedures, for the disclosures required by Rule 17g–5. In the Adopting Release, the Commission estimated that there are approximately 336 issuers, sponsors, or underwriters of asset-backed securities. Therefore, the one-time burden for the additional 136 respondents is approximately 40,800 hours. The Commission therefore estimates that, over a three-year period, the total industry-wide one-time burden would be approximately 13,600 hours per year when annualized over three years.

Paragraph (a)(3) of Rule 17g–5 also requires disclosures by arrangers on a transaction by transaction basis. The Commission estimates that 336 arrangers would arrange approximately 20 new transactions per year and that it would take 1 hour per transaction to make the information publicly available, resulting in a total annual disclosure burden of approximately 6,720 hours.

Paragraph (a)(3) of Rule 17g–5 also requires disclosure of information by arrangers on an ongoing basis that is used by an NRSRO to undertake credit rating surveillance on the structured finance product. The Commission estimates this disclosure would be required for approximately 125 transactions a month, and it would take each respondent approximately 0.5 hours per transaction to disclose the information. Therefore, the Commission estimates that it would take each respondent approximately 750 hours on an annual basis to disclose such information, for a total aggregate annual disclosure burden of 252,000 hours.

Paragraph (e) of Rule 17g–5 requires NRSROs to submit an annual certification to the Commission. The Commission estimates that it would take each NRSRO approximately 2 hours to complete the certification, resulting in a total industry-wide annual reporting burden for 10 NRSROs of 20 hours.

New paragraph (a)(3)(iii)(E) of Rule 17g–5 may require NRSROs to redraft the agreement templates they use with respect to obtaining representations from issuers, sponsors, or underwriters as required under Rule 17g–5. The Commission estimates that an NRSRO will spend approximately two hours on a one-time basis to redraft these templates with respect to each issuer, sponsor, or underwriter, for a total industry-wide one-time disclosure burden of approximately 6,720 hours. The Commission therefore estimates that the total one-time disclosure burden to redraft the templates would

[1] *See Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations,* Exchange Act Release No. 55857 (June 5, 2007), 72 FR 33564, 33595–33599 (June 18, 2007); *Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* Exchange Act Release No. 59342 (Feb. 2, 2009) 74 FR 6456, 6465–6469 (Feb. 9, 2009); and *Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* Exchange Act Release No. 61050 (Nov. 23, 2009), 74 FR 63832, 63842–63850 (Dec. 4, 2009).

[2] *See Nationally Recognized Statistical Rating Organizations,* Exchange Act Release No. 72936 (August 27, 2014), 79 FR 55078, 55107–55194 (Sept. 15, 2014) (''Adopting Release'').

be approximately 2,240 hours per year when annualized over three years.

New paragraph (a)(3)(iii)(E) of Rule 17g–5 also requires issuers, sponsors, and underwriters to post on the Rule 17g–5 Web sites any executed Form ABS Due Diligence-15E delivered by a person employed to provide third-party due diligence services. The Commission estimates that issuers, sponsors, and underwriters will need to post approximately 715 Forms ABS Due Diligence-15E on Rule 17g–5 Web sites per year (in addition to the information that is already posted to the Web sites). The Commission estimates that it will take the issuer, sponsor, or underwriter approximately ten minutes to upload each form and post it to the Web site, for a total industry-wide annual disclosure burden of approximately 119 hours.

As a consequence of the new absolute prohibition in paragraph (c)(8) of Rule 17g–5, the Commission believes that an NRSRO will need to update the written policies and procedures to address and manage conflicts of interest the NRSRO must establish, maintain, and enforce under Section 15E(h) of the Exchange Act and Rule 17g–5. The Commission estimates that updating the conflicts of interest policies and procedures would take an NRSRO an average of approximately 100 hours, for an industry-wide one-time reporting burden of approximately 1,000 hours. In addition, Exhibit 7 to Form NRSRO requires an NRSRO to provide a copy of the written policies and procedures in the exhibit. Paragraph (e) of Rule 17g–1 requires an NRSRO to promptly file with the Commission an update of its registration on Form NRSRO when information on the form is materially inaccurate. The update of registration must be filed electronically on the Commission's EDGAR system. The Commission estimates that it would take an NRSRO an average of approximately twenty-five hours on a one-time basis to prepare and file the update of registration to account for the update of the NRSRO's written policies and procedures to address and manage conflicts of interest, for an industry-wide one-time reporting burden of approximately 250 hours. The Commission therefore estimates that the total one-time reporting burden to update the conflicts of interest policies and procedures and to prepare and file an update of registration to account for the update of the NRSRO's written policies and procedures would be 1,250 hours, or approximately 417 hours per year when annualized over three years.

Finally, paragraph (f) of Rule 17g–5 permits an NRSRO to apply for an exemption from the prohibited conflict under paragraph (c)(8) of Rule 17g–5. The Commission estimated that an NRSRO would likely spend an average of approximately 150 hours to draft and submit the application to the Commission. If all 10 NRSROs apply for an exemption, this would result in a one-time industry-wide reporting burden of 1,500 hours, or approximately 500 hours per year when annualized over 3 years.

Accordingly, the total estimated burden associated with Rule 17g–5 is 50,270 hours on a one-time basis (40,800 + 6,720 + 1,250 +1,500 = 50,270) and 261,295 hours on an annual basis (2,436 + 6,720 + 252,000 + 20 +119 = 261,295).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following Web site: *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: May 15, 2015.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–12285 Filed 5–20–15; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14317 and #14318]

West Virginia Disaster #WV–00038

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of West Virginia (FEMA–4219–DR), dated 05/14/2015.

Incident: Sever Storms, Flooding, Landslides, and Mudslides.

Incident Period: 04/03/2015 through 04/05/2015.

Effective Date: 05/14/2015.

Physical Loan Application Deadline Date: 07/13/2015.

Economic Injury (EIDL) Loan Application Deadline Date: 02/15/2016.

ADDRESSES: Submit completed loan applications to: U.S. Small Business, Administration Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 05/14/2015, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Boone; Cabell; Lincoln; Logan; Mingo; Wayne.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere ...	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2625
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14317B and for economic injury is 14318B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008).

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2015–12372 Filed 5–20–15; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Administrator's Line of Succession Designation, No. 1–A, Revision 35

This document replaces and supersedes ''Line of Succession Designation No. 1–A, Revision 34.''

Line of Succession Designation No. 1–A, Revision 35: Effective immediately,

the Administrator's Line of Succession Designation is as follows: (a) In the event of my inability to perform the functions and duties of my position, or my absence from the office, the Deputy Administrator will assume all functions and duties of the Administrator. In the event the Deputy Administrator and I are both unable to perform the functions and duties of the position or are absent from our offices, I designate the officials in listed order below, if they are eligible to act as Administrator under the provisions of the Federal Vacancies Reform Act of 1998 (5 U.S.C. 3345–3349d), to serve as Acting Administrator with full authority to perform all acts which the Administrator is authorized to perform:

(1) Chief of Staff;

(2) General Counsel;

(3) Chief Operating Officer;

(4) Associate Administrator, Office of Disaster Assistance;

(5) Regional Administrator for Region 8;

(6) Regional Administrator for Region 5; and

(7) Regional Administrator for Region 10.

(b) Notwithstanding the provisions of SBA Standard Operating Procedure 00 01 2, ''absence from the office,'' as used in reference to myself in paragraph (a) above, means the following:

(1) I am not present in the office and cannot be reasonably contacted by phone or other electronic means, and there is an immediate business necessity for the exercise of my authority; or

(2) I am not present in the office and, upon being contacted by phone or other electronic means, I determine that I cannot exercise my authority effectively without being physically present in the office.

(c) An individual serving in an acting capacity in any of the positions listed in subparagraphs (a)(1) through (7), unless designated as such by the Administrator, is not also included in this Line of Succession. Instead, the next non-acting incumbent in the Line of Succession shall serve as Acting Administrator.

(d) This designation shall remain in full force and effect until revoked or superseded in writing by the Administrator, or by the Deputy Administrator when serving as Acting Administrator.

(e) Serving as Acting Administrator has no effect on the officials listed in subparagraphs (a)(1) through (7), above, with respect to their full-time position's authorities, duties and responsibilities (except that such official cannot both recommend and approve an action).

Dated: May 8, 2015.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2015–12362 Filed 5–20–15; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14308 and #14309]

Alabama Disaster #AL–00057

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Alabama dated 05/15/2015.

Incident: Severe thunderstorms and straight-line winds.

Incident Period: 04/25/2015 through 04/26/2015.

Effective Date: 05/15/2015.

Physical Loan Application Deadline Date: 07/14/2015.

Economic Injury (EIDL) Loan Application Deadline Date: 02/15/2016.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Houston.

Contiguous Counties:

Alabama: Dale, Geneva, Henry.

Florida: Jackson.

Georgia: Early, Seminole.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.375
Homeowners Without Credit Available Elsewhere	1.688
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14308 B and for economic injury is 14309 0.

The States which received an EIDL Declaration # are Alabama, Florida, Georgia.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: May 15, 2015.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2015–12366 Filed 5–20–15; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 9140]

Culturally Significant Objects Imported for Exhibition Determinations: ''Power and Pathos: Bronze Sculpture of the Hellenistic World'' and ''Pergamon and the Art of the Hellenistic Kingdom'' Exhibitions

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibitions ''Power and Pathos: Bronze Sculpture of the Hellenistic World'' and ''Pergamon and the Art of the Hellenistic Kingdom,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the J. Paul Getty Museum, Los Angeles, California, from on or about July 28, 2015, until on or about November 1, 2015, at the National Gallery of Art, Washington, DC, from on or about

December 6, 2015, until on or about March 20, 2016, at The Metropolitan Museum of Art, New York, New York, from on or about April 11, 2016, until on or about July 10, 2016, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including lists of the exhibit objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Dated: May 18, 2015.

Kelly Keiderling,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2015–12482 Filed 5–20–15; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 9134]

Exchange Visitor Program—Establishment of a Private Sector U.S.-Mexico Intern Program

ACTION: Notice of Proposed Intern Program.

SUMMARY: The Department of State administers the Exchange Visitor Program pursuant to the Mutual Educational and Cultural Exchange Act of 1961 (Pub. L. 87–256) as amended, 22 U.S.C. 2451, *et seq.*, also known as the Fulbright-Hays Act (the Act). The purpose of the Act is to increase mutual understanding between the people of the United States and the people of other countries, including through educational and cultural exchanges. As set forth in 22 CFR part 62, such exchanges are facilitated, in part, through the designation of public and private entities as sponsors of the Exchange Visitor Program.

The Intern category is one of 15 categories under the Exchange Visitor Program. The purpose of the internship program is to provide foreign nationals who are currently enrolled full-time and pursuing studies at a degree- or certificate-granting post-secondary academic institution or graduated from such an institution no more than 12 months prior to their exchange visitor program begin date a period of work-based learning to allow them to develop practical skills that will enhance their future careers. Bridging the gap between formal education and practical work experience and gaining substantive cross-cultural experience are major goals in educational institutions around the world. By providing training opportunities for current foreign students and recent foreign graduates at formative stages of their development, the U.S. Government will build partnerships, promote mutual understanding, and develop networks for relationships that will last through generations as these foreign nationals move into leadership roles in a broad range of occupational fields in their own societies.

On March 16, 2015, Assistant Secretary of State for Educational and Cultural Affairs Evan Ryan and Under Secretary for North American Affairs for the Government of Mexico Sergio Alcocer signed a Memorandum of Understanding to establish the U.S.-Mexico Intern Program for four years. This new effort is intended to increase professional and educational opportunities for youth in both countries. The U.S.-Mexico Intern Program advances President Obama's *100,000 Strong in the Americas Initiative.* It also supports the goals of the Bilateral Forum on Higher Education, Innovation and Research (FOBESSI), announced by President Obama and Mexico's President Enrique Peña.

To support this Program, which will be implemented through the Exchange Visitor Program, the Department of State, Bureau of Educational and Cultural Affairs (ECA), Office of Private Sector Exchange (EC) wishes to collaborate with currently designated intern sponsors as well as other interested entities to provide Mexican citizens with internships and practical training in the occupational categories of Management, Business, Commerce and Finance; Public Administration and Law; Information Media and Communications; and The Sciences, Engineering, Architecture, Mathematics, and Industrial occupations. This type of immersion creates endless benefits for the individual and for understanding between the people of Mexico and the people of the United States.

ECA/EC is prepared to authorize separate designations to current intern sponsors as needed to support the U.S.-Mexico Intern Program. Beginning June 1, the Department intends to provide to currently designated intern sponsors the opportunity to submit designation applications (Form DS–3036) in the occupational fields of Management, Business, Commerce and Finance; Public Administration and Law; Information Media and Communications; and The Sciences, Engineering, Architecture, Mathematics, and Industrial occupations. The designation will be for a period of two years, after which time the sponsor will be required to submit an application for redesignation per 22 CFR 62.7.

Interested entities that do not hold an intern designation under the Exchange Visitor Program should follow the designation process set forth at 22 CFR 62.5, taking care to identify the specified occupational fields outlined in this Notice. Applicants are encouraged to consult the *User Manual for Temporary Users of SEVIS* (How to Complete and Submit the Form DS–3036, Exchange Visitor Program Application), Version: 6.19, dated March 10, 2015.

Public Comment: Interested persons are invited to submit written views concerning this program, until June 22, 2015. The addresses are:

- *Mail:* U.S. Department of State, Attn: Ms. Robin Lerner, Office of Private Sector Exchange, SA–5, 2200 C Street NW., Washington, DC 20522–0505.
- *Email:* [*no email address was provided in the original draft*].

FOR FURTHER INFORMATION CONTACT: Robin J. Lerner, Deputy Assistant Secretary for Private Sector Exchange, U.S. Department of State, SA–5, Floor 5, 2200 C Street NW., Washington, DC 20522; or email at *JExchanges@state.gov.*

Robin J. Lerner,

Deputy Assistant Secretary for Private Sector Exchange, Bureau of Educational and Cultural Affairs.

[FR Doc. 2015–12333 Filed 5–20–15; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 9142]

Culturally Significant Objects Imported for Exhibition Determinations: ''Gustave Caillebotte: The Painter's Eye''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I

hereby determine that the objects to be included in the exhibition ''Gustave Caillebotte: The Painter's Eye,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the National Gallery of Art, Washington, DC, from on or about June 28, 2015, until on or about October 4, 2015, the Kimbell Art Museum, Ft. Worth, Texas, from on or about November 8, 2015, until on or about February 14, 2016, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact the Office of the Legal Adviser, U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505, telephone (202–632–6471), or email at *section2459@state.gov.*

Dated: May 13, 2015.

Kelly Keiderling,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2015–12481 Filed 5–20–15; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 9141]

Culturally Significant Objects Imported for Exhibition Determinations: ''Van Gogh and Nature'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Van Gogh and Nature,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Sterling and Francine Clark Art Institute, Williamstown, Massachusetts, from on or about June 14, 2015, until on or about September 13, 2015, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Dated: May 18, 2015.

Kelly Keiderling,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2015–12480 Filed 5–20–15; 8:45 am]

BILLING CODE 4710–05–P

TENNESSEE VALLEY AUTHORITY

Environmental Impact Statement for the Disposal of Coal Combustion Residuals From the Bull Run Fossil Plant

AGENCY: Tennessee Valley Authority.

ACTION: Notice of Intent.

SUMMARY: This notice of intent is provided in accordance with the Council on Environmental Quality's regulations (40 CFR parts 1500–1508) and Tennessee Valley Authority's (TVA) procedures implementing the National Environmental Policy Act (NEPA). TVA intends to prepare an environmental impact statement (EIS) to address the continued disposal of Coal Combustion Residuals (CCR) from the Bull Run Fossil Plant (BRF).

DATES: To ensure consideration, comments on the scope of the EIS must be postmarked or emailed no later than July 6, 2015.

ADDRESSES: Written comments on the scope of the *Disposal of Coal Combustion Residuals from Bull Run Fossil Plant EIS* should be sent to Anita E. Masters, Project Environmental Planning, NEPA Project Manager, Tennessee Valley Authority, 1101 Market Street, Mail Stop BR 4A, Chattanooga, Tennessee 37402. Comments may also be submitted on the project Web site at *http://www.tva.com/environment/reports/index.htm* or by email at *BRF_CCR_Disposal@tva.gov.*

FOR FURTHER INFORMATION CONTACT: Other project related questions should be sent to Myra Ireland, Senior Strategic Communications Partner, Communications, Tennessee Valley Authority, 1101 Market Street, Mail Stop LP 5B, Chattanooga, Tennessee 37402 or by email at *mhireland@tva.gov.*

SUPPLEMENTARY INFORMATION:

TVA Power System

TVA operates the nation's largest public power system, producing 4 percent of all the electricity in the nation. TVA provides electricity to most of Tennessee and parts of Virginia, North Carolina, Georgia, Alabama, Mississippi, and Kentucky. It serves about 9 million people in this seven-state region through 155 power distributors and 57 directly served large industries and federal facilities. The TVA Act requires the TVA power system to be self-supporting and operated on a nonprofit basis, and directs TVA to sell power at rates as low as feasible.

TVA is in the process of converting its handling of CCR from wet systems to dry systems across its coal-fired system. In September 2012, TVA decided to construct a mechanical dewatering facility at BRF. This facility is currently under construction and will allow TVA to manage bottom ash and gypsum using a dry stack basis. Fly ash generated at BRF is already being handled and stored on a dry basis. TVA needs to plan for the future management of material since existing storage capacity for dry stack CCRs at BRF is limited.

Purpose and Need

TVA proposes to expand its capacity for managing CCRs from BRF by constructing a new dry storage area on TVA property adjacent to BRF. BRF has state-of-the-art air pollution controls and is one of TVA's coal plants that is planned to continue to operate in the future. Construction of a new CCR dry storage area will provide additional CCR management capacity enabling TVA to continue operations at BRF. This proposal would be consistent with TVA's voluntary commitment to convert wet CCR management systems to dry systems. This also would help TVA comply with the U.S. Environmental Protection Agency's (EPA) recently issued Coal Combustion Residuals Rule.

Alternatives

This EIS will address alternatives that have reasonable prospects of providing a solution to the disposal of CCRs generated from BRF. TVA has determined that BRF has limited

capacity for additional CCR storage onsite and will need to consider additional options for storage. TVA has further determined that either the construction of a new CCR storage area or hauling CCR to an existing permitted landfill are the most reasonable alternatives. Alternative site locations for a CCR storage suitable for meeting TVA's needs and objectives will also be considered. However, based on preliminary analysis there are unlikely to be any other alternatives that have fewer impacts than the proposed location adjacent to BRF. Additionally, the EIS will consider a ''No Action'' Alternative under which TVA would not seek additional storage capacity for CCR from BRF.

No decision has been made about CCR disposal beyond the current available onsite capacity. TVA is preparing this EIS to inform decision makers, other agencies, and the public about the potential for environmental impacts associated with a decision to dispose of CCR generated from BRF. The draft EIS will be made available for public comment. In making its final decision, TVA will consider the analyses in this EIS and substantive comments that it receives. A final decision on proceeding with construction and operation will depend on a number of factors, including the results of the EIS, engineering and risk evaluations, and financial considerations.

Preliminary Identification of Environmental Issues

This EIS will analyze potential impacts on the quality of the human and natural environment resulting from disposal of CCRs through the construction and operation of a new CCR storage area, utilizing existing permitted sites, and other reasonable alternatives. The impact analyses will include, but are not necessarily limited to:

- Water resources (surface water, groundwater quality, and use);
- vegetation;
- wildlife;
- aquatic ecology;
- endangered and threatened species;
- floodplains and wetlands;
- geology;
- land use;
- transportation;
- recreational and managed areas;
- visual resources;
- archaeological and historic resources;
- solid and hazardous waste;
- public health and safety;
- noise;
- air quality and climate change; and
- socioeconomics and environmental justice.

These and other important issues identified during the scoping process will be addressed as appropriate in the EIS.

Public Participation

This EIS is being prepared to provide the public an opportunity to comment on TVA's assessment of the potential environmental impacts of constructing and operating a new CCR storage area or utilizing an existing permitted site for the disposal of CCR from BRF. Applicable regulations require an early and open process for deciding what should be discussed in an EIS. Known as ''scoping,'' this process involves requesting and using comments from the public, interested agencies, and recognized Native American tribes to help identify the issues and alternatives that should be addressed in the EIS, as well as the temporal and geographic coverage of the analyses.

The public is invited to submit comments on the scope of this EIS no later than the date given under the **DATES** section of this notice. Any comments received, including names and addresses, will become part of the administrative record and will be available for public inspection.

After consideration of the comments received during this scoping period, TVA will develop and distribute a document that will summarize public and agency comments that were received and identify the issues and alternatives to be addressed in the EIS and identify the schedule for completing the EIS process. Following analysis of the issues, TVA will prepare a draft EIS for public review and comment. Notice of availability of the draft EIS will be published by the U.S. Environmental Protection Agency in the **Federal Register**. The public, governmental agencies, and recognized Native American tribes will be invited to submit comments on the draft EIS. TVA expects to release a draft EIS in Summer 2016 and the final EIS is expected to be issued in 2017.

Wilbourne (Skip) C. Markham,

Director.

[FR Doc. 2015–12305 Filed 5–20–15; 8:45 am]

BILLING CODE 8120–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Dispute No. WT/DS489]

WTO Dispute Settlement Proceeding Regarding Certain Measures Providing Export-Contingent Subsidies to Enterprises in Several Industrial Sectors in China; Correction

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; Correction.

SUMMARY: On Tuesday, May 12, 2015 (80 FR 27225), the Office of the United States Trade Representative (''USTR'') published a notice titled WTO Dispute Settlement Proceeding Regarding Certain Measures Providing Export-Contingent Subsidies to Enterprises in Several Industrial Sectors in China. Subsequent to the publication of that notice, USTR discovered an error in the published notice. This notice corrects that error.

DATES: This correction is effective immediately.

FOR FURTHER INFORMATION CONTACT: Arthur Tsao, Assistant General Counsel, Office of the United States Trade Representative, (202) 395–3150.

SUPPLEMENTARY INFORMATION: On page 27225, make the following correction: In the **DATES** section, in the fifth line, ''May 12, 2015'' should read ''June 11, 2015.''

Juan A. Millán,

Acting Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 2015–12279 Filed 5–20–15; 8:45 am]

BILLING CODE 3290–F5–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on Surplus Property Release at Lewistown Municipal Airport, in Lewistown, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comments.

SUMMARY: Under the provisions of Title 49, U.S.C. Section 47153(d), notice is being given that the FAA is considering a request from Fergus County, MT, and the City of Lewistown, MT, to waive the surplus property requirements for approximately 5.82 acres of airport property located at Lewistown Municipal Airport, in Lewistown, MT.

Approximately 3.43 acres of the subject parcel is currently part of the

right of way for West Main Street. An additional 0.84 acres is proposed for right of way along West Main Street, and 1.55 acres is proposed for right of way along Airport Road. These portions of the subject parcel are currently vacant. It has been determined through study and master planning that the subject parcel will not be needed for aeronautical purposes. The proceeds of the sale will be used exclusively for developing, improving, operating, or maintaining the Lewistown Municipal Airport.

DATES: Comments must be received on or before June 22, 2015.

ADDRESSES: Send comments on this document to Mr. Steve Engebrecht at the Federal Aviation Administration, 2725 Skyway Drive, Suite 2, Helena, MT, 59601, Telephone 406–449–5271.

FOR FURTHER INFORMATION CONTACT: Documents are available for review by appointment by contacting Mr. Steve Engebrecht, Telephone 406–449–5271 or by contacting Mr. Jason Garwood, Federal Aviation Administration, 2725 Skyway Drive, Suite 2, Helena, MT 59601, Telephone 406–449–5271.

Issued in Helena, Montana, on May 15, 2015.

David S. Stelling,

Manager, Helena Airports District Office.

[FR Doc. 2015–12373 Filed 5–20–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2012–0033]

Notice of Intent to Grant a Buy America Waiver to the Long Island Rail Road for the Purchase of Seven U.S.-Made Turnouts Containing Four Non-Domestic Components

AGENCY: Federal Railroad Administration (FRA), United States Department of Transportation (DOT).

ACTION: Notice of intent to grant Buy America waiver.

SUMMARY: FRA is issuing this notice to advise the public that it intends to grant the Long Island Rail Road (LIRR), a subsidiary of the Metropolitan Transportation Authority, a waiver from FRA's Buy America requirement under 49 U.S.C. 24405(a)(2)(B) for the purchase of seven (7) turnouts manufactured by VAE Nortrak North America, Inc. at its plant in Birmingham, Alabama, for use in the LIRR North East Corridor Congestion Relief Project at Harold Interlocking. The turnouts will contain four components (ZU1–60 steel left and right switch point rail sections and Schwihag roller assemblies and plates) not produced in the U.S. The roller assemblies and plates are manufactured in Switzerland, and the ZUl-60 steel switch point rail sections are manufactured in Austria. The foreign material comprises approximately 11.9 percent of the turnouts' $3.1 million cost or approximately $367,000. FRA believes a waiver is appropriate under 49 U.S.C. 24405(a)(2)(B) for the ZUI–60 steel switch point rail sections and roller assemblies and plates because domestically-produced components meeting the specific needs of LIRR are not currently ''produced in sufficient and reasonably available amount or are not of a satisfactory quality.''

DATES: Written comments on FRA's determination to grant LIRR's Buy America waiver request should be provided to the FRA on or before May 26, 2015.

ADDRESSES: Please submit your comments by one of the following means, identifying your submissions by docket number FRA–2012–0033. All electronic submissions must be made to the U.S. Government electronic site at *http://www.regulations.gov.* Commenters should follow the instructions below for mailed and hand-delivered comments.

(1) *Web site: http://www.regulations.gov.* Follow the instructions for submitting comments on the U.S. Government electronic docket site;

(2) *Fax:* (202) 493–2251;

(3) *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, Room W12–140, Washington, DC 20590–0001; or

(4) *Hand Delivery:* Room W12–140 on the first floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must make reference to the ''Federal Railroad Administration'' and include docket number FRA–2012–0033. Due to security procedures in effect since October 2001, mail received through the U.S. Postal Service may be subject to delays. Parties making submissions responsive to this notice should consider using an express mail firm to ensure the prompt filing of any submissions not filed electronically or by hand. Note that all submissions received, including any personal information therein, will be posted without change or alteration to *http://www.regulations.gov.* For more information, you may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or visit *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. John Johnson, Attorney-Advisor, FRA Office of Chief Counsel, 1200 New Jersey Avenue SE., Mail Stop 25, Washington, DC 20590, (202) 493–0078, *John.Johnson@dot.gov.*

SUPPLEMENTARY INFORMATION:

The letter granting LIRR's request is quoted below:

Mr. Carl Cipriano
Manager-Procurement East Side Access
Long Island Rail Road
90–27 Sutphin Boulevard
3 Floor, MC 0335
Jamaica, NY 11435

Re: Request for Waiver of Buy America Requirement

Dear Mr. Cipriano:

As you are aware, on August 21, 2014, the Long Island Rail Road (LIRR) requested a waiver from FRA's Buy America requirement to purchase twenty-two (22) turnouts (Turnouts) manufactured by VAE Nortrak North America, Inc. (Nortrak) for use in the LIRR North East Corridor (NEC) Congestion Relief Project at Harold Interlocking (Harold Interlocking Project).

In February 2015, LIRR withdrew its request for the full twenty-two (22) Turnouts and amended its request to only seven (7) Turnouts. Those 7 Turnouts will be manufactured by Nortrak at its plant in Birmingham, Alabama, but will contain four components (ZU1–60 steel left and right switch point rail sections and Schwihag roller assemblies and plates) that are not produced in the U.S. Instead, the roller assemblies and plates are manufactured in Switzerland and the ZUl-60 steel switch point rail sections are manufactured in Austria. The foreign material comprises approximately 11.9 percent of the Turnouts' $3.1 million cost or approximately $367,000.

LIRR amended its request because it determined that an alternative turnout design that Union Pacific railroad is using could potentially provide LIRR with a 100-percent FRA Buy America compliant turnout for future use at Harold Interlocking. However, LIRR asserts that an alternative design will require significant work before LIRR can integrate it into LIRR's infrastructure, including use for Harold Interlocking. This work includes development of a new configuration; preparation of shop drawings; and preparation, review and

approval of the new design. The new specification then must be provided to potential manufacturers who will need to perform additional engineering and fabrication so that the newly designed turnout can be adapted for use for the Harold Interlocking Project. FRA agrees with LIRR's assertions. For the reasons set forth below, FRA is granting a waiver for the purchase of seven (7) Turnouts.

FRA believes a waiver is appropriate under 49 U.S.C. 24405(a)(2)(B) for the ZUI–60 steel switch point rail sections and roller assemblies and plates because domestically-produced components meeting the specific needs of LIRR for this application are not currently ''produced in sufficient and reasonably available amount or are not of a satisfactory quality.'' Both FRA and LIRR have conducted significant outreach to find 100-percent compliant turnouts. LIRR issued two competitive solicitations for the Turnouts and received no Buy America compliant bids. LIRR also conducted extensive market research utilizing a previous scouting report relating to turnout components from a previous FRA waiver for the same components. In conducting that research, LIRR contacted seven potential manufacturers. None produced the needed turnout components as designed.

On September 19, 2014, FRA provided public notice of this waiver request and a 15-day opportunity for comment on its Web site. FRA also emailed notice to over 6,000 persons who have signed up for Buy America notices through ''GovDelivery.'' See *http://www.fra.dot.gov/Page/P0719.* FRA received no comments.

Moreover, although a future design capable of using domestic components may be possible, FRA concludes that the seven (7) turnouts are not reasonably available because the time required to design, test, and competitively procure those turnouts would likely cause at least a one year delay in completing the overall project, preventing the Harold Interlocking Project from being completed by September 30, 2017 (the deadline for the expenditure of Federal funds awarded under the American Recovery and Reinvestment Act of 2009). Thus, FRA grants LIRR's request for the initial seven (7) Turnouts.

This waiver applies only to the ZUI–60 steel switch point rail sections and Schwihag roller assemblies and plates as manufactured into the initial seven (7) Turnouts installed in the Harold Interlocking Project. We will not grant any future requests for waivers without a specific showing that a significant good faith effort to obtain domestic sources for these components has taken place but failed.

Pursuant to 49 U.S.C. 24405(a)(4), FRA will publish this letter granting LIRR's request in the **Federal Register** and provide notice of such finding and an opportunity for public comment after which this waiver will become effective.

Questions about this letter can be directed to, John Johnson, Attorney-Advisor, at *John.Johnson@dot.gov* or (202) 493–0078.

Sincerely,

Sarah Feinberg,
Acting Administrator.

Melissa L. Porter,

Chief Counsel.

[FR Doc. 2015–12332 Filed 5–20–15; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD–2015–0051]

Policy Announcement; Merchant Marine Awards and Flags Program

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: This notice serves to inform interested parties and the public of the Maritime Administration's (MARAD) new policy for the issuance of Merchant Marine medals, decorations, citations, and the donation or loan of Merchant Marine flags. Consistent with Public Law 84–759, 46 CFR part 350, and upon analysis and review of established criteria, the Maritime Administration will issue certain awards, and/or donate or loan Merchant Marine flags, for the purpose of honoring the historic and or continuing contributions of Merchant Mariners to the United States. This policy updates MARAD procedures to implementing regulations 46 CFR part 350 by defining the role of the Merchant Marine Awards and Flags Committee, and articulating the criteria for awards and other official recognition.

DATES: This policy is effective upon publication in the **Federal Register**. (See also Paperwork Reduction Act section.)

ADDRESSES: The complete file for this policy is available for inspection with the Docket Clerk, Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: You may contact Bill Kurfehs, Office of Sealift Support, Maritime Administration, at (202) 366–2318. You may send mail to Mr. Kurfehs at Maritime Administration, 1200 New Jersey Avenue SE., MAR 630, Washington, DC 20590–0001. You may send electronic mail to *Bill.Kurfehs@dot.gov.* If you have questions on viewing the Docket, call Cheryl Collins, Program Manager, Docket Operations, telephone: (800) 647–5527.

SUPPLEMENTARY INFORMATION: The promotion of the United States Merchant Marine is a central mission of MARAD. The Merchant Marine Act of 1936 was enacted to promote a well-equipped and efficient merchant marine fleet owned and operated by United States citizens and supported by domestic shipbuilding and repair facilities.[1] MARAD was specifically formed as a separate maritime promotional entity from the Federal Maritime Commission to ensure that maritime promotional and regulatory functions were handled by different Federal agencies.[2] The Message of the President transmitting Plan 7 states that the ''basic objective of the plan is to strengthen and revitalize the administration of our Federal programs concerned with the promotion and development of the U.S. Merchant Marine by concentrating responsibility in separate agencies for the performance of regulatory and promotional functions.''

It is central to MARAD's promotional mission to encourage citizens of the United States to join the United States Merchant Marine and to see that these individuals are trained to operate the vessels of the United States. To this end, MARAD operates the United States Merchant Marine Academy, supports and helps fund training at State Maritime Academies, provides certain property to support nonprofit and other maritime training institutions, and generally provides maritime training to citizens of the United States.

Pursuant to 46 U.S.C. Chapter 519, authority also has been given to MARAD to provide Merchant Marine Awards. Such awards may be for individual acts or service in the Merchant Marine, for vessels and crews participating in outstanding or gallant action, certificates for civilian service, and for flags and grave markers.

[1] American Trading Transportation Company, Inc. *v.* United States, 791 F.2d 942, 944 (D.C. Cir. 1986).

[2] Reorganization Plan No. 7 of 1961, 75 Stat. 840 (August 12, 1961).

By this policy, MARAD will act to recognize the role of the Merchant Mariners of the United States in providing for the national defense. Recognizing the contributions, value, and sacrifices of Merchant Mariners advances MARAD's mission of ensuring that new individuals will become Merchant Mariners and that those capabilities will be available to address the Nation's needs in the future. This recognition will remind the public of the hard work and dedication of the Merchant Mariners of the United States and in doing so promote the interests and mission of MARAD; particularly recruiting and maintaining a vital Merchant Marine workforce to ensure the stability and maintenance of the United States Merchant Marine.

Maritime Administration Merchant Marine Awards and Recognition Policy

This policy describes the process through which the Maritime Administration (MARAD) will exercise its authority under Public Law 84–759, 46 CFR part 350 to issue certain Merchant Marine awards.

Maritime Administration (MARAD) Merchant Marine Awards and Flags Program

The Merchant Marine Awards and Flags Committee is established to make recommendations to the Maritime Administrator for the issuance of Merchant Marine medals, decorations, and citations. The committee is also established to make recommendations to the Maritime Administrator to donate or loan Merchant Marine flags to qualifying organizations.

A. The Merchant Marine Awards and Flags Committee Responsibilities

1. Receive nominations, through the Director, Office of Ship Operations, from any individual or entity, including individual members of the Committee, that properly addresses award evaluation criteria; and

2. Review nominations and make recommendations to the Maritime Administrator with respect to giving or loaning Merchant Marine flags to any qualifying organization and the award of any awards, medals, decorations, etc., authorized to be issued by the Maritime Administration (MARAD) by Public Law 84–759, and 46 CFR part 350.

B. Awards—The Issuance of Medals, Decorations and Citations

Criteria for Issuance

1. Gallant Ship Unit Citation Award may be awarded to any United States vessel or to any foreign vessel (merchant, Coast Guard, Navy, or other), crew of that ship or other individuals or organizations participating in outstanding or gallant action in marine disasters or other emergencies for the purpose of saving life or property when the following circumstances are present:

(a) The vessel itself should move to the rescue and not be simply the platform from which crew members perform a rescue operation;

(b) The operation should encompass the maneuvers of the vessel and a substantial part of the personnel;

(c) The operation should involve either the use of the lifeboats by the crew taking to the water to effect a rescue with the vessel in some danger; or the vessel itself, by reason of perilous circumstances, should be in considerable danger;

(d) The conditions should be such that danger to the vessel or the lifeboat or the crew members is present; and

(e) The operation of the ship, its equipment, and personnel should favorably reflect efficiency, discipline and expertness.

2. Merchant Marine Meritorious Service Medal may be awarded to any person serving in the U.S. Merchant Marine for meritorious act, conduct or service in line of duty when the following circumstances are present:

(a) A Master of a U.S. merchant ship (without separate action) when that vessel is granted the Gallant Ship Award;

(b) An act of heroism, bravery, devotion to duty involving extreme danger (actual or perceived);

(c) The act, if it involves lifesaving, should be generally one performed while the vessel is at sea and not in a harbor, at the dock, or otherwise idle;

(d) The act may be at sea or in port if it involves an effort directed toward saving the vessel or the cargo; and

(e) The act should be one not directly entitling the individual to other medals such as the Carnegie Medal, the Coast Guard Medal for Lifesaving, etc. Merchant Marine Distinguished Service Medal may be awarded to any person serving in the U.S. Merchant Marine who distinguished himself or herself by outstanding act, conduct, or valor beyond the line of duty when the following circumstances are present:

(f) Extreme peril to the life or safety of the individual attempting the rescue action;

(g) It must be considered as going beyond the call of duty;

(h) It must involve the activity of the Merchant Marine so that it is distinguished from a saving of life or property where the vessel is solely a platform from which the individual moved or upon which the individual acted; and

(i) The accomplishment or the attempt must involve human lives or something of considerable worth either actual or considered so in the mind of the individual performing the action.

3. The Mariners Medal is awarded to a mariner who, while serving from December 7, 1941 and July 25, 1947, was wounded or suffered physical injures as result of an act of an enemy of the United States.

4. For World War II mariners who sailed in various war zones:

(a) The Atlantic War Zone Medal and bar are awarded for service in the Atlantic war zone, including the North Atlantic, South Atlantic, Gulf of Mexico, Caribbean, Barents Sea and the Greenland Sea, during the period from December 7, 1941 to November 8, 1945;

(b) The Mediterranean-Middle East War Zone Medal and bar are awarded for service in the zone including the Mediterranean Sea, Red Sea, Arabian Sea and the Indian Ocean west of 80 degrees east longitude, during the period from December 7, 1941 to November 8, 1945;

(c) The Pacific War Zone Medal and bar are awarded for service in the Pacific War Zone, including the North Pacific, South Pacific and the Indian Ocean east of 80 degrees east longitude during the period from December 7, 1941 to March 2, 1946;

(d) The Merchant Marine Combat Bar is awarded to Merchant Mariners who served on a vessel which at the time of such service was attacked or damaged by an instrumentality of war from December 7, 1941 to July 25, 1947. A star is attached if the mariner was forced to abandon ship. For each additional abandonment, a star is added;

(e) The Victory Medal with bar are awarded to members of the crew of vessels who served for 30 days or more during the period from December 7, 1941 to September 3, 1945;

(f) The Honorable Service Button is awarded to members of crews of vessels who served for 30 days during the period from December 7, 1941 to September 3, 1945;

(g) The Merchant Marine Emblem is an identifying insignia that was issued to active Merchant Mariners for service from December 7, 1941 to July 25, 1947;

(h) The Presidential Testimonial Letter signed by President Harry S. Truman was awarded to all active Merchant Mariners of World War II;

(i) The Government of the Philippines authorized the Philippine Defense Medal/Ribbon and Philippine Liberation Medal to members of crews of vessels who served in Philippine

waters. The Philippine Defense Medal is awarded to members of crews who served in Philippine waters for not less than 30 days from December 8, 1941 to June 15, 1942. The Philippine Liberation Medal is awarded to members of crews who served in Philippine waters for not less than 30 days from October 17, 1944 to September 3, 1945; and

(j) The Soviet Commemorative Medal was awarded to Merchant Mariners who participated in convoys to Murmansk during World War II.

5. Korea Service Medal and bar: For Merchant Mariners who sailed during the Korean War, the Maritime Administration has authorized the Korean Service Medal and bar to be awarded to mariners who served in the Merchant Marine in waters adjacent to Korea between June 30, 1950 and September 30, 1953.

6. Vietnam Service Medal and bar: For Merchant Mariners who sailed during the Vietnam conflict who served in the Merchant Marine at any time from July 4, 1965 to August 15, 1973 in waters adjacent to Vietnam.

7. Merchant Marine Expeditionary Medal: Established in 1990 to recognize U.S. Merchant Mariners who served on U.S.-flag ships in support of U.S. military and allied forces. This medal was first for service in Operations DESERT SHIELD and DESERT STORM. The medal is also authorized for mariners who served in Operations ENDURING FREEDOM and IRAQI FREEDOM.

8. Merchant Marine Medal for Outstanding Achievement: The Merchant Marine Medal for Outstanding Achievement is an award given to mariners or other individuals making a significant contribution to the U.S. Merchant Marine or the maritime industry of the United States. The medal may be awarded by the Maritime Administrator for any activities that he/she finds to be an outstanding maritime achievement. For example, the medal may be awarded to recognize mariners or other individuals for maritime activities of a humanitarian nature. The medal also may be awarded to recognize those individuals in the maritime industry and educational community for their outstanding achievements and contributions to the U.S. Merchant Marine or the maritime industry of the United States. Individuals making significant contributions to fostering, developing and promoting the U.S. Merchant Marine or the maritime industries of the United States also are eligible for the award.

9. The Administrator's Professional Ship Award is intended to recognize National Defense Reserve Fleet (''NDRF'') vessels, crews, ship managers, general agents and related contractors and other related personnel that achieve the highest degree of readiness, performance, efficiency, reliability, productivity and safety, or that have distinguished themselves through outstanding accomplishment or significant mission contribution in connection with NDRF missions;

(a) Each vessel, individual, or other entity approved for this award will receive a commendation letter from the Maritime Administrator and a certificate. The certificate will be inscribed with the name of the ship and the operation or other activity for which the award was earned and signed by the Administrator;

(b) With respect to an award given to an NDRF vessel, the certificate will be framed and forwarded to the appropriate Ship Manager/General Agent to be mounted in the master's office or other appropriate area on the vessel; and

(c) Awards will be based on demonstrated and sustained superior performance in fulfilling the vessel's assigned mission. Information will be considered from all sources (*e.g.,* reports from program sponsors, Gateway Offices, operational commanders, MARAD surveyors' observations, etc.).

10. Additional awards:

(a) The Maritime Administrator may determine to create award categories in addition to the awards set forth above.

(b) The Awards Committee may recommend to the Maritime Administrator such additional award categories as it deems appropriate.

(c) Any recommendation and establishment of a new award category shall contain the following:

i. A specific title for the award;

ii. A description of what would be awarded; (*i.e.* medal, plaque, certificate)

iii. Detailed criteria as to what is necessary to qualify for such award; and

iv. A determination by the Office of Chief Counsel that such an award category is within the authority under Public Law 84–759 and 46 CFR part 350 or this MAO.

(d) All such new award categories shall be published in the Code of Federal Regulations and on MARAD's Web site.

(e) In any case of a proposed award or citation to a foreign vessel or to a master or person serving aboard such vessel, such award or citation shall be subject to the concurrence of the Secretary of State.

C. Other Recognition—The Donation or Loan of Merchant Marine Flags

In times of war and national emergency, the Merchant Mariners of the United States have played a critical role in the transportation system that supports and serves with the armed forces of the United States. Termed the ''fourth arm'' of defense by President Franklin D. Roosevelt, the mariners of the United States provide vital transportation of critical personnel and materials to the appropriate locations in support of the national defense and emergency response efforts of the United States.

MARAD receives requests for Merchant Marine flags and logos from organizations that wish to honor the historic and continuing contributions of Merchant Mariners to the United States. MARAD also has received requests for Merchant Marine flags and logos from various educational organizations that perform maritime training.

Honoring the historic and continuing contributions of Merchant Mariners supports MARAD's mission. Providing these flags, and displaying them with the flags of the U.S. Armed Forces, recognizes the role Merchant Mariners have played and continue to play in the national defense of the United States. In recognizing the achievements and importance of the service of U.S. Merchant Mariners, the displays will enhance public awareness of the United States Merchant Marine as a career path for citizens of the U.S. and focus individuals considering such careers on the importance and value of the work they would do as Merchant Mariners. This recognition will serve to underscore the dignity and significance of the U.S. Merchant Marine as a whole. In addition, such flags will remind those training to be Merchant Mariners that they are part of a long tradition and profession whose mission goes beyond individual gain in support of the highest principles of public service.

Merchant Marine flags are neither gifts nor awards for individuals. Their purpose is to recognize and memorialize the past and continuing role and contribution of the Merchant Mariners of the United States.

The Merchant Marine Awards and Flag Committee will make recommendations to the Maritime Administrator regarding which groups satisfy the criteria set forth below and whether it should receive either the donation or a loan of the Merchant Marine flag and under what terms and conditions.

Criteria for the Donation or Loan of Merchant Marine Flags

Merchant Marine flags may only be donated or loaned to the following groups:

1. Public entities, or civic organizations in the United States qualified under United States Code, Title 26, section 501(c)(3), which at the location in which the Merchant Marine flag would be displayed have, at the time of application, at least 100 members and host visits by at least 2,500 other members of the public annually in that location; and, at the time of application, publicly display the United States flag and the flag of at least one United States military service.

2. Educational institutions providing maritime training that would lead to a career in the United States Merchant Marine.

3. Institutions qualified to receive donated property under 46 U.S.C. 51103.

4. Non-profit organizations as defined by Section 501(c) of the United States Internal Revenue Code (26 U.S.C. 501(c)), memorial/museum ships, and public bodies that:

(a) Are registered with the Internal Revenue Service as a non-profit organization;

(b) Are open to the public, or have and will display the flags in publicly accessible areas; and

(c) Possess an educational, maritime, or civic mission.

5. Federal, State or local government entities that will display the flags in publicly accessible areas.

6. Cemeteries or other locations at which U.S. Merchant Mariners are buried and where the Merchant Marine flag will be displayed with the flags of at least one other of the Armed Forces of the United States.

Policy Analysis and Notices

Consistent with the Administrative Procedures Act and Department of Transportation rulemaking policy, MARAD is publishing this policy in the **Federal Register** to indicate how it plans to exercise the discretionary authority provided by Public Law 84–759, 46 CFR part 350. Nothing in this notice or in the policy itself requires MARAD to exercise its discretionary authority under the law. This policy updates the existing program in which successful applicants may obtain official MARAD recognition of their service or contributions to the U.S. Merchant Marine.

Paperwork Reduction Act: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), a Federal agency must obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors or requires through regulations. MARAD analyzed each provision of this policy and determined that it imposes no new requirements for recordkeeping and reporting. The existing information collection 2133–0506, expiration date: 1/31/2017, is sufficient and requires no changes.

Authority: Public Law 84–759, 46 CFR part 350, 46 U.S.C. 51901.

Dated: May 14, 2015.

By Order of the Maritime Administrator.

Thomas M. Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2015–12088 Filed 5–20–15; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Delayed Applications

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

ACTION: List of application delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), PHMSA is publishing the following list of special permit applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: Ryan Paquet, Director, Office of Hazardous Materials Special Permits and Approvals, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

Key to "Reason for Delay"

1. Awaiting additional information from applicant
2. Extensive public comment under review
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis
4. Staff review delayed by other priority issues or volume of special permit applications

Meaning of Application Number Suffixes

N—New application

M—Modification request

R—Renewal Request

P—Party To Exemption Request

Issued in Washington, DC, on May 5, 2015.

Donald Burger,

Chief, General Approvals and Permits.

Application No.	Applicant	Reason for delay	Estimated date of completion
Modification to Special Permits			
15642–M	Praxair Distribution, Inc., Danbury, CT	4	05–22–2015
8451–M	Special Devices, Inc., Mesa, AR	4	05–30–2015
15393–M	Savannah Acid Plant LLC, Savannah, GA	3	05–30–2015
7945–M	Pacific Scientific Company, Simi Valley, CA	4	05–15–2015
11903–M	Comptank Corporation, Bothwell, ON	4	06–10–2015
New Special Permit Applications			
15767–N	Union Pacific Railroad Company, Omaha, NE	1	05–20–2015
16001–N	Veltek Associates, Inc., Malvern, PA	4	05–31–2015
16190–N	Digital Wave Corporation, Centennial, CO	4	05–29–2015
16198–N	Fleischmann's Vinegar Company, Inc., Cerritos, CA	4	05–15–2015
16212–N	Entegris, Inc., Billerica, MA	4	05–30–2015

Application No.	Applicant	Reason for delay	Estimated date of completion
16220–N	Americase, Waxahache, TX	4	05–30–2015
16193–N	CH&I Technologies, Inc., Santa Paula, CA	4	05–29–2015
16261–N	Dexsil Corporation, Hamden, CT	4	05–13–2015
16292–N	Standard Technologies, LLC, Fremont, OH	4	05–16–2015
16238–N	Entegris, Inc., Billerica, MA	4	05–20–2015
16241–N	Linde Gas North, Murray Hill, NJ	4	06–19–2015
16274–N	Matheson Tri-Gas, Inc., Longmont, CO	4	05–31–2015
16232–N	Linde Gas, North America LLC, Murray Hill, NJ	1	06–05–2015
16249–N	Optimized Energy, Solutions, LLC, Durango, CO	4	05–30–2015
16302–N	Ametek Inc., Pittsburgh, PA	4	05–27–2015
Party to Special Permits Application			
16279–P	Advantra Group, Middleburg Heights, OH	4	06–15–2015
16279–P	MediWaste Disposal, LLC, Anaheim, CA	4	06–15–2015
Renewal Special Permits Applications			
11860–R	GATX Corporation, Chicago, IL	1	05–30–2015
15765–R	Delphi Automotive Systems, LLC, Kokomo, IN	4	05–15–2015

[FR Doc. 2015–11815 Filed 5–20–15; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Actions on Special Permit Applications

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

ACTION: Notice of actions on special permit applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given of the actions on special permits applications in (October to October 2014). The mode of transportation involved are identified by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Special Permits. It should be noted that some of the sections cited were those in effect at the time certain special permits were issued.

Issued in Washington, DC, on May 5, 2015.

Donald Burger,

Chief, Special Permits and Approvals Branch.

S.P. No.	Applicant	Regulation(s)	Nature of special permit thereof
MODIFICATION SPECIAL PERMIT GRANTED			
13961–M	3AL Testing Corp., Centennial, CO.	49 CFR 172.203(a), 172.301(c), 180.205(f) and (g), 180.209(a).	To modify the special permit to authorize ultrasonic equipment and with a five sensor head with sensors positioned to perform all required straight and angle beam examinations in a single pass.
13220–M	Entegris Inc., Danbury, CT	49 CFR 173.301; 173.302; 173.304; 173.315.	To modify the special permit to authorize additional hazardous materials.
11914–M	Cascade Designs, Inc., Seattle, WA.	49 CFR 173.304(d)(3)(iii); 178.33	To modify the special permit to authorize 16 oz. camping fuel canisters.
15773–M	Roche Molecular Systems, Inc., Branchburg, NJ.	49 CFR 173.242(e)(1)	To modify the special permit to authorize bulk packaging.
11911–M	Transfer Flow, Inc., Chico, CA.	49 CFR 177.834(h), and 178.700(c)(1).	To modify the special permit to remove the requirement that the discharge outlet is at the highest point of the tank.
NEW SPECIAL PERMIT GRANTED			
16181–N	Arc Process, Inc., Austin, TX	49 CFR 178.50(e)	To authorize the manufacture, marking, sale and use of certain non-DOT specification cylinders similar to a DOT 4B except for the valve protection ring. (modes 1, 2, 3, 4)
16288–N	CE Kellogg Co. Inc., Vancouver, WA.	49 CFR 107.503(b), 107.503(c), 173.241, 173.242, 173.243.	To authorize the manufacture, mark, sale and use of a non-DOT specification glass fiber reinforced plastic (FRP) cargo tank similar to a DOT Specification 407/412. (mode 1)
16275–N	ThyssenKrupp Bilstein of America, Inc., Hamilton, OH.	49 CFR 173.306(f)(2)	To authorize the transportation in commerce of accumulators meeting the requirements of § 173.306(f)(2) except that the charge pressure may exceed 200 psig and the initial pressure test is waived. (modes 1, 2)

S.P. No.	Applicant	Regulation(s)	Nature of special permit thereof
16390–N	J.R. Helicopters LLC, Yakima, WA.	49 CFR 172.101 Hazardous Materials Table Column (9B), 172.200, 172.204(c)(3), 172.301(c), 173.27(b)(2), 175.30(a)(1), 175.75.	To authorize the transportation in commerce of certain hazardous materials by 14 CFR part 133 Rotorcraft External Load Operations transporting hazardous materials attached to or suspended from an aircraft, in remote areas of the U.S. only, without being subject to hazard communication requirements, quantity limitations and certain loading and stowage requirements. (mode 4)
16377–N	BASF Corporation, Florham Park, NJ.	49 CFR 173.315(a)(1), 173.315(a)(2).	To authorize the transportation in commerce of certain non-DOT specification spherical pressure vessels containing boron trifluoride. (modes 1, 2, 3)
EMERGENCY SPECIAL PERMIT GRANTED			
16343–N	Digital Wave Corporation, Centennial, CO.	49 CFR 180.205(g)	To extend the service life of certain permitted cylinders by certifying them by an alternative retest. (modes 1, 2, 3, 4, 5)
16375–N	Kalitta Charters, LLC, Ypsilanti, MI.	49 CFR 175.700(b)(2)(ii), 175.702(b).	To authorize the carriage of radioactive materials aboard cargo aircraft when the combined transport index exceeds the authorized limit of 200 per aircraft or the separation distance criteria of § 175.702(6) cannot be met. (mode 4)
16437–N	U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Washington, DC.	49 CFR 173.56(b), and 172.320	An emergency special permit to authorize the one-way transportation in commerce of unapproved fireworks for use in a research testing project. (mode 1)
16447–N	Kalitta Air, LLC, Ypsilanti, MI	49 CFR 172.101 Column (9B), 172.204(c)(3), 173.27(b)(2) and (3) and 175.30(a)(1).	To authorize the one-time transportation in commerce of certain explosives that are forbidden for transportation by cargo only aircraft. (mode 4)
16449–N	Conoco Phillips Alaska, Inc., Anchorage, AK.	49 CFR 172.101 Hazardous Materials Table Column (9B) and 173.315.	To authorize the transportation in commerce of nitrogen, refrigerated liquid, in non-DOT specification vacuum insulated portable tanks manufactured under a current DOT special permit and certain hazardous materials in packagings that exceed the quantity limit for cargo carrying aircraft. (mode 4)
NEW SPECIAL PERMIT WITHDRAWN			
16422–N	Wisconsin Central Ltd., Homewood, IL.	49 CFR 174.85	To authorize the positioning of placarded cars without a buffer car. (mode 2)
16441–N	Pace Air Freight, Plainfield, IN.	49 CFR 173.196, 173.199, 178.609	To authorize the the transportation in commerce of certain Division 6.2 hazardous materials in specialized freezers. (mode 1)
16444–N	Motorola Solutions UK Limited, Basingstoke, Hants RG22 4PD.	49 CFR 173.185(f)	To authorize the transportation in commerce of damaged lithium ion batteries in alternative packagings. (modes 1, 3)
DENIED			
16304–N	Request by GO Global Enterprizes LLC Phoenix, AZ April 24, 2015. To authorize the manufacture, mark, sale and use of alternative packaging for Ebola contaminated waste.		

[FR Doc. 2015–11827 Filed 5–20–15; 8:45 am]
BILLING CODE 4909–40–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35917]

LEWPAC, LLC—Lease and Operation Exemption—Mount Vernon Terminal Railway LLC

LEWPAC, LLC (LP), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to lease from Mount Vernon Terminal Railway LLC (MVTR), and to operate, a 0.47-mile line of railroad between milepost 1.172 and milepost 1.642 in Skagit County, Wash.

LP certifies that the projected annual revenues as a result of this transaction will not result in LP's becoming a Class I or Class II rail carrier and will not exceed $5 million. LP states that there are no agreements applicable to the line imposing any interchange commitments. LP also states that the line connects with the BNSF Railway Company's Bellingham Subdivision at milepost 70 in Mount Vernon, Wash.

The proposed transaction may be consummated on or after June 4, 2015, the effective date of this exemption (30 days after the verified notice was filed).[1] If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed by May 28, 2015 (at least seven days prior to the date the exemption becomes effective).

[1] LP initially filed its verified notice of exemption on May 5, 2015. On May 6 and May 13, 2015, it submitted filings correcting the milepost descriptions in the cover sheet to Exhibit A and in the text of the verified notice, respectively.

An original and 10 copies of all pleadings, referring to Docket No. FD 35917, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on applicant's representative, John D. Heffner, Strasburger & Price, LLP, 1025 Connecticut Ave. NW., Suite 717, Washington, DC 20036.

Board decisions and notices are available on our Web site at *WWW.STB.DOT.GOV.*

Decided: May 18, 2015.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Raina S. Contee,

Clearance Clerk.

[FR Doc. 2015–12368 Filed 5–20–15; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 550 (Sub-No. 3X)]

R.J. Corman Railroad Company/ Allentown Lines, Inc.—Abandonment Exemption—in Lehigh County, PA

On April 30, 2015, R.J. Corman Railroad Company/Allentown Lines, Inc. (RJC) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from provisions of 49 U.S.C. 10903 to abandon approximately 3.5 miles of rail line extending between milepost 93.18 in Allentown, Pa., and milepost 96.709 in or near Whitehall, Pa. (the Line). The Line traverses United States Postal Service Zip Codes 18102 and 18052.

According to RJC, there is one shipper, American Carbonation (AC), which leases property adjacent to the right-of-way to conduct a transload operation. RJC states that AC is aware of RJC's proposed abandonment and does not object. RJC and AC have worked to relocate AC's transloading operation to a nearby RJC yard track not included within the scope of this abandonment. From the new location, RJC will serve AC directly at (or before) such time as RJC officially terminates operations over the Line. AC expects to be able to ship and receive carload traffic to and from this new location on or before May 31, 2015.

After receiving Board authority to abandon the Line, RJC intends to salvage the rails, ties, and other track material and then convey its right, title, and interest, if any, in the portion of the subject right-of-way to Trestle Redevelopment Partners (Trestle). Trestle plans to use that portion of the corridor in connection with a multi-faceted riverfront redevelopment project.

According to RJC, the Line does not contain federally granted rights-of-way. Any documentation in RJC's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, In Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by August 19, 2015.

Any OFA under 49 CFR 1152.27(b)(2) will be due by August 29, 2015, or 10 days after service of a decision granting the petition for exemption, whichever occurs first. Each OFA must be accompanied by a $1,600 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment, the Line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than June 10, 2015. Each trail request must be accompanied by a $300 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to Docket No. AB 550 (Sub-No. 3X) and must be sent to: (1) Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001; and (2) Audrey L. Brodrick, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606–2832. Replies to the petition are due on or before June 10, 2015.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Assistance, Governmental Affairs and Compliance at (202) 245–0238 or refer to the full abandonment regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis (OEA) at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service at 1–800–877–8339.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by OEA will be served upon all parties of record and upon any other agencies or persons who comment during its preparation. Other interested persons may contact OEA to obtain a copy of the EA (or EIS). EAs in abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA generally will be within 30 days of its service.

Board decisions and notices are available on our Web site at ''*WWW.STB.DOT.GOV.*''

Decided: May 15, 2015.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Brendetta S. Jones,

Clearance Clerk.

[FR Doc. 2015–12314 Filed 5–20–15; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35915]

Tri-City Railroad Company—Petition for Declaratory Order

By petition filed on March 19, 2015, Tri-City Railroad Company, LLC (TCRY) seeks a declaratory order concerning efforts by two Washington State communities to bisect TCRY's tracks with a proposed at-grade street crossing. TCRY, a Class III rail carrier, operates on approximately 16 miles of track, which is owned by the Port of Benton.[1] The track runs through the City of Kennewick and the City of Richland (collectively the Cities).[2] TCRY asks for a finding that 49 U.S.C. 10501(b) preempts actions by the Cities to condemn and acquire a right-of-way for a proposed at-grade crossing, which would bisect TCRY's main and passing tracks.[3] TCRY claims that the proposed at-grade crossing would unreasonably interfere with current and planned railroad operations by rendering portions of the tracks unusable for switching and railcar storage operations.[4] Moreover, TCRY asserts that the proposed at-grade crossing would create new hazards for both rail crews and members of the public.[5]

TCRY states that the Cities filed two petitions with the Washington State Utilities and Transportation Commission (UTC) to approve the at-grade crossing at issue here. TCRY claims that the first petition, filed in 2006, was denied because the UTC found that the Cities had failed to meet their burden to demonstrate that the

[1] TCRY Pet. 4, Mar. 19, 2015.

[2] *Id.*

[3] *Id.* at 1–2 and 46–7.

[4] *Id.* at 1.

[5] *Id.*

inherent and site-specific dangers of the crossing could be mitigated with the installation of safety devices.[6] The Cities filed a second petition in 2013. TCRY notes that the UTC initially denied the 2013 petition, but that it ultimately reversed itself and approved the crossing.[7]

The Cities subsequently served a pre-condemnation notice outlining the Cities' plan for condemning the right-of-way and offered $38,500 in compensation.[8] On April 7, 2015, TCRY filed a supplemental affidavit of counsel with the Board and attached the Cities' Notice of Planned Final Action and the proposed condemnation ordinances. According to the Cities, approval of these ordinances would authorize the commencement of eminent domain (condemnation) proceedings against TCRY.[9] Although the Cities were scheduled to consider the condemnation ordinances in April, the record is silent concerning the outcome.

The Cities did not file a reply to the petition for declaratory order as provided for in 49 CFR1104.13(a), but they did file a notice of appearance on March 20, 2015.

The Board has discretionary authority under 5 U.S.C. 554(e) and 49 U.S.C. 721 to issue a declaratory order to eliminate a controversy or remove uncertainty. Here, a controversy exists as to whether the proposed condemnation action to construct an at-grade crossing is preempted under 10501(b), and the record is incomplete. The Board will therefore institute a declaratory order proceeding and consider the matter under the modified procedure rules at 49 CFR pt. 1112.

The Board will treat TCRY's March 19 petition as its opening statement. Replies and comments from interested parties are due June 8, 2015. TCRY's rebuttal to all replies and comments shall be due June 17, 2015.

It is ordered:

1. A declaratory order proceeding is instituted. This proceeding will be handled under the modified procedure on the basis of written statements submitted by the parties. All parties must comply with the Rules of Practice, including 49 CFR parts 1112 and 1114.
2. Replies are due June 8, 2015.
3. TCRY's rebuttal is due June 17, 2015.
4. Notice of the Board's action will be published in the **Federal Register**.
5. This decision is effective on its service date.

Decided: May 18, 2015.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Raina S. White,

Clearance Clerk.

[FR Doc. 2015–12409 Filed 5–20–15; 8:45 am]

BILLING CODE 4915–01–P

[6] *Id.* at 13–4.

[7] TCRY Pet. 18–20, Mar. 19, 2015.

[8] *Id.* at 23.

[9] TCRY's Supplemental Aff. Ex. 1, Apr. 7, 2015.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

AGENCY: Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before June 22, 2015 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by emailing *PRA@treasury.gov,* calling (202) 927–5331, or viewing the entire information collection request at *www.reginfo.gov.*

Financial Crimes Enforcement Network (FinCEN)

OMB Number: 1506–0020.

Type of Review: Extension without change of a currently approved collection.

Title: Anti-Money Laundering Programs for Money Services Business, Mutual Funds, Operators of Credit Card Systems, and Providers of Prepaid Access.

Abstract: Money services businesses, mutual funds, and operators of credit card systems, and providers of prepaid access are required to develop and implement written anti-money laundering program. A copy of the program must be maintained for five years. See 31 CFR 103.125, 103.130, and 103.135.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 341,216.

Dated: May 18, 2015.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2015–12307 Filed 5–20–15; 8:45 am]

BILLING CODE 4810–02–P

UNITED STATES INSTITUTE OF PEACE

Notice of Intent To Release a Request for Proposal (RFP) for Facility Management Services; for Immediate Release

May 15, 2015.

AGENCY: United States Institute of Peace.

ACTION: Notice of Intent to Release a Request for Proposal (RFP) for Facility Management Services.

SUMMARY: United States Institute of Peace (USIP) is intending to release a Request for Proposal (RFP) on June 30, 2015, for Facility Management Services.

The following information provides background information for the intended RFP as well as high level view of the ''Expected Scope of Services.'' Also included with this notice is a summary of estimated key dates to enable appropriate planning by the vendor community. The purpose of this notice is to provide early awareness of this impending RFP in our effort to support broad and fair competition for this procurement.

Please note that USIP will not entertain questions regarding this RFP until the REP is released.

Expected Scope of Services: Below are targeted objectives for the facility management services contract for the USIP Campus. The objectives have been organized under the following:

- Facilities Management Services
  - Facility Management
  - External Maintenance
  - Interior Maintenance
  - Event Support
  - Oversee/Monitor subcontractor(s) for the building
- Contractor relations
- Negotiated contracts
- Facility Management direct contracts

Estimated Key Action Dates: The dates in the following table are only estimates and are provided to illustrate the current expectations for timing of actions related to this RFP and the resultant contract for services.

Key actions	Estimated dates
REP issued	June 30, 2015.
Site Visit	July 2015.
Proposals due	August 2015.
Notification for interviews.	September 2015.
Interviews—Month	September–October 2015.
Contract Award date	December 2015.

Intent to Respond: Each Contractor who intends to submit a Proposal in response to the RFP shall submit an ''Intent to Respond'' via email *opsfmrfp@usip.org* (Subject Line: Facility Management REP Intent to Respond), on or before 5 p.m., May 29, 2015. The Intent to respond shall include the name of the Contractor, the name of a contact person and that person's email address.

Dated: May 15, 2015.

Michael Graham, Sr.,

Vice President, Management & CFO.

[FR Doc. 2015–12291 Filed 5–20–15; 8:45 am]

BILLING CODE 6820–AR–M

FEDERAL REGISTER

Vol. 80 Thursday,

No. 98 May 21, 2015

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Removal of the Louisiana Black Bear From the Federal List of Endangered and Threatened Wildlife and Removal of Similarity-of-Appearance Protections for the American Black Bear; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2015–0014; FXES11130900000C2–156–FF09E32000]

RIN 1018–BA44

Endangered and Threatened Wildlife and Plants; Removal of the Louisiana Black Bear From the Federal List of Endangered and Threatened Wildlife and Removal of Similarity-of-Appearance Protections for the American Black Bear

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; availability of draft post-delisting monitoring plan.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to remove the Louisiana black bear (*Ursus americanus luteolus)* from the Federal List of Endangered and Threatened Wildlife (List) due to recovery. This proposed action is based on a thorough review of the best available scientific and commercial data, which indicate that this subspecies has recovered and no longer meets the definition of a threatened or endangered species under the Endangered Species Act of 1973, as amended (Act). Our review of the status of this subspecies shows that the threats to the subspecies have been eliminated or reduced, and adequate regulatory mechanisms exist. The subspecies is now viable over the next 100 years with sufficient protected habitat to support breeding and movement of individuals between subpopulations so that the subspecies is not currently, and is not likely to again become, a threatened species within the foreseeable future in all or a significant portion of its range. We also propose to remove from the List the American black bear, which is listed within the historic range of the Louisiana black bear due to similarity of appearance. Finally, we announce the availability of a draft post-delisting monitoring (PDM) plan for the Louisiana black bear. We seek information, data, and comments from the public regarding this proposal to delist this subspecies and on the draft PDM plan.

DATES: To allow us adequate time to consider your comments on this proposed rule, we must receive your comments on or before July 20, 2015. We will hold two public hearings on this proposed rule. The first hearing will be in Tallulah, LA on June 23, 2015, from 7:00 to 9:00 p.m. (Central Time). The second hearing will be in Baton Rouge, LA on June 25, 2015, from 7:00 to 9:00 p.m. (Central Time) (see **ADDRESSES**).

ADDRESSES: You may submit comments on this proposed rule and draft PDM plan by one of the following methods:

- *Electronically: Go to the Federal eRulemaking Portal: http://www.regulations.gov.* In the Search box, enter the Docket Number for this proposed rule which is: FWS–R4–ES–2015–0014. You may submit a comment by clicking on ''Comment now!'' Please ensure that you have found the correct rulemaking before submitting your comment.
- *By hard copy: Submit by U.S. mail or hand-delivery to:* Public Comments Processing, Attn: Docket Number, FWS–R4–ES–2015–0014; U.S. Fish and Wildlife Service; Headquarters, ABHC–PPM, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Information Requested section below for more information).

Document availability: A copy of the draft PDM plan can be viewed at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2015–0014, or at the Louisiana Ecological Services Field Office's Web site at *http://www.fws.gov/lafayette/.* A companion guide that lists acronyms for this rule also can be found at these Web sites.

Public hearing: We will hold public hearings on the proposed rule, at the following locations: Tallulah, LA on June 23, 2015, from 7:00 to 9:00 p.m. (Central Time) at the Tallulah Community Center, 800 North Beech Street, Tallulah, LA 71282 and Baton Rouge, LA on June 25, 2015, from 7:00 to 9:00 p.m. (Central Time) at the Louisiana Department of Wildlife and Fisheries Headquarters, 2000 Quail Drive, Baton Rouge, LA 70898. Comments will be accepted at the hearings orally or in writing.

FOR FURTHER INFORMATION CONTACT: Jeffrey Weller, Field Supervisor, U.S. Fish and Wildlife Service, Louisiana Ecological Services Field Office, 646 Cajundome Boulevard, Suite 400, Lafayette, Louisiana 70506; telephone (337) 291–3100. Individuals who are hearing-impaired or speech-impaired may call the Federal Information Relay Service at (800) 877–8339 for TTY assistance 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of the Regulatory Action

We propose to remove the Louisiana black bear from the Federal List of Endangered and Threatened Wildlife (50 CFR 17.11) due to recovery. This proposed action is based on a thorough review of the best available and commercial information. This document proposes to delist this threatened bear and announces the availability of a draft post delisting monitoring (PDM[1]) plan. We are also proposing to remove the similarity of appearance protections for the American black bear.

Basis for Action

We may delist a species if the best scientific and commercial data indicate the species is neither a threatened species nor an endangered species for one or more of the following reasons:

(1) The species is extinct;

(2) the species has recovered and is no longer threatened or endangered; or

(3) the original data used at the time the species was classified were in error. Here, we have determined that the species may be considered for delisting based on recovery:

- The Louisiana black bear was listed as a threatened species primarily because of the historical modification and reduction of habitat, the reduced quality of remaining habitat due to fragmentation, and the threat of future habitat conversion and human-related mortality (57 FR 588, January 7, 1992). At that time, the Louisiana black bear population consisted of three breeding subpopulations, the Tensas River, Upper Atchafalaya River, and Lower Atchafalaya River Basins (TRB, UARB, and LARB, respectively). An indirect result of habitat fragmentation was isolation of the already small bear populations, subjecting them to threats from such factors as demographic stochasticity[2] and inbreeding. However, key demographic attributes (*e.g.,* survival, fecundity[3], population growth rates, home ranges) for the Louisiana black bear were not known at the time of listing.
- In February 2014, we completed a 5-year status review. The review indicated that habitat restoration and protection, designed to facilitate population expansion, movement of bears between subpopulations, and

[1] See list of commonly used acronyms at *www.regulations.gov* (Docket No. FWS–R4–ES–2015–0014) and *www.fws.gov/lafayette.*

[2] ''Demographic stochasticity'' is defined as the variability in population growth rates arising from random differences among individuals in survival and reproduction within a season.

[3] the reproductive rate of an organism.

genetic exchange between subpopulations, had increased the amount of habitat protected and reduced habitat fragmentation; trends in habitat conversion and loss were reduced and in some instances appeared to have reversed. As identified in the 5-year review, the TRB, UARB, and LARB breeding subpopulations had increased in numbers and range and appeared to be stable or increasing. Additionally, one new breeding subpopulation, the Three Rivers Complex (TRC), had formed in Louisiana, and three more breeding subpopulations were forming on adjacent lands in Mississippi. The extent of movement of individuals between subpopulations and the limits to that interchange had not been documented at the time of the 5-year review. We described in the review that we anticipated making additional progress with partners and believed delisting could be considered for this subspecies in the near future. However, the review did not include a recommendation to reclassify or delist this subspecies.

• Since completion of the 5-year review, the Louisiana black bear population now consists of four main subpopulations in Louisiana and several additional satellite subpopulations in Louisiana and Mississippi. Research has documented that the four main Louisiana subpopulations (TRB, TRC, UARB, and LARB) are stable or increasing (Hooker 2010, O'Connell 2013, Troxler 2013, Laufenberg and Clark 2014, entire documents respectively). The Louisiana black bear recovery plan defines a minimum viable subpopulation as one that has a 95 percent or better chance of persistence over 100 years, despite the foreseeable effects of four stochastic factors: demography, environment, genetics, and natural catastrophe (Service 1995, p. 14). According to the most recent research and modeling efforts, the TRB subpopulation has a 96 to 100 percent probability of persistence over 100 years; similarly, the UARB subpopulation has an 85 to 99 percent probability of persistence over the next 100 years (Laufenberg and Clark 2014, pp. 66–67) and the TRC subpopulation persistence probabilities were greater than or equal to 95 percent only for projections based on the most optimistic set of assumptions (Laufenberg and Clark 2014, p. 67). Although the long-term viability of the LARB subpopulation is not known, it remains the second largest Louisiana black bear subpopulation and has approximately doubled in size in just the last 10 years, in spite of a relatively high rate of adult female mortality (due to anthropogenic and natural sources of mortality, existing dispersal barriers, and other threats to the LARB subpopulation). A metapopulation (a group of subpopulations that interact (*i.e.,* movement of individuals)) now exists among the TRB, UARB, and the TRC subpopulation as a result of bear movements among them. Other interactions have been documented among these and newly forming subpopulations in Louisiana and Mississippi, as well as movement of individuals from subpopulations in Arkansas, has been documented. The current potential for movement of individuals between the LARB and other subpopulations is low (nonexistent for female bears), and immigration into this subpopulation has not been documented (Laufenberg and Clark 2014, p. 85). However, reports of bear live-captures, known natal dens, and confirmed sightings indicate bears can and do move out (at least temporarily) of this subpopulation (Figure 1, Davidson et al. 2015, p. 24). Dispersal by male bears of more than 100 miles is not unusual and combined with the documented occurrences of bears (likely males) on the higher portions (levees and ridges) of the Atchafalaya Basin spanning the area between the UARB and LARB subpopulations, the movement of individuals between the other subpopulations cannot be ruled out. Overall, the Louisiana black bear metapopulation (TRB, UARB, and TRC) has an estimated probability of long-term persistence (more than 100 years) of 0.996 under even the most conservative scenario (Laufenberg and Clark 2014, p. 82). The current movement of individuals between the additional subpopulations elsewhere in Louisiana and Mississippi would only improve metapopulation's chance for persistence (Laufenberg and Clark 2014, p. 94). The opportunity for movement of individuals between the TRB–TRC–UARB metapopulation and the LARB subpopulation is currently low; however, the presence of the relatively large LARB subpopulation and projections for improving habitat conditions (refer to Factor A and D discussions below) between it and the more northerly UARB subpopulation contributes to the persistence of the Louisiana black bear population as a whole. Furthermore, results of these studies indicate that sufficient restoration and protection of habitat supporting breeding subpopulations is in place and is expected to continue to expand in the future, and movement of individuals between those subpopulations has been achieved.

• A large proportion of habitat (an increase of over 430 percent since the time of listing) supporting breeding subpopulations and interconnecting those subpopulations has been protected and restored through management on publicly owned lands, or through private landowner restoration efforts with permanent non-developmental easements. The threat of significant habitat loss and conversion that was present at listing has been significantly reduced and in many cases reversed. These habitat restoration and protection activities are expected to continue due to their value to many other species. Since the listing of the Louisiana black bear in 1992, voluntary landowner-incentive based habitat restoration programs and environmental regulations have not only stopped the net loss of forested lands in the Lower Mississippi River Alluvial Valley (LMRAV), but have resulted in significant habitat gains within both the LMRAV and the Louisiana black bear habitat restoration planning area (HRPA). A substantial portion of those restored habitats are protected with perpetual non-development easements (through the NRCS's Wetland Reserve Program [WRP] or wetland mitigation banking programs) (see the Factor D evaluation below). Public management areas such as National Wildlife Refuges (NWRs), Wildlife Management Areas (WMAs), and Corps of Engineers (Corps) lands supporting Louisiana black bear subpopulations are also protected and managed in a way that benefits the Louisiana black bear. Remnant and restored forested wetlands are provided protection through applicable conservation regulations (*e.g.,* Section 404 of the Clean Water Act of 1972 [CWA]).

Taking into consideration the current long-term viability of the Louisiana black bear metapopulation (TRB, TRC, and UARB), the protection of suitable habitat, and the lack of significant threats to the Louisiana black bear or its habitat, our conclusion is that this subspecies no longer meets the definition of a threatened species under the Act.

Public Comments

We intend that any final action resulting from this proposed rule will be as accurate and effective as possible. Therefore, we request data, comments, and new information on this proposed rule from other governmental agencies, Tribes, the scientific community, industry, or other interested parties. The comments that will be most useful and

likely to influence our decisions are those that are supported by data or peer-reviewed studies and those that include citations to, and analyses of, applicable laws and regulations. Please make your comments as specific as possible and explain the basis for them. In addition, please include sufficient information with your comments to allow us to authenticate any scientific or commercial data you reference or provide. In particular, we seek comments concerning the following:

(1) Biological data regarding the Louisiana black bear including locations of any additional breeding subpopulations.

(2) Relevant data concerning any threats (or lack thereof) to the Louisiana black bear, as well as the extent of Federal and State protection and management, if this rule is finalized, that would be provided to the Louisiana black bear as a delisted species.

(3) Current or planned activities within the geographic range of the Louisiana black bear that may impact or benefit the species (*e.g.,* restoration of prior-converted lands to natural habitat, conversion of habitat to non-habitat conditions through development or clearing, etc.).

(4) The draft post-delisting monitoring plan and the methods and approaches detailed in it.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that a determination as to whether any species is a threatened or endangered species must be made ''solely on the basis of the best scientific and commercial data available.''

In issuing a final determination on this proposed action, we will take into consideration all comments and any additional information we receive. Such information may lead to a final rule that differs from this proposal. All comments and recommendations, including names and addresses, will become part of the administrative record.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. 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.

If you submit information via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the Web site. 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.

Similarly, if you mail or hand-deliver a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. To ensure that the electronic docket for this rulemaking is complete and all comments we receive are publicly available, we will post all hardcopy submissions on *http://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation used in preparing this proposed rule will be available for public inspection in two ways:

(1) You can view them on *http://www.regulations.gov.* In the Search box, enter FWS–R4–ES–2015–0014, which is the docket number for this proposed rule. Then, in the Search panel on the left side of the screen, select the type of documents you want to view under the Document Type heading.

(2) You can make an appointment, during normal business hours, to view the comments and materials in person at the U.S. Fish and Wildlife Service, Louisiana Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Public Hearing

We have scheduled formal public hearings to afford all interested parties with an opportunity to make formal oral comments on the proposed delisting of the Louisiana black bear. We will hold two public informational open houses from 6:00 p.m. to 7:00 p.m., followed by public hearings from 7:00 p.m. to 9:00 p.m., on the dates specified above in **DATES**, at the locations identified in **ADDRESSES**. A public information open house will take place prior to each public hearing to provide an additional opportunity for the public to gain information and ask questions about the proposed rule. This open house session should assist interested parties in preparing substantive comments on the proposed rule. Persons needing reasonable accommodations in order to attend and participate in the public hearings should contact the Louisiana Field Office at (337) 291–3100 or *FW4ESLafayette@fws.gov* as soon as possible. In order to allow sufficient time to process requests, please contact us for assistance no later than one week before the hearing.

Written comments submitted during the comment period receive equal consideration with comments presented at a public hearing. All comments we receive at the public hearing, both oral and written, will be considered in making our final decision.

Previous Federal Actions

On January 7, 1992, we published a final rule in the **Federal Register** (57 FR 588) listing the Louisiana black bear as threatened within its historic range (east Texas, Louisiana, and southwestern Mississippi). The final rule identified the following threats to the Louisiana black bear: The threat of habitat conversion to non-timber uses in addition to past losses (historical modification and reduced quality of habitat, primarily as a result of conversion to agriculture); the lack of protection of privately owned woodlands in the UARB and TRB areas; the potential effects of human-related mortality (illegal killing); and the inadequacy of existing regulatory mechanisms to protect Louisiana black bear habitat. To address one of those threats (human-related mortality), in the 1992 final rule we also listed the American black bear in § 17.11(h) due to similarity of appearance to the Louisiana black bear. The final listing rule included a special rule under section 4(d) of the Act allowing normal forest management practices in occupied bear habitat, with certain limitations. The List of Endangered and Threatened Wildlife is found in the Code of Federal Regulations (CFR) in title 17 (50 CFR 17.11(h)), and the section 4(d) rule for the Louisiana black bear is found at 50 CFR 17.40(i).

On September 27, 1995, we published the Louisiana Black Bear Recovery Plan (Service 1995, 59 pp.). On August 2, 2007, we initiated a 5-year status review of this species (72 FR 42425). On March 10, 2009, we published a final rule in the **Federal Register** (74 FR 10350) designating 1,195,821 acres (483,932 hectares) of critical habitat in Avoyelles, East Carroll, Catahoula, Concordia, Franklin, Iberia, Iberville, Madison, Pointe Coupee, Richland, St. Martin, St. Mary, Tensas, West Carroll, and West Feliciana Parishes, Louisiana. The critical habitat designation is at 50 CFR 17.95(a). We completed a 5-year status review on February 18, 2014 (Service 2014, 74 pp). The review indicated the individual Louisiana black bear subpopulations (TRB [4], TRC, UARB, and LARB) had exhibited substantial

[4] See list of commonly used acronyms at *www.regulations.gov* (Docket No. FWS–R4–ES–2015–0014) and *www.fws.gov/lafayette.*

improvement. For a summary of the findings of that 5-year status review, see the Executive Summary of this proposed rule.

For additional details on previous Federal actions, see discussion under the Recovery section below. Also, see *http://www.fws.gov/endangered/species/us-species.html* for this species' profile.

Species Information

Distribution and Taxonomy

The Louisiana black bear is one of 16 subspecies of the American black bear (*Ursus americanus*). Historically black bears were widely distributed in the forested areas of North America, including Mexico (Pelton 2003, p. 547). Today, the status and density of bears varies throughout their range with some areas having large populations and others with smaller populations and restricted numbers (Pelton 2003, p. 547). Hall (1981, pp. 948–951) recognized three black bear subspecies ocurring in the southeastern United States. These included:

(1) The American black bear (*U.a. americanus*), historically occuring in the eastern United States and Canada west to the Rocky Mountains, south to central Texas, southern Arkansas, and northern Mississippi, Alabama and Georgia, but now in the Southeast primarily restricted to the Appalachian mountains and small populations in Arkansas and the Atlantic coast (Pelton 2003, p. 547);

(2) the Florida black bear (*U.a. floridanus*) whose range is restricted to small populations in Florida and southern Alabama and Georgia (Pelton 2003, p. 547); and

(3) the Louisiana black bear (*U.a. luteolus*) that historically occurred from eastern Texas, throughout Louisiana and southwest Mississippi (Hall 1981, pp. 950–951) (See Figure 1 for a map detailing the known locations of the Louisiana black bear).

At the time of listing, known Louisiana black bear breeding subpopulations were restricted to the LMRAV in Louisiana (Service 1995, p. 2) with small numbers of bears reported in Mississippi. When we listed the Louisiana black bear, we primarily relied on Hall's (1981, pp. 950–951) depiction of the historical distribution; however, Hall (1981, pp. 950–951) included the southernmost counties of Arkansas as part of the historical range. While acknowledging that the Louisiana black bear was not a geographic isolate and that movement of individuals between American black bears in southern Arkansas and Louisiana bears existed, we did not include those counties as part of the historical range for the listed entity because there were no specimens to support doing so (57 FR 588).

The validity of the Louisiana black bear as a subspecies has been debated during and since listing, primarily focusing on potential genetic effects to Louisiana black bear subpopulations from the translocation of bears from Minnesota during the 1960s and the subspecific status of southern Arkansas bears. Based on Pelton's (1989, pp. 13–15) blood protein, electrophoresis, mitochondrial DNA analysis and Kennedy's (1989, pp. 9–10) analysis of skull measurements, the Service concluded that the evidence, although not overwhelming, did support the validity of the subspecies (55 FR 25341, June 21, 1990) and subsequently listed the Louisiana black bear recognizing its subspecies status and distribution based on morphometric [5] characters. Continued interest in the taxonomic status of this subspecies resulted in numerous additional studies (examining morphometric and genetic data) relevant to the Louisiana black bear. Those studies have produced differing interpretations of the effects of the (intentional) introductions of bears from Minnesota and the interchange with American black bears in southern Arkansas on the taxonomy and distribution of bears in Louisiana (Warrilow et al. 2001, Csiki et al. 2003, Kennedy 2006, Van Den Bussche et al. 2009, entire documents respectively). Due to varying sample sizes, methodologies, and sample population distributions, no definitive determination or conclusion has been accepted (Service 2014, pp. 21–27). Most recently, Laufenberg and Clark's (2014, pp. 60, 84) unified analyses of genetic data from Louisiana, Mississippi, Arkansas, and Minnesota indicate that the three subpopulations of Louisiana black bears in Louisiana are genetically distinct as a result of the following three factors:

(1) restricted gene flow between subpopulations due to habitat loss and fragmentation;

(2) accelerated genetic drift related to past reductions in subpopulation abundances; and

(3) differing levels of genetic introgression as a result of the Minnesota introductions.

Louisiana black bear subpopulations show some affinities to the White River Basin (WRB) subpopulation and Minnesota bears. However, the level of genetic affinity or differentiation between the Louisiana black bear subpopulations and the WRB subpopulation and Minnesota bears is not sufficient evidence for determining taxonomic status (Laufenberg and Clark 2014, p. 85).

Species Description

The Louisiana black bear is a large, bulky mammal with long, coarse black hair and a short, well-haired tail. The facial profile is blunt, the eyes small, and the nose pad broad with large nostrils. The muzzle is yellowish brown with a white patch sometimes present on the lower throat and chest. Black bear color varies between black, blonde, cinnamon, and brown; but in Louisiana, bears have only been documented as black (Davidson et al. 2015, p. 8). Louisiana black bears are not readily visually distinguishable from other black bear subspecies. Black bears have five toes with short, curved claws on the front and hind feet. The median estimated weight for male and female Louisiana black bears in north Louisiana is 292 lb (133 kg) and 147 lb (67 kg), respectively (Weaver 1999, p. 26). This is similar to that reported for black bears throughout their range by Pelton (2003, p. 547).

Reproduction

Average age at first reproduction varies widely across black bear studies; however, most reports involve bears between 3 years and 5 years of age (Weaver 1990a, p. 5). Weaver (1999, p. 28) reported that all adult females (greater than or equal to 4 years old) in the TRB subpopulation had evidence of previous lactation or were with cubs. Breeding occurs in summer and the gestation period for black bears is 7 to 8 months. Delayed implantation occurs in the black bear (blastocysts float free in the uterus and do not implant until late November or early December) (Pelton 2003, p. 547). Observations of Louisiana black bears indicate that they enter dens primarily from late November to early December and emerge in March and April (Weaver 1999, p. 125, Table 4.4). Adult Louisiana black bears generally den longer than subadults, and females longer than males (Weaver 1999, p. 123). Cubs are born in winter dens at the end of January or the beginning of February (Pelton 2003, p. 548). The normal litter sizes range from one to four cubs (Laufenberg and Clark 2014, p. 35), and occasionally litters of five have been documented (Davidson et al. 2015, p. 11). Cubs are altricial (helpless) at birth (Weaver 1990a, p. 5; Pelton 2003,

[5] ''Morphometric'' is defined as the use of measurements of the form of organisms in taxonomic analysis.

p. 547) and generally exit the den site with the female in April or May. Young bears stay with the female through summer and fall, and den with her the next winter (Pelton 2003, p. 548). The young disperse in their second spring or summer, prior to the female's becoming physiologically capable of reproducing again (Pelton 2003, p. 548).

Adult females normally breed every other year (Pelton 2003, p. 548). Not all females produce cubs every other winter; reproduction is related to physiological condition (*i.e.,* female bears that do not reach an optimal weight or fat level may not reproduce in a given year) (Rogers 1987, p. 51). If a female's litter is lost prior to late summer, she may breed again producing cubs in consecutive years (Young 2006, p. 16). An important factor affecting black bear populations appears to be variation in food supply and its effect on physiological status and reproduction (Rogers 1987, pp. 436–437). Nutrition may have an impact on the age of reproductive maturity and subsequent female fecundity (Pelton 2003, p. 547). Black bear cub survival and development are closely associated with the physical condition of the mother (Rogers 1987, p. 434). Cub mortality rates and female infertility are typically greater in years of poor mast [6] production or failure (Rogers 1987, p. 53; Eiler et al. 1989, p. 357; Elowe and Dodge 1989, p. 964). Litter size may be affected by food availability prior to denning (Rogers 1987, p. 53). Reproduction may occur as early as 2 years of age for black bears in high-quality habitat; in poor or marginal habitat, reproduction may not occur until 7 years of age (Rogers 1987, pp. 51–52).

Habitats Used by the Louisiana Black Bear

Like other black bears, the Louisiana black bear is a habitat generalist. Large tracts of bottomland hardwood (BLH) forest communities having high species and age class diversity can provide for the black bear's life requisites (*e.g.,* escape cover, denning sites, and hard and soft mast supplies) without intensive management (Pelton 2003, pp. 549–550). We use the term BLH forest community with no particular inference to hydrologic influence; we use this term to mean forests within southeastern United States floodplains, which can consist of a number of woody species occupying positions of dominance and co-dominance (Black Bear Conservation Coalition (BBCC) 1997, p. 15). Other habitat types may be used by Louisiana black bears including marsh, upland forested areas, forested spoil areas along bayous, brackish and freshwater marsh, salt domes, and agricultural fields (Nyland 1995, p. 48; Weaver 1999, p. 157). Bears have the ability to climb and large-cavity trees (especially bald cypress (*Taxodium distichum*) or water tupelo gum (*Nyssa aquatic*) that are commonly found along water courses are important for denning; however, Louisiana black bears have been observed to use a variety of den types, including ground nests, cavities at the base and in the top of hollow trees, and brush piles (Crook and Chamberlain 2010, p. 1645).

Den trees may be an important component for female reproductive success in areas subject to flooding (Hellgren and Vaughan 1989, p. 352). Den trees located in cypress swamps would also appear to increase the security (*e.g.,* decrease the susceptibility to disturbance) of bears utilizing these dens compared to ground dens; however, the availability of den trees does not appear to be a limiting factor in reproductive success as bears demonstrate flexibility in den use (Weaver and Pelton 1994, p. 431; Crook and Chamberlain 2010, p. 1644). For instance, bears typically excavate open ground/brushpile nests. Shallow depressions that are either bare or are lined with vegetation gathered in the vicinity of the nest (Weaver and Pelton 1994, p. 430). These nests are located in thick vegetation, usually in areas logged within the past 1 to 5 years (Crook and Chamberlain 2010, p. 1643) and are typically found within felled tops and other logging slash (Crook and Chamberlain 2010, p. 1646).

Diet

Bear activity revolves primarily around the search for food, water, cover, and mates during the breeding season. Though classified as a carnivore by taxonomists, black bears are not active predators and only prey on vertebrates when the opportunity arises; most vertebrates are consumed as carrion (Pelton 2003, p. 551). Bears are best described as opportunistic feeders, as they eat almost anything that is available; thus, they are typically omnivorous. Their diet varies seasonally, and includes primarily succulent vegetation during spring, fruits and grains in summer, and hard mast (such as acorns and pecans) during fall. Bears utilize all levels of forest for feeding; they can gather foods from tree tops and vines, but also collect beetles and grubs in fallen logs and rotting wood.

Home Range and Dispersal

The size of the area necessary to support black bears may differ depending on population density, habitat quality, conservation goals, and assumptions regarding minimum viable populations (Rudis and Tansey 1995, p. 172, Pelton 2003, p. 549). Maintaining and enhancing key habitat patches within breeding habitat is a critical conservation strategy for black bears (Hellgren and Vaughan 1994, p. 276). Areas should be large enough to maintain female survival rates above the minimum rate necessary to sustain a population (Hellgren and Vaughan 1994, p. 280). Weaver (1999, pp. 105–106) documented that bear home ranges and movements were centered in forested habitat and noted that actions to conserve, enhance, and restore that habitat would promote population recovery, although no recommendations on minimum requirements were provided. Hellgren and Vaughn (1994, p. 283) concluded that large, contiguous forests are a critical conservation need for black bears. The home ranges of Louisiana black bears appear to be closely linked to forest cover (Marchinton 1995, p. 48, Anderson 1997, p. 35).

Female range size may be partly determined by habitat quality (Amstrup and Beecham 1976, p. 345), while male home range size may be determined by the distribution of females (*i.e.,* to allow for a male's efficient monitoring of a maximum number of females) (Rogers 1987, p. 19). Male black bears commonly disperse, and adult male bears can be wide-ranging with home ranges generally three to eight times larger than those of adult females (Pelton 2003, p. 549) and that may encompass several female home ranges (Rogers 1987, p. 19). Dispersal by female black bears is uncommon and typically involves short distances (Rogers 1987, p. 43). In their studies of dispersal, Laufenberg and Clark (2014, p. 85) found no evidence of natural female dispersion in Louisiana black bears. Females without cubs generally had larger home ranges than females with newborn cubs (Benson 2005, p. 46), although this difference was observed to vary seasonally, with movements more restricted in the spring (Weaver 1999, p. 99). Following separation of the mother and yearling offspring, young female black bears commonly establish a home range partially within or adjacent to their mother's home range (Rogers 1987, p. 39). Young males, however, generally disperse from their maternal home

[6] Hard mast refers to nuts (especially those of beech and oaks); soft mast refers to seeds and berries of shrubs and trees that are eaten by wildlife.

range. Limited information suggests that subadult males may disperse up to 136 miles (219 kilometers) (Rogers 1987, p. 44).

Home range estimates, calculated as the minimum convex polygon (MCP), vary for the Louisiana black bear. The MCP is a way to represent animal movement data and is calculated as the smallest (convex) polygon that contains all the points a group of animals has visited. Mean MCP home range estimates for the Tensas River NWR subpopulation were 35,736 ac (14,462 ha) and 5,550 ac (2,426 ha) for males and females, respectively (Weaver 1999, p. 70). Male home ranges (MCP) in the UARB population may be as high as 80,000 ac (32,375 ha), while female home ranges are approximately 8,000 ac (3,237 ha) (Wagner 1995, p. 12). LARB population home ranges (MCP) were estimated to be 10,477 ac (4,200 ha) for males, and 3,781 ac (1,530 ha) for females (Wagner 1995, p. 12).

Barriers to Movement

Habitat fragmentation can create barriers to immigration and emigration that can affect population demographics and genetic integrity (Clark et al. 2006, p. 12). Fragmentation was identified as a threat to the Louisiana black bear at the time of its listing because it limits the potential for the existing Louisiana black bear subpopulations to expand their breeding range (Service 1995, p. 8). Habitat fragmentation can restrict bear movements both within and between populations (Marchinton 1995, p. 53: Beausoleil et al. 2005, p. 403). Even though Louisiana black bears are capable of traveling long distances, including swimming across rivers, open areas, roads, large waterways, development, and large expanses of agricultural land may affect habitat contiguity, and such features tend to impede the movement of bears (Clark 1999, p. 107). Laufenberg and Clark (2014, p. 84) detected evidence of possible gene flow restriction in the TRB associated with U.S. Interstate 20 (I–20). Such barriers can result in increased mortality as bears are forced to forage on less protected sites, travel farther to forage, or cross roads (Hellgren and Maehr 1992, pp. 154–156, Pelton 2003, p. 549; Laufenberg and Clark 2014, p. 84).

Even bear populations in a relatively large habitat patch are not necessarily ensured of long-term survival without recolonization by bears from adjacent patches (Clark 1999, p. 111). Anderson (1997, p. 73) observed that males may not be as affected by fragmentation as females. Louisiana black bears have been observed to occur in open areas such as fields (Anderson 1997, p. 45). Tracking the dispersal of translocated females demonstrated that bears can disperse through fragmented landscapes (Benson 2005, p. 98). The results of genetic analyses indicated differentiation between the three Louisiana subpopulations present at listing (TRB, UARB, and LARB) partially as the result of restricted gene flow (Laufenberg and Clark 2014, p. 84). Laufenberg and Clark (2014, p. 24) analyzed connectivity between Louisiana black bear subpopulations using a combination of genetic markers (differentiating resident from immigrant bears and within-population genetic structure) and actual bear movements as recorded by global positioning system (GPS) data and step-selection function (SSF) models. Tools like SSF models are relatively new powerful models used to quantify and to simulate the routes and rates of interchange selected by animals moving through the landscape. The SSF models can be used to identify landscape features that may facilitate or impede interchange or dispersal. The results of connectivity modeling indicated that in general, the bears selected a movement direction as distance to natural cover and agriculture decreased and distance to roads increased (Laufenberg and Clark 2014, pp. 70–71). Those models also predicted occasional crossing of habitat gaps (even large ones) by both males and females.

When Laufenberg and Clark examined the potential effect of continuous corridors on bear dispersal, they concluded that while such corridors may be important, they were not more effective than the presence of a broken habitat matrix such as that currently surrounding Louisiana black bear subpopulations (Laufenberg and Clark 2014, p. 85). The genetic and GPS data used in Laufenberg and Clark's study (2014, p. 86) generally agreed with the connectivity model results, which indicated interchange was occurring between some Louisiana black bear subpopulations and unlikely to occur between others (see discussion below where emigration and immigration is discussed). Laufenberg and Clark concluded that a patchwork of natural land cover between Louisiana black bear breeding subpopulations may be sufficient for movement of individuals to occur between subpopulations (at least for males) (Laufenberg and Clark 2014, p. 90).

Historically, the Louisiana black bear was believed to be common or numerous in bottomland hardwood (BLH) forests such as the Big Thicket area of Texas, the TRB, ARB, and LMRAV in Louisiana, and the Yazoo River Basin in Mississippi (St. Amant 1959, p. 32; Nowak 1986, p. 4). Exploitation of Louisiana black bears due to hunting and large-scale destruction of forests from the 1700s to the early 1800s resulted in low numbers of bears that were confined to the BLH forests of Madison and Tensas Parishes and the LARB BLH forests in Louisiana (St. Amant 1959, pp. 32, 44); black bears in Mississippi were similarly affected (Shropshire 1996, pp. 25–33). At the time of listing, additional extensive land clearing, mainly for agricultural purposes, had further reduced its habitat by more than 80 percent (Gosselink et al. 1990, p. 592), and the remaining habitat quality had been degraded by fragmentation. That fragmentation caused isolation of the already small subpopulations, subjecting them to threats from such factors as demographic stochasticity and inbreeding. Known breeding subpopulations were known to occur in fragmented BLH forest communities of the TRB, LARB, and UARB of Louisiana (Weaver 1990a, p. 2; Service 1992, p. 2) (Figure 1), and were believed to be demographically isolated (BBCC 1997, p. 10). No reliable estimates of population numbers were known at the time of listing, but only 80 to 120 Louisiana black bears were estimated to remain in Louisiana in the 1950s (Nowak 1986, p. 4). Bears had occasionally been reported in Louisiana outside of these areas, but it was unknown if those bears were reproducing females or only wandering subadult and adult males (Service 1992, p. 2).

Black bears were also known to exist in Mississippi along the Mississippi River and smaller areas in the Lower East Pearl River and Lower Pascagoula River Basins of southern Mississippi (Weaver 1990a, p. 2). Fewer than 25 bears were estimated to reside in Mississippi at the time of listing (Shropshire 1996, p. 35 citing Jones 1984). The last known Mississippi breeding subpopulation occurred in Issaquena County in 1976 (Shropshire 1996, p. 38 citing Jones 1984). Similarly, black bears were exterminated from southeastern Texas during the period from 1900 to 1940 largely as a result of overhunting (Schmidley 1983, p. 1); and, except for wanderers, the resident bear populations had not been observed in eastern Texas for many years (Nowak 1986, p. 7). Key demographic attributes (*e.g.,* survival, fecundity, population growth rates, home ranges) for the Louisiana black bear were not known at the time of listing.

Currently, the Louisiana black bear remains in the BLH forests of the

LMRAV in Louisiana and western Mississippi; however, based on the number and distribution of confirmed Louisiana Department of Wildlife and Fisheries (LDWF) and Mississippi Department of Wildlife, Fisheries, and Parks (MDWFP) sighting reports (Simek et al. 2012, p. 165; Davidson et al. 2015, p. 22), the geographic distribution of bears has expanded; the number and size of resident breeding subpopulations and the habitat they occupy have also increased (Table 1; Figure 1) resulting in a more scattered distribution of breeding females between the original TRB and UARB subpopulation areas. The TRC is a new breeding subpopulation (*i.e.,* it was not present at the time of listing) located at the confluence of the Mississippi and Red Rivers in Louisiana (formed as a result of a multiyear reintroduction project (2001–2009) (Figure 1), and serves to facilitate movement of bears from the UARB to the TRB (Laufenberg and Clark 2014, p. 85). Several additional new breeding subpopulations, indirectly resulting from those translocations (*i.e.,* female dispersal), are forming in Louisiana and three new breeding subpopulations are forming in Mississippi, partially as an indirect effect of the Louisiana translocation project and from the immigration of WRB bears (Figure 1). Demographic attributes including subpopulation abundance estimates, growth rates, and adult survival rates have been obtained for the three original Louisiana breeding subpopulations (TRB, UARB, LARB) (Hooker 2010, pp. 26–27; Lowe 2011, pp. 28–30; Troxler 2013, pp. 30–37; Laufenberg and Clark 2014, pp. 76–82).

Based on the best available data, all three original breeding subpopulations appear to be stable or increasing, and emigration and immigration (*i.e.,* gene flow) has been documented among several of the Louisiana and Mississippi subpopulations (Laufenberg and Clark 2014, pp. 91–94). The areas supporting Louisiana black bear breeding subpopulations have increased over 430 percent from an estimated 340,000 acres [ac] (138,000 hectares [ha]) in Louisiana in 1993, to the present estimated 1,424,000 ac (576,000 ha) and 382,703 ac (154,875 ha), in Louisiana and Mississippi, respectively, for a total of 1,806,556 ac (731,087 ha) (Table 1). In addition, approximately 148,400 ac (60,055 ha) of private lands have been restored and permanently protected in the Louisiana black bear HRPA since it was listed (Table 2, Figure 2; and see Factor A below). When combined with permanently protected habitat on public lands (Table 3), there are now 638,000 ac (258,200 ha) of permanently protected habitat within the HRPA versus the 227,200 ac (91,945 ha) estimated to exist in 1991 (Service 2014, p. 74, Table 6), an estimated increase of more than 280 percent in protected habitat status.

TABLE 1[7]—ESTIMATED AREA SUPPORTING LOUISIANA BLACK BEAR BREEDING SUBPOPULATIONS (SHOWN IN ACRES AND [HECTARES]) IN 1993 AND 2014.

Breeding habitat	Tensas River Basin [1]	Upper Atchafalaya River Basin [2]	Lower Atchafalaya River Basin [3]	Louisiana total	Mississippi total [3]	Total
1993	84,402	111,275	144,803	340,480	0	340,480
	[34,156]	[45,031]	[58,600]	[137,787]	.....	[137,787]
2014	1,002,750	290,263	130,839	1,423,853	382,703	1,806,556
	[405,798]	[117,465]	[52,949]	[576,213]	[154,875]	[731,087]

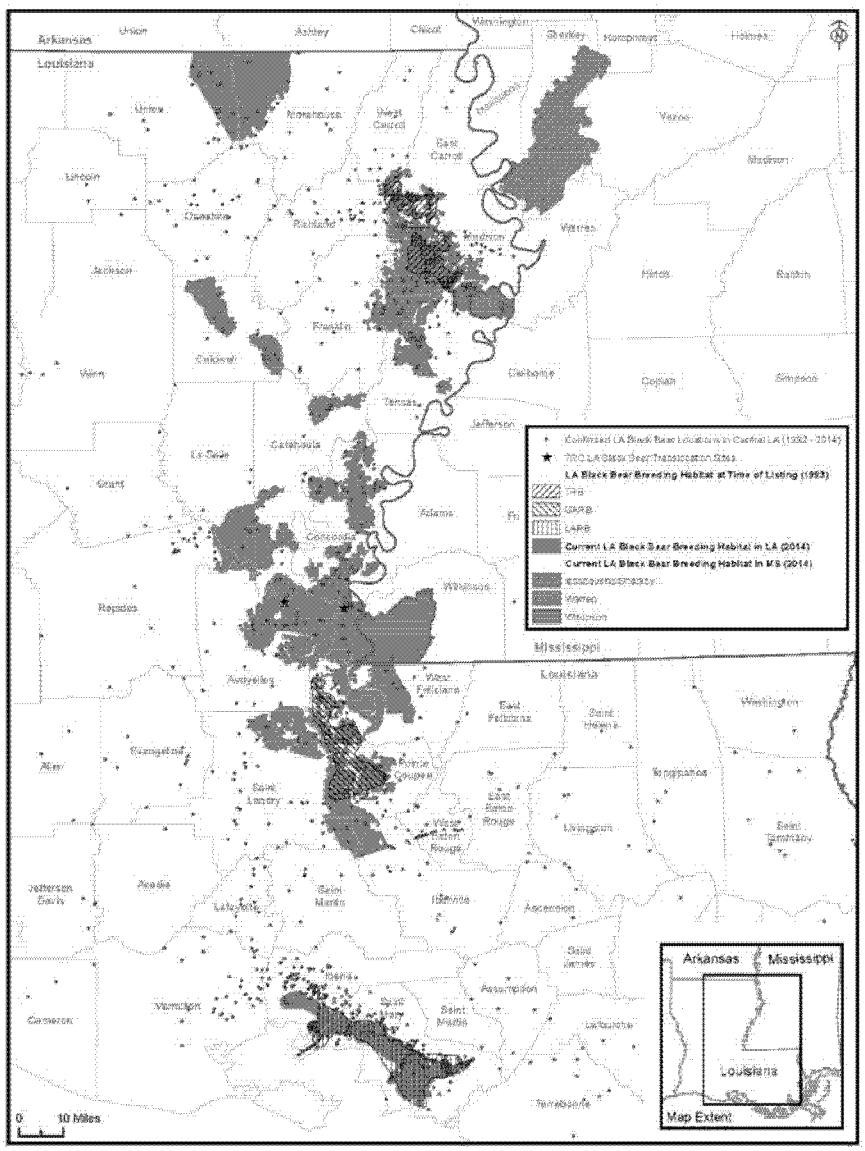
[1] Includes the TRC subpopulation and the Louisiana black bear subpopulation in north-central Louisiana near the Arkansas State line.

[2] Includes the Louisiana black bear subpopulation found in the Florida parishes of Louisiana (east of the Mississippi River).

[3] Although the LARB subpopulation area appears to have decreased in acreage over time; the decrease is due to more detailed mapping in 2014 that excluded many non-habitat areas that were included in the more general 1993 boundary. In fact, spatially, the distribution appears to have increased over time. In 1993, we did not have the data to support including breeding bears on Avery Island (at the western end of this area) even though we knew bears occurred there. We now have that data to support and delineate breeding habitat on Avery Island and, therefore, have included that area in the 2014 mapping updates. The actual area and spatial distribution of this breeding population has likely not changed over time.

[7] For all tables, habitat is listed in acres and hectares. In addition, numbers in each table may not total due to rounding.

Figure 1. Louisiana black bear breeding habitat, 1993 and current.



Subpopulations

Tensas River Basin Subpopulation: The TRB subpopulation is the largest Louisiana black bear breeding subpopulation and occurs in the TRB of Louisiana. It consists of groups of bears located on lands north (privately owned tracts formerly known as the Deltic subpopulation/tracts) and south (Tensas River NWR, Big Lake WMA, Buckhorn WMA, and adjacent private lands) of I–20 and U.S. Highway 80 (Hwy 80). Population numbers have steadily increased since listing as described below. Nowak (1986, p. 7) speculated that the TRB subpopulation consisted of 40 to 50 bears at that time. Subsequent population studies by Beausoleil (1999, p. 51) and Boersen et al. (2003, p. 202) estimated 119 bears in the Tensas River NWR, and 24 to 72 bears in the adjacent Deltic tracts, respectively.

At the time of listing, there was no evidence that interchange was occuring between the two TRB subgroups. They were thought to be isolated and disjunct from each other (BBCC 1997, p. 99) until Anderson (1997, p. 82) reported one of the first instances of a bear moving between these two areas. Evidence of that historical separation in the recent genetic history of sampled bears was detected by Laufenburg and Clark (2014, p. 54). Though the two subgroups are separated by I–20 and Hwy 80, a significant amount of habitat between those subgroups has been restored primarily within the last 10 years. Increased sightings and vehicular mortality of bears in the vicinity of I–20 indicate that bears are attempting to disperse (Benson 2005, p. 97) and current radio-collar data and genetic evidence supports some successful interchange (Laufenberg 2015, personal communication). Furthermore, the current genetic structure of Louisiana black bear subpopulations groups bears in those two areas as one subpopulation (Laufenberg and Clark 2014, p. 60). Hooker (2010, p. 26) estimated a population abundance (for both genders averaged across years) of 294 bears (standard error [SE] = 31) for the combined Tensas River NWR and nearby Deltic and State-owned tracts with an apparent annual survival rate of 0.91 (SE = 0.08), which did not differ by gender. The pooled population annual growth rate for both genders was 1.04

(SE = 0.18), and the mean realized population growth estimate ranged from 0.99 to 1.06 (Hooker 2010, p. 26) indicating a stable to increasing population. Hooker (2010, p. 26) estimated density to be 0.66 bears per square kilometer (km^2) (SE = 0.07). Similar results were obtained by Laufenberg and Clark (2014, p. 45) with mean realized population growth estimates ranging from 0.97 to 1.02.

According to the most recent study results (Laufenburg and Clark 2014, p. 31), the estimated mean annual survival rate for radio-collared adult female bears in the TRB subpopulation was 0.99 (95 percent confidence interval [CI] 0.96–1.00) when data for bears with unknown fates were censored (assumed alive) and was 0.97 (95 percent CI = 0.93–0.99) when unknown fates were treated as mortalities. Detection heterogeneity (differences in detectability among individuals from such things as size, behavior, etc.) is a well known issue in estimating black bear vital rates. Mathematical models can be used to account for those differences; however, it is impossible to identify the appropriate group of distributions (a distribution describes the numbers of times each possible outcome occurs in a sample) to use in a model because the same distribution could result from several different sets of circumstances (Laufenberg and Clark (2014, pp. 18). Therefore, Laufenberg and Clark (2014, pp. 18–19) used two models to estimate population numbers. Model 1 assumed detection heterogeneity followed a logistic-normal distribution, and Model 2 assumed a 2-point finite mixture distribution [8]. We will report results for both models. The current estimated number of females from those two models ranged from 133 to 163 (Laufenberg and Clark 2014, p. 39). Assuming a one to one ratio of males to females and using the most conservative figures, we estimate that the current total population size ranges from 266 to 321 bears.

Mean cub and yearling litter size for the TRB subpopulation were an estimated 1.85 and 1.40 respectively, and fecundity and yearling recruitment for the TRB were 0.47 and 0.15, respectively (Laufenberg and Clark 2014, p. 35). Annual per-capita recruitment estimates ranged from 0.00 to 0.22, and estimates of female apparent survival rates (these included emigration) ranged from 0.87 to 0.93 based on capture-mark-recapture (CMR) data. The estimated mean of the population growth rate ranged from 0.97 (range = 0.88–1.06) to 1.02 (range = 0.98–1.09), depending on model assumptions (Laufenberg and Clark 2014, p. 45), which indicates a stable to increasing population.

Early studies suggested that the TRB subpopulation had low genetic diversity (Boersen et al. 2003, p. 204). The recent study by Laufenberg and Clark (2014, pp. 84–85) indicate that genetic exchange with other subpopulations has occurred at a level substantial enough to increase genetic diversity at TRB (Davidson et al. 2015, pp. 26), primarily as a result of bear emigration from the WRB subpopulation of Arkansas into the TRB subpopulation. The results of recent population structure analyses, however, show evidence of bear emigration from the WRB subpopulation of Arkansas into the TRB subpopulation (Laufenberg and Clark 2014, p. 85). Nearly 30 bears sampled in the TRB had a probability greater than or equal to 0.10 of originating from the WRB subpopulation in Arkansas (6 bears were identified as WRB migrants), and 1 had a 0.48 probability of coming from the UARB (Laufenberg and Clark 2014, p. 63). Additionally, ten bears sampled in northwestern Mississippi were determined to have a probability greater than or equal to 0.90 of originating from the TRB. The analysis of genetic data identified five bears in the TRB as migrants from the WRB subpopulation (Laufenberg and Clark 2014, p. 67). Three males captured in the TRB had CMR histories that indicated they had dispersed from the TRC subpopulation, and an additional male was identified as a second generation migrant from the UARB subpopulation (Laufenberg and Clark 2014, p. 67). One male detected in the TRB subpopulation was subsequently live-captured in Mississippi (Laufenberg and Clark 2014, p. 67).

Laufenberg and Clark (2014, p. 85) suggested genetic interchange by bears from outside the range of the Louisiana black bear (that is, Arkansas) probably should be considered as a positive genetic and demographic contribution to the Louisiana black bear. Connectivity modeling analyses by Laufenberg and Clark (2014, p. 90) indicated that, without the presence of the TRC subpopulation, there was low potential for dispersal of either sex between TRB and UARB. Recent LDWF capture records (USGS et al. 2014) have documented the presence of additional resident breeding females between the TRC and the TRB subpopulations, which may significantly increase the probabilities for interchange (M. Davidson and S. Murphy, LDWF, 2015, unpublished data).

Laufenberg and Clark (2014, p. 90) suggested that the establishment of satellite populations of resident breeding bears between subpopulations may be a more effective measure to link populations than the establishment of continous habitat corridors. Laufenberg and Clark 2014, pp. 22–24) developed a series of population persistence models to assess the long-term viability of Louisiana black bear subpopulations. Those models were developed using multiple methods to address the treatment of bears with unknown fates. Model 1 uses censored fates (assumed alive), and Model 2 assumes mortality. In addition, because there is uncertainty in various (*i.e.,* variation) model parameters that may affect the outcome, three population projections were analyzed for Model 1 and Model 2 resulting in 6 separate population projections (Laufenberg and Clark 2014, pp. 22–23) developed as follows. The first projection accounted for environmental variation for survival and recruitment and also included density dependence (process-only model). Process-only models produced the least conservative (*i.e.,* protective) estimates. The second and third projection models (all-uncertainty projections and the most conservative) included the same sources of variation as the process-only projection, but also included an estimation of uncertainty for survival and recruitment; they differ only in the conservativeness (*i.e.,* worst-case scenario for maximum protection of bears, with the 50 percent confidence interval being less conservative than the 95 percent confidence interval projection). We will report the range of values obtained for all models in the following discussions. Based on CMR estimates from Model 1, the estimated probability of persistence over 100 years for the TRB subpopulation ranged from 1.00 and 0.96 for process-only and all-uncertainty projections, respectively (Laufenberg and Clark 2014, p. 46, Table 4). Similarly, based on the more conservative projections, the probability of persistence was 1.00 and 0.96 based on Model 2 estimates for process-only and all-uncertainty projections (Laufenberg and Clark 2014, p. 46, Table 4).

We estimated there were approximately 400,000 to 500,000 ac (161,875 to 202,343 ha) of forested habitat in the TRB in the early 1990s (Service 2014, p. 33). Comparing the small-scale National Land Cover Database (NLCD) estimates of habitat for 2001 and 2011, there has been an increase of 1,312 ac (531 ha) in the TRB HRPA (Table 8). Currently, based on

[8] For a detailed description of how this modeling was done, see Laufenberg and Clark 2014.

ownership boundaries, there are 255,899 ac (103,559 ha) of State and Federal management areas, and approximately 136,870 ac (55,389 ha) of private lands that have been restored and permanently protected, in the TRB HRPA (Tables 2, 5). We estimated that there were approximately 85,000 ac (34,398 ha) in the TRB HRPA at the time of listing (Service 2014, p. 74, Table 6). In 1993, we estimated that the breeding subpopulation occupied approximately 84,400 ac (34,156 ha). Today, an estimated 1,002,750 ac (405,798 ha) is occupied by the TRB breeding subpopulation (*Table 1*).

Upper Atchafalaya River Basin Subpopulation: Nowak (1986, p. 6) suggested that UARB population numbers were extremely low or believed to be nonexistent before the introduction of Minnesota bears to Louisiana in the 1960s and speculated that the population consisted of 30 to 40 individuals (based on a LDWF 1981 report). Pelton (1989, p. 9) speculated the UARB subpopulation size ranged from 30 to 50 bears. Triant et al. (2004, p. 653) estimated 41 bears in the UARB population at that time. Lowe (2011, p. 28) estimated a UARB population of 56 bears with an annual survival rate of 0.91. More recently, O'Connell-Goode et al. (2014, p. 7) estimated a mean population abundance of 63 bears and mean average male and female survivorship to be 0.77 (SE = 0.08) and 0.89 (SE = 0.04), respectively. The most recent research (Laufenberg and Clark 2014, p. 46) estimated female abundance ranging from 25 to 44 during the study period (50 to 88 total population of males and females, combined), regardless of treatment of capture heterogeneity (or capture differences among individuals). Their estimated annual per-capita recruitment was between 0.00 and 0.41, and apparent female survival was between 0.88 and 0.99 during that time period (Laufenberg and Clark 2014, p. 46, Table 4). The estimated mean growth rate ranged from 1.08 (range = 0.93–1.29) to 1.09 (range = 0.90–1.35) indicating a stable to increasing population (Laufenberg and Clark 2014, p. 46). The estimated probabilities of the UARB subpopulation persistence (*i.e.,* viability) over 100 years were greater than 0.99 for all process-only projections, and greater than 0.96 for model 1 all-uncertainty projections. Persistence probabilities were lowest for the most conservative estimation methods (Model 2, all uncertainty projections) at 0.93 and 0.85, respectively (Laufenberg and Clark 2014, p. 46, Table 4).

As discussed previously, Laufenberg and Clark's connectivity models (2014, p. 90) indicated there was no potential for dispersal of either sex between the TRB and UARB subpopulations without the current presence of the TRC subpopulation. The modeled potential for natural interchange between the UARB and TRC subpopulations is high based on the genetic and capture data (Laufenberg and Clark 2014, p. 85), and genetics data show that gene flow has occurred. Twenty of the 35 TRC cubs showed evidence of having been sired by UARB males. A 2-year-old male tagged as a cub in the UARB was later captured at the TRC, and a second generation migrant from the UARB was later captured in the TRB subpopulation (Laufenberg and Clark 2014, p. 67). The step-selection model (as discussed under Barriers to movement above) predicted that dispersals between the LARB and UARB subpopulations were infrequent but possible for males but nearly nonexistent for females (Laufenberg and Clark 2014, p. 85). Three cubs sampled in west central Mississippi, east of the TRC subpopulation, showed evidence of mixed ancestry between TRB and UARB (Laufenberg and Clark 2014, p. 63). No migrants from the UARB into the WRB or LARB were detected by Laufenberg and Clark (2014, p. 85). Recent LDWF capture records, however, verify the presence of at least one WRB migrant in the TRC subpopulation (M. Davidson, LDWF, unpublished data). Finally, genetic diversity of the UARB subpopulation is the highest among the three original Louisiana black bear subpopulations, and second highest of all extant subpopulations. Results from Laufenberg and Clark (2014, pp. 53–54) indicated this increase may be the result of the persistence of genetic material from bears sourced from Minnesota during the 1960s.

The Atchafalaya basin, located between the UARB and LARB, is currently believed to be too wet to support breeding females. Elevations within the Atchafalaya Basin are increasing due to sedimentation (Hupp et al. 2008, p. 139), and as a result, in the long term, habitat conditions between this subpopulation and the UARB subpopulation may improve over time (LeBlanc 1981, p. 65).

Historical reports do not break the Atchafalaya River Basin into the two areas that we use in terms of bear recovery and habitat restoration planning (*i.e.,* UARB and LARB) but make delineations based on the Corps' Atchafalaya Basin Floodway (Floodway) delineation. The Floodway is roughly equivalent to the UARB as we define it for bears. When the Louisiana black bear was listed, the estimated amount of forested habitat remaining north of U.S. 190 had been reduced 40 to 50 percent (100,000 to 128,000 ac [40,469–51,800 ha] (57 FR 588)). Based on the analyses used for listing, we estimated there were approximately 600,000 ac to 700,000 ac (242,812–283,280 ha) of forested habitat in the UARB area in the early 1990s (Service 2014, p. 33). Comparing small-scale NLCD estimates of habitat for 2001 and 2011, there has been an increase of 2,676 ac (1,083 ha) in the UARB HRPA (Table 8). Currently, based on ownership boundaries, there are 226,037 ac (91,476 ha) of State and Federal management areas and approximately 11,530 ac (4,666 ha) of private lands that have been restored and permanently protected in the UARB HRPA (Tables 2, 5). We estimated that there were approximately 141,000 ac (57,060 ha) of protected lands in the UARB HRPA at the time of listing (Service 2014, p. 74, Table 6). Today, an estimated 130,839 ac (52,949 ha) is occupied by the UARB breeding subpopulation (Table 1), an increase over the 111,275 ac (45,031 ha) estimated around the time of listing.

Lower Atchafalaya River Basin Subpopulation: Nowak (1986, p. 7) speculated that there were approximately 30 bears in the LARB subpopulation. Until recently, the only quantitative estimate for this subpopulation was Triant et al.'s (2004, p. 653) population estimate of 77 bears (95 percent CI = 68–86). Similar to their UARB population estimate, the authors felt this may underestimate the actual population number (Triant et al. 2004, p. 655). Troxler (2013, p. 30) estimated a population of 138 bears (95 percent CI = 118.9–157.9) (which represents a substantial increase over Triant's estimate) and an estimated growth rate of 1.08 indicating that the subpopulation is growing. Laufenberg and Clark's (2014, p. 43) recent LARB population abundance estimate ranged between 78 (95 percent CI = 69–103) and 97 females (95 percent CI = 85–128) from 2010 to 2012 based on Model 1 and between 68 (95 percent CI = 64–80) and 84 (95 percent CI = 79–104) based on Model 2 (we estimate the total combined population of 156–194 or 136–168, respectively). Estimates of apparent female survival ranged from 0.81 to 0.84 (Laufenberg and Clark 2014, p. 43), which are the lowest of all the subpopulations. The reason for this is this area is experiencing a high degree of mortality associated with vehicular collision, and nuisance-related removals Troxler 2013, pp. 37–38); Davidson et

al. 2015, pp. 29–30). In spite of this relatively high rate of adult female mortality (which has persisted for decades), the LARB subpopulation remains the second largest Louisiana black bear subpopulation and has approximately doubled in size in just the last 10 years. The overall size of that subpopulation, coupled with the current positive growth rate (Laufenberg and Clark 2014, p. 46), strongly suggests that anthropogenic and natural sources of LARB mortality, existing dispersal barriers, and other threats to the LARB have not resulted in long-term negative effects to that subpopulation.

Although the LARB subpopulation has occasionally been characterized as a genetically unique subpopulation, recent research (Csiki et al. 2003; Troxler 2013; Laufenberg and Clark 2014) has identified a genetic bottleneck (*i.e.,* isolation resulting in restricted gene flow and genetic drift) as a cause of that uniqueness rather than a true genetic difference. That genetic bottleneck likely resulted from low immigration potential that is restricted by the poor habitat quality found along the northern periphery of the LARB subpopulation. U.S. Highway 90 serves as an additional barrier to movement. The genetic structure analyses found evidence of historic genetic isolation associated with Highway 317 within this subpopulation (Troxler 2013, p. 33; Laufenberg and Clark 2014, p. 54). However, recent data indicate that this has been alleviated and movement of individuals has been occurring within the LARB on both sides of Highway 317 (Troxler 2013, p. 39). As discussed previously, based on the step selection models, the current potential for interchange between this and other subpopulations is low (nonexistent for female bears), and immigration into this subpopulation has not been documented (Laufenberg and Clark 2014, p. 85).

Currently, bears have been observed on the higher portions (levees and ridges) of the Atchafalaya Basin (Figure 1, Davidson et al. 2015, p. 23), between the UARB and LARB subpopulations, but the Basin is believed to be too wet to support breeding females. However, LeBlanc et al. (1981, p. 65) projected that by 2030, over 35,000 ac (14,000 ha) of lakes and cypress–tupelo (*Taxodium distichum—Nyssa aquatic*) swamps would be converted to cypress swamp and early successional hardwood; habitat types more suitable for black bear use. Studies by Hupp et al. (2008, p. 139) confirm the continued sedimentation (filling in) of wet areas within the Atchafalaya Basin. Such changes could ultimately expand the acreage of suitable habitat for the LARB and UARB subpopulations, and improve habitat linkages and genetic exchange between those groups.

We were not able to estimate the amount of forested Louisiana black bear habitat in the LARB around the time of listing based on internal maps and reports, nor were we able to tease it out from the above-mentioned studies. Nyland (1995, p. 58), based on his trapping data, estimated that bears occupied approximately 140,000 ac (56,656 ha) in Iberia and St. Mary Parishes. This is probably a slight underestimate of forested and occupied habitat at that time since it was based primarily on trapping data and did not include Avery Island to the west, a forested salt dome [9] known to be used by bears (Service 2014, p. 34). Comparing NLCD estimates of habitat for 2001 and 2011, there has been an increase of 3,685 ac (1,491 ha) in the LARB HRPA (Table 8). We estimated that there were approximately 9,921 ac (4015 ha) of conservation lands (permanently protected) in the LARB HRPA at the time of listing (Service 2014, p. 73, Table 4). Currently, based on ownership boundaries, there are an estimated 11,573 ac (ha) of conservation lands in the LARB HRPA (Table 5).

In 1993, we estimated approximately 144,803 ac (58,600) supported the LARB breeding population (Table 1). Today, we estimate 130,839 ac (52,949 ha) are occupied by the LARB breeding subpopulation (Table 1). The LARB breeding area appears to have decreased in acreage over time; however, the decrease is due to a more detailed mapping in 2014 that excluded many non-habitat areas that were included in the more general 1993 boundary. In fact, spatially, the distribution appears to have increased over time (Figure 1) because we did not have the data in 1993 to support including breeding bears at the western edge on Avery Island, even though we knew bears were present. We now have the data and, therefore, included breeding bears in the 2014 mapping. Based on the inclusion of the Avery island area and exclusion of non-habitat, the actual area and spatial distribution of this breeding population has likely not changed significantly over time.

Three Rivers Complex Subpopulation: A new breeding subpopulation, not present at listing, currently exists in Louisiana as a result of reintroduction efforts (Benson and Chamberlain 2007, pp. 2393–2403; Davidson et al. 2015, pp. 27–28). The subpopulation occurs in the TRC located primarily on the Richard K. Yancey WMA. The objective of the reintroduction, initiated in 2001, was to establish a new group of reproducing Louisiana black bears in east-central Louisiana (primarily in Avoyelles and Concordia Parishes) that would facilitate the interchange of individuals between the subpopulations currently existing within the Tensas and Atchafalaya River Basins, within the historic range of the Louisiana black bear, but the area in east-central Louisiana was not known to be occupied by reproducing females when this effort began. Until 2001, recovery actions had focused on habitat restoration and protections; reduction of illegal poaching; conflict management; research on Louisiana black bear biology and habitat requirements; and educating the public. No actions, however, had been taken to expedite expansion into unoccupied habitats.

Range expansion of breeding females is a slow process, even when bear habitat is in large contiguous blocks since females typically only disperse very short distances. When the recovery plan was written, translocations (*i.e.,* capture and release) of adult bears, termed a ''hard'' release, were not deemed to be effective, as evidenced with the wide dispersals of the Minnesota reintroductions (Taylor 1971, p. 79). The method of winter translocations of adult females and their young (termed ''soft'' release), however, proved to be successful in Arkansas and was recommended as the preferred method for translocations (Eastridge 2000, p. 100). The site chosen for the releases was at the Richard K. Yancy WMA (formerly known as the Red River and Three Rivers WMAs), located about 80 miles south of the TRB and 30 to 40 miles north of the UARB. In addition to the geographic location, the amount of publicly owned land and potential habitat in that area (179,604 ac (72,714 ha)) encompassing several NWRs, WMAs, and more than 12,000 ac (4,858 ha) of privately owned land in WRP made it the logical site for establishment of an additional breeding subpopulation.

The success of those translocations in the formation of the TRC breeding subpopulation represents a significant improvement in Louisiana black bear population demographic conditions since listing. Abundance estimates for the TRC subpopulation are currently unknown. The mean annual estimated female survival rate (2002–2012) for the TRC subpopulation ranged from 0.93 (95 percent CI = 0.85–0.97) to 0.97 (95 percent CI = 0.91–0.99) (Laufenberg and

[9] A forested salt dome is a dome that is formed beneath the surface when a mass of salt pushes up into the rock layers.

Clark 2014, p. 31). Mean cub and yearling litter size for the same time period were 2.15 and 1.84 in the TRC subpopulation, respectively (Laufenberg and Clark 2014, p. 35). Fecundity and yearling recruitment for the TRC subpopulation were 0.37 and 0.18 (Laufenberg and Clark 2014, p. 31), low compared to the TRB subpopulation, but possibly an artifact of small sample size. The estimated asymptotic growth rates (growth rate estimates calculated from population matrix models) for the TRC ranged from 0.99 to 1.02, for Model 1 and Model 2 respectively (Laufenberg and Clark 204, p. 45). As male cubs born at TRC reach maturity and more males emigrate from the UARB, growth rates of this subpopulation may increase (Laufenberg ad Clark 2014, pp. 70–80). TRC persistence probabilities ranged from 0.295 to 0.999 depending on estimated carrying capacity, the strength of the density dependence, level of uncertainty, and the treatment of unresolved fates (*i.e.,* deaths or lost collars) (Laufenberg and Clark 2014, p. 47). Using the telemetry and reproductive data from the TRC, probabilities of persistence were greater than or equal to 0.95 only for projections based on the most optimistic set of assumptions (*i.e.,* Models 1 and 2, process only) and under the most conservative model (*i.e.,* unresolved fates were assumed dead and more uncertainty was included in model variable estimates), probabilities ranged from 0.34 to .90 (Laufenberg and Clark 2014, pp. 48–49, Tables 5 and 6).

Based on step selection function modeling, the least potential for interchange was between the TRB and TRC subpopulations, and the greatest proportion of successful projections was between the UARB and the TRC (Laufenberg and Clark 2014, p. 74). As discussed previously, the TRC has experienced and possibly facilitated gene flow with other subpopulations (Laufenberg and Clark 2014, p. 84). Three males were captured in the TRB that had dispersed from the TRC, and 20 of 35 cubs sampled in the TRC showed evidence of having been sired by UARB males (Laufenberg and Clark 2014, p. 67). One TRC female dispersed to a location southwest of the TRB subpopulation and apparently bred with an Arkansas bear (Laufenberg and Clark 2014, p. 63). Laufenberg and Clark (2014, p. 83) detected direct evidence of interchange by bears from the UARB to the TRB subpopulation via the TRC subpopulation; however, they did not have any direct evidence of reverse movements. A male bear with UARB ancestry (possibly a second generation migrant) was captured on the TRB, indicating gene flow likely facilitated by the presence of the TRC subpopulation (Laufenberg and Clark 2014, p. 84). Recent LDWF capture records verify the presence of at least one WRB migrant in the TRC subpopulation (Laufenberg and Clark 2014, p. 83).

The TRC contains some of the largest contiguous blocks of publicly owned land in Louisiana. It encompasses approximately 179,600 ac (72,700 ha) of potential bear habitat and roughly 100,000 ac (40,500 ha) of publicly owned, forested land (Richard K. Yancey, Grassy Lake, Pomme de Terre and Spring Bayou WMAs, and Lake Ophelia NWR). The location of this population and its surrounding patchwork of habitat are essential in maintaining connectivity and movement of individuals between the existing TRB and UARB populations.

Mississippi Subpopulations: Black bear numbers are increasing in Mississippi (Simek et al. 2012, p. 165). Shropshire indicated that the most reliable bear sighting reports occurred in nine Mississippi counties (Bolivar, Coahoma, Issaquena, Warren, Adams, Wilkinson, Hancock, Stone, and Jackson (Shropshire 1996, page 55, Table 4.1), and bear sightings are concentrated in three physiographic regions of Mississippi: Southern Mississippi Valley Alluvium [Delta], the Lower Coastal Plain, and the Coastal Flatwoods (Shropshire 1996, p. 57, Table 4.2). The Mississippi population is currently estimated to be about 120 bears, with approximately 75 percent occurring within Louisiana black bear range (B. Young, Mississippi Wildlife Federation, personal communication, 2013). Most of the sightings occur along the Mississippi River and in the lower East Pearl River and lower Pascagoula River basins (Simek et al. 2012). Three new resident breeding populations have formed (first documented in 2005) in north west-central (Sharkey-Issaquena Counties), west-central (Warren County) and south west-central (Wilkinson County) Mississippi (Figure 1). Genetic studies and LDWF CMR studies have documented bear immigration from the WRB and TRB to the northern Mississippi breeding subpopulation and from TRC to the southern Mississippi breeding subpopulation (Laufenberg and Clark 2014, p. 67). Six bears from northwestern Mississippi (sampled east of the TRB and across the Mississippi River) had mixed ancestry between WRB and TRB (Laufenberg and Clark 2014, p. 63). Genetic studies and LDWF CMR studies have documented bear emigration from the WRB and TRB to the Sharkey-Issaquena and Warren County, Mississippi, subpopulations and from TRC to the Wilkinson County, Mississippi, subpopulation (Laufenberg and Clark 2014, pp. 63–67).

Shropshire (1996, p. 64) found that Adams County contained the most suitable habitat in Mississippi and that Delta National Forest was comparable in habitat quality to Tensas River NWR. Habitat suitability models based on landscape characteristics, human attitudes, and habitat quality found the highest habitat suitability was in southern Mississippi and the lowest was in the Delta region (Bowman 1999, p. 180).

Similar to the trend for the TRB area, in the Lower Mississippi River Valley of Mississippi the total forested area increased by 11 percent between 1987 and 1994, and reforestation of former agricultural lands accounted for nearly 40 percent of that increase (King and Keeland 1999, p. 350). Approximately 110,000 ac (41,000 ha) of private land in Mississippi counties adjacent to the Mississippi River have been enrolled in WRP 99-year and permanent easements within the Mississippi Alluvial Valley Black Bear Priority Units (MAVU). When WRP permanent easement lands are added to the habitat protected on Federal and State NWRs or WMAs, other Federal- and State-protected lands, and privately owned protected lands, approximately 868,000 ac (440,000 ha) have been permanently protected and/or restored within the MAVU in Mississippi. Although not permanently protected, approximately 328,000 ac (132,737 ha) were enrolled in the Conservation Reserve Program (CRP) within the MAVU. Approximately 68 percent of breeding habitat in the MAVU is under permanent protection.

East Texas: At the time of listing, populations of bears had not been reported in east Texas for many years, with the exception of the occasional wandering animal (Nowak 1986, p. 7). Keul (2007, p. 1) reviewed historical literature on the black bear in East Texas and concluded that while habitat loss did occur, the primary reason for loss of bears was due to aggressive and uncontrolled sport hunting. The last known areas supporting bears in east Texas was the Big Thicket area of Hardin County and forested areas in Matagorda County, which may have supported a few individuals up to the mid-1940s (Barker et al. 2005, p. 6; Schmidley 1983. p. 1). There was an episode of black bear sightings in east Texas in the 1960s following the reintroduction of Minnesota bears into Louisiana, but by 1983 Schmidley (1983, p. 1) stated there were no resident bears remaining in east Texas.

Sightings of bears in east Texas have gradually increased since 1977, the time period when the Texas Parks and Wildlife Department (TPWD) started collecting data (Chappell 2011, p. 11). Most of those sightings were believed to be juvenile or sub-adult males that had wandered into the northeastern part of the listed range from expanding populations in Oklahoma, Arkansas, and Louisiana (Barker et al. 2005, p. 7). Observations in the 1990s indicate the return of a few black bears to the remote forests of east Texas, primarily transient, solitary males that are believed to be dispersing from Arkansas and Oklahoma (D. Holdermann, TPWD, personal communication, 2014). Kaminski (2011, entire document) conducted a region-wide hair snare survey in east and southeast Texas in areas assumed to have the highest likelihood of bear occurrence and where sightings had been reported. According to the genetic analysis and based on the estimated effectiveness of their sampling method, it was determined it was highly unlikely there were established black bear populations in the region (Kaminski 2011, p. 34). Since 1990, there have been 37 verified black bear sightings in 13 east Texas counties, and preliminary examination of these data suggest that some observations may represent duplicate sightings of individual bears (D. Holdermann, TPWD, personal communication, 2014).

Kaminski (2011, p. 50) used Habitat Suitability Indices (HSI) for black bears in east and southeast Texas to identify 4 recovery units (ranging in size from 74,043 to 183,562 ac (31,583 to 74,285 ha) capable of sustaining viable back bear populations. Estimated HSI scores for each were comparable to other estimates for the occupied range of black bears in the southeast, and the estimated acreage of suitable habitat for all units exceeded those estimated to support existing Louisiana black bear populations (Kaminski 2011). Approximately 11.8 million ac (477,530 ha) of the Pineywoods area of east Texas is classified as forest, of which approximately 61 percent is non-industrial private timberland (Barker et al. 2005, pp. 25–26). Habitat fragmentation may become a concern in east Texas as timberland owners dissolve their holdings over much of southeast Texas lands (Barker et al. 2005, p. 26). Future water reservoir developments further threaten the highest quality habitat remaining in East Texas (Barker et al. 2005, p. 26).

Although there is currently no evidence of a resident breeding population of black bears in east Texas, bear recovery and range expansion in bordering Louisiana, Arkansas, and Oklahoma may increase bear occurrence and activity in east Texas in future years. Habitat restoration activities continue in Texas.

The TPWD field analyses of remaining potential black bear habitats within east Texas (using habitat suitability models) found that the Sulphur River Bottom, Middle and Lower Neches River Corridors, and Big Thicket National Preserve areas in east Texas were all suitable for black bears and that the Middle Neches River Corridor provided the most suitable location for any bear restoration or management efforts in east Texas (Garner and Willis 1998, p. 5). Between 2008 and 2011, more than 500 ac (200 ha) have been restored and 1,550 ac (630 ha) have been enhanced in east Texas via the Hardwood Habitat Cooperative program.

Louisiana Black Bear Population: Since listing there have been many studies of the Louisiana black bear's biology, taxonomy, denning ecology, nuisance behavior, movements, habitat needs, reintroduction efforts, and public attitudes (primarily in Louisiana, but also Mississippi and Texas). See Laufenberg and Clark (2014, p. 5) for a list of that research, and, additionally, much of that work was summarized in the 5-year review for this species (Service 2014). More recent studies have focused on population vital statistics for individual subpopulations such as abundance (*e.g.,* Hooker 2010; Lowe 2011, O'Connell 2013, Troxler 2013). Laufenberg and Clark (2014, entire document) expanded the results of those studies and also conducted genetic structure connectivity studies to examine the viability and connectivity of the Louisiana black bear.

In summary, considering Laufenberg and Clark's recent work (2014, entire document) and prior research, the following conditions exist for the Louisiana black bear population:

(1) The population sizes of the TRB, UARB, and LARB subpopulations have increased since listing, their average population growth rates are stable to increasing, and the probability of long-term persistence for the TRB and UARB subpopulations (except for one UARB modeling scenario) was greater than 95 percent. The probability of long term persistence for the LARB is unknown.

(2) The habitat occupied by the TRB, UARB, and LARB breeding subpopulations has increased; there is a more scattered distribution of breeding females between the original TRB and UARB subpopulation areas; and new satellite breeding populations are forming in Louisiana (Figure 1).

(3) A new breeding subpopulation, the TRC, that was not present at listing, now exists between the TRB and UARB subpopulations and facilitates interchange between those subpopulations.

(4) There is evidence that TRB and UARB bears have emigrated to Mississippi and have contributed to the formation of three resident breeding subpopulations that were not present at listing.

(5) There is evidence of interchange of bears between the TRB, UARB, TRC, WRB, and Mississippi subpopulations; however, the current potential for interchange between the LARB and other subpopulations is low.

(6) The overall probability of persistence for the Louisiana black bear metapopulation comprised of the TRB, TRC, and UARB subpopulations is estimated to be 0.996, assuming dynamics of those subpopulations were independent and using the most conservative population-specific persistence probabilities (*i.e.,* 0.958, 0.295, and 0.849, respectively) (Laufenberg and Clark 2014, p. 47). If subpopulations are not independent (some environmental processes would affect all populations similarly), the long-term viability of the metapopulation could be reduced. However, the high persistence probabilities for the TRB and UARB subpopulations would offset that reduction because the probability that at least one subpopulation would persist would be as great as that for the subpopulation with the greater probability of persistence (which was greater than 95 percent) (Laufenberg and Clark 2014, p. 80).

Recovery

Section 4(f) of the Act directs us to develop and implement recovery plans for the conservation and survival of threatened and endangered species unless we determine that such a plan will not promote the conservation of the species. Recovery plans are not regulatory documents and are instead intended to establish goals for long-term conservation of a listed species; define criteria that are designed to indicate when the threats facing a species have been removed or reduced to such an extent that the species may no longer need the protections of the Act; and provide guidance to our Federal, State, and other governmental and non-governmental partners on methods to minimize threats to listed species. There are many paths to accomplishing recovery of a species, and recovery may be achieved without all criteria being fully met. For example, one or more

criteria may have been exceeded while other criteria may not have been accomplished, yet the Service may judge that, overall, the threats have been minimized sufficiently, and the species is robust enough, to reclassify the species from endangered to threatened or perhaps delist the species. In other cases, recovery opportunities may have been recognized that were not known at the time the recovery plan was finalized. These opportunities may be used instead of methods identified in the recovery plan.

Likewise, information on the species may be learned that was not known at the time the recovery plan was finalized. The new information may change the extent that criteria need to be met for recognizing recovery of the species. Recovery of species is a dynamic process requiring adaptive management that may, or may not, fully follow the guidance provided in a recovery plan.

The following discussion provides a brief review of recovery planning and implementation for the Louisiana black bear, as well as an analysis of the recovery criteria and goals as they relate to evaluating the status of the taxon.

The Louisiana Black Bear Recovery Plan was approved by the Service on September 27, 1995 (Service 1995, 59 pp.). It was developed in coordination with the BBCC and its Black Bear Restoration Plan (BBCC 1997, entire document). The objective of the recovery plan is to sufficiently alleviate the threats to the Louisiana black bear metapopulation, and the habitat that supports it, so that the protection afforded by the Endangered Species Act is no longer warranted.

The four primary recovery actions outlined in the Louisiana black bear recovery plan are:

(1) Restoring and protecting bear habitat;

(2) developing and implementing information and education programs;

(3) protecting and managing bear populations; and

(4) conducting research on population viability, corridors, and bear biology. Significant accomplishments have been made on all of the primary actions for this subspecies (Service 2014, entire document). Below are examples:

Habitat Restoration and Protection: Habitat Restoration Planning maps have been used to focus our conservation efforts resulting in approximately 148,400 ac (60,055 ha) of privately owned lands being restored and protected under the Service's Partners for Fish and Wildlife program and the WRP program. Approximately 480,836 ac (194,588 ha) have been permanently protected, including 126,417 ac (51,159 ha) that have been purchased or put under non-development easements in the Atchafalaya Basin (see the Factor Analysis below for additional details).

Information and Education Programs: The BBCC, which implemented the first public education efforts, developed a landowner habitat management guide and continues to present informational and educational materials about bears and how to live in areas where they occur. The Bear Education and Restoration (BEaR) group of Mississippi, and the East Texas Black Bear Task Force, are additional organizations that actively conduct public education activities through events such as workshops, public talks, and brochures. There are two annual black bear festivals, one each in Mississippi and Louisiana, to promote public education and awareness of bears. Louisiana, Mississippi, and Texas have all developed and are distributing public education and safety informational material. LDWF regularly sponsors hunter safety and teacher workshops.

Protecting and Managing Bear Populations: The BBCC developed the black bear restoration plan in 1997. All three States (LA, MS, TX) now have black bear management plans in place that guide their restoration and management activities. LDWF and MDWFP have nuisance response protocols in place and actively manage human–bear conflicts in coordination with the U.S. Department of Agriculture's (USDA) Wildlife Services program. The LDWF initiated a program with St. Mary Parish to reduce bear human conflict in the LARB by providing an employee dedicated to reduce bear access to anthropogenic food sources (*e.g.* garbage, pet foods) in conjunction with purchasing and deploying bear-resistant waste cans (Davidson et al. 2015, p. 51). The LDWF continues providing financial support for the Parish to maintain this program and has worked with adjacent parishes to implement similar programs. The LDWF and Service have worked with the Louisiana Department of Transportation and Development to provide bear crossing signs on Hwy 90 in the LARB subpopulation and to focus habitat restoration and protection efforts for future bear crossings (*i.e.,* under passes). Similar efforts are underway to address the same concern along I–20 in the TRB subpopulation. The LDWF, in coordination with the Service and U.S. Geological Survey (USGS), has developed a database that is used to track bear occurrences, captures, and mortalities to better manage subpopulations. A multi-partner effort to conduct a translocation program (based on new methodology of being able to use soft releases) from 2001 through 2009 resulted in the successful formation of the TRC breeding subpopulation.

Conduct Research on Population Viability, Corridors, and Bear Biology: More than 25 research studies on Louisiana black bear biology and habitat requirements, subpopulation vital statistics, taxonomy and genetics, and public attitudes in Louisiana, Mississippi, and Texas have been conducted (see Laufenberg and Clark 2014, p. 5 for a partial listing). The LDWF will continue monitoring (using hair snare and mark recapture efforts) the TRB, UARB, TRC, and LARB subpopulations (Davidson et al, 2015, p. 33, Table 3.1). Data from these studies are being used to monitor and manage the bear population.

Additionally, all four of these recovery actions have been identified for continued implementation in the LDWF Black Bear Management Plan (Davidson et al. 2015), the Mississippi Conservation and Management of Black Bears in Mississippi Plan (Young 2006, Appendix A), and the East Texas Black Bear Conservation and Management Plan (Barker et al. 2005, pp. 30–41).

Substantial progress has been achieved in alleviating known threats to the Louisiana black bear through increased habitat protection and restoration, improved population demographics by reduction of habitat fragmentations, increased knowledge of key population attributes (*e.g.,* survival, fecundity, population growth rates, home ranges) necessary to manage this species, responsive conflict management, and increased public education. Many public and private partners have contributed to the current improved status of the Louisiana black bear population by implementing these recovery actions.

Recovery Criteria

The Recovery Plan includes the following criteria to consider the Louisiana black bear for delisting:

(1) At least two viable subpopulations, one each in the Tensas and Atchafalaya River Basins;

(2) immigration and emigration corridors between the two viable subpopulations; and

(3) long-term protection of the habitat and interconnecting corridors that support each of the two viable subpopulations used as justification for delisting.

The recovery plan defines a minimum viable subpopulation as one that has a 95 percent or better chance of

persistence over 100 years, despite the foreseeable effects of four factors: Demography, environment, genetics, and natural catastrophe (Schaffer 1981, p. 133). Long-term protection was defined in the recovery plan as having sufficient voluntary conservation agreements with private landowners and public land managers in the Tensas and Atchafalaya River Basins (in Louisiana) so that habitat degradation is unlikely to occur over 100 years. The recovery plan (Service 1995, p. 14) also noted that the requirements for delisting were preliminary and could change as more information about the biology of the species was known. We continue to believe the recovery criteria outlined in the 1995 Service recovery plan (Service 1995) are valid (see our published 5-year review for the bear at *http://www.fws.gov* for more detail and our evaluation of the latest information as it relates to the criteria).

All of these criteria have been met, as described below. Additionally, the level of protection currently afforded to the species and its habitat, as well as the current status of threats, are outlined below in the *Summary of Factors Affecting the Species* section. In addition, we are issuing a draft PDM plan at the same time as this proposed rule (see Post Delisting Monitoring section). A primary goal of post-delisting monitoring is to monitor the species to ensure the status does not deteriorate, and if a substantial decline in the species (numbers of individuals or populations) or an increase in threats is identified, to enact measures to halt the decline so that re-proposing the species as threatened or endangered is not needed. We may delist a species according to 50 CFR 424.11(d) if the best available scientific and commercial data indicate that the species is neither endangered nor threatened for the following reasons: (1) The species is extinct; (2) the species has recovered and is no longer endangered or threatened; and/or (3) the original scientific data used at the time the species was classified was in error.

Criterion (1): At least two viable subpopulations, one each in the Tensas and Atchafalaya River Basins. Historic habitat fragmentation, and the potential for continued loss and fragmentation, threatened the ability of the bear to survive as a population and also potentially affected the demographic integrity of the subsequently isolated subpopulations. Based on Shaffer's discussion (1981, p. 133), the requirement for two viable Louisiana black bear subpopulations (one each in the Tensas and Atchafalaya River Basins) with exchange of individuals (see Criterion 2) to form a metapopulation would increase the likelihood of two or more subpopulations persisting for 100 years (BBCC 1997, p. 54). In terms of achieving recovery criteria, the UARB subpopulation is located approximately 110 miles south of the TRB and, thus, the Louisiana black bear breeding subpopulation nearest the one in Tensas River Basin. The LARB subpopulation is located approximately 70 miles south of the UARB (therefore, approximately 180 miles south of TRB). When these recovery criteria were developed, there were no successful methods for establishing new breeding subpopulations other than relying on habitat restoration and natural population expansion. Thus, habitat restoration was and still is focused on surrounding all breeding subpopulations. Currently, there is one new breeding subpopulation, the TRC (formed in Louisiana as a result of reintroductions), between the TRB and UARB. This location was chosen for reintroductions in order to facilitate movement of individuals between the UARB and TRB subpopulations. Recent documentation of bear movement between the TRC and UARB and between the UARB and TRB via the TRC subpopulation demonstrates the success of this effort. In addition, several smaller breeding areas indirectly resulting from those reintroductions are forming in Louisiana. Additionally, three naturally forming (and indirectly resulting from the Louisiana reintroductions) breeding populations are establishing themselves in Mississippi, all evidence of increased interchange of bears.

The estimated probability of persistence over 100 years for the TRB subpopulation was 1.00 and 0.96 for process-only Model 1 estimates and was 1.00 and 0.96 for Model 2 estimates (Laufenberg and Clark 2014, p. 46). The probability of persistence of the UARB subpopulation met the 95 percent probability of long-term persistence except under the two most conservative sets of assumptions (Model 2, all uncertainty) (Laufenberg and Clark 2014. p. 82). The estimated asymptotic growth rates for the TRC ranged from 0.99 to 1.02, for Model 1 and Model 2, respectively (Laufenberg and Clark 2014, p. 45). TRC persistence probabilities ranged from 0.29 to 0.99 depending on carrying capacity, the strength of the density dependence, level of uncertainty, and the treatment of unresolved fates (*i.e.,* deaths or lost collars) (Laufenberg and Clark 2014, p. 47). Using the telemetry and reproductive data from the TRC, probabilities of persistence were greater than or equal to 0.95 only for projections based on the most optimistic set of assumptions (Laufenberg and Clark 2014, p. 47).

Estimates of long-term viability of the TRB and the UARB subpopulations were greater than 95 percent except for the two most conservative models for the UARB (long-term viability estimates of 85 percent and 92 percent). Taken together as a system, and assuming that those subpopulations were independent, the combined viability analysis of the TRB, UARB, and TRC (using the most conservative estimates obtained for all three subpopulations) indicated that the Louisiana black bear metapopulation (TRB, TRC, and UARB) has an overall long-term probability of persistence of approximately 100 percent (0.996) (Laufenberg and Clark 2014, p. 92). The current movement of individuals between the additional subpopulations elsewhere in Louisiana and Mississippi would only improve metapopulation's chance for persistence (Laufenberg and Clark 2014, p. 94). The opportunity for movement of individuals between the TRB–TRC–UARB metapopulation and the LARB subpopulation is currently low; however, the presence of the relatively large LARB subpopulation and projections for improving habitat conditions (refer to Factor A and D discussions below) between it and the more northerly UARB subpopulation contributes to the persistence of the Louisiana black bear population as a whole.

This recovery criterion, as described in the recovery plan, calls for two viable subpopulations, one each in the Tensas and Atchafalaya River Basins. The overall goal of the recovery plan was to protect the Louisiana black bear metapopulation and the habitat that supports it so that the protection afforded by the Act is no longer warranted. Based on the above analysis, we believe the Tensas subpopulation is viable and we believe the UARB subpopulation is viable based on three model scenarios. We have high confidence in these three model scenarios. The long term persistence of the Louisiana black bear metapopulation (TRB, TRC, and UARB) is estimated to be at least 0.996 under the most conservative (*i.e.,* using the lowest estimates of viability) model assumptions; therefore, we believe this criterion to be met. We believe that these conservative assumptions identified in these scenarios will likely be present post-delisting as the Louisiana black bear PDM plan is

implemented. Additionally, we will pay close attention to UARB and LARB subpopulation parameters as post-delisting monitoring progresses. The TRC subpopulation located between TRB and UARB provides a mechanism for exchange between the TRB and UARB subpopulations. In addition, this recovery plan criterion did not include the possibility of other populations forming on the landscape because female range expansion is very slow and there was no acceptable methodology at the time to expedite that expansion (*e.g.,* soft release translocations). However, this assumption was proven wrong. In addition to the populations described above, we have documented new breeding populations established in Louisiana and Mississippi (Figure 1).

Criterion (2): Establishment of immigration and emigration corridors between the two subpopulations. This criterion and Criterion 3 (below) are addressed in the recovery plan Action 1: Restore and Protect Bear Habitat. To reach an accurate conclusion regarding the achievement of this criterion, it is essential to fully understand the term ''corridor'' in light of the advances in Louisiana black bear research methodology (and the knowledge gained regarding Louisiana black bear dispersal and interchange) that has occurred since the listing of the Louisiana black bear more than 20 years ago. Although the Louisiana black bear Recovery Plan does not specifically define the term ''corridor'', it does present the future objective of developing corridor requirements and guidelines from available research studies and incorporating pertinent findings and knowledge into practical management guidelines (Service 1995, p. 18).

The Black Bear Restoration Plan states that little was known about Louisiana black bear corridor use and requirements at that time (BBCC 1997, p. 58). Research studies conducted near the time of the Louisiana black bear listing were primarily inconclusive regarding the identification and function of corridors. Weaver et al. (1990b, p. 347) determined that the Louisiana black bear will use tree-lined drainages in agricultural areas to travel between larger forested tracts. They also stated, however, that ''research is needed to document the characteristics a corridor must possess to make it suitable for use by bears as a habitat link.'' Marchinton (1995, pp. 53, 64) speculated that male Louisiana black bear movements, though influenced by habitat fragmentation patterns, were not inhibited by the level of fragmentation within his study area (which was typical of the landscape throughout the range of the Louisiana black bear). He also discussed anecdotal evidence which suggested that ''adult male bears would cross open fields'' (Marchinton 1995, p. 59). We believe those early studies not only challenged the continuous-habitat-linkage perception of a corridor, but also described the need for additional research to clearly characterize the qualities and functions of such corridors.

The Black Bear Restoration Plan states that ''the criteria for measuring corridor effectiveness should also consider corridor function'' and ''research is urgently needed to determine the corridor functions, their size and shape, and their actual effectiveness'' (BBCC 1997, p. 58). To assess the function and role of corridors in Louisiana black bear dispersal and genetic exchange, Laufenberg and Clark (2014, pp. 24–31) conducted a movement, or step selection, study throughout a large portion of the range of the Louisiana black bear. In regard to facilitating Louisiana black bear movement between subpopulations, their findings indicated that, while contiguous forested habitat linkages can be beneficial to bears moving through a fragmented landscape, hypothetical forested corridors ''were not more effective than the broken habitat matrix that surrounded many of the subpopulations'' (Laufenberg and Clark 2014, p. 85). Their study also documented interchange occurring ''from the UARB to the TRB by way of the TRC'' (Laufenberg and Clark 2014, pp. 2, 84). Such interchange supports the assertion by Laufenberg and Clark (2014, p. 90) that the presence of multiple satellite populations of breeding bears on the landscape may be more effective in establishing and/or maintaining connectivity between the larger subpopulations than the presence of contiguous forested linkages.

Most such satellite populations exist today as a result of a multi-agency project undertaken specifically to reduce demographic isolation of the existing TRB and UARB subpopulations. That translocation project, initiated in 2001, was based on the assumption that relocated females with cubs would remain at a new location (not currently supporting a Louisiana black bear subpopulation) and adult females would be discovered by males traveling through the area. From 2001 through 2009, 48 females and 104 cubs were moved (primarily from the TRB) to a complex of public lands located between the TRB and the UARB subpopulations. Though most relocated females and their offspring remained within the vicinity of their release site (creating a new subpopulation that reduced the distance between existing subpopulations), a few dispersed to various habitat patches creating the satellite populations that now facilitate interchange between the larger subpopulations.

As part of the recovery process, HRPA maps were developed by a collaborative multi-agency and organization group (Federal, State, local government partners, and nonprofit organizations including but not limited to the Natural Resources Conservation Service (NRCS), LDWF, BBCC, Louisiana State University, the Louisiana Nature Conservancy, and the Service) to design and create landscape features to support the habitat-block/satellite-population corridor concept that facilitates such interchange. The Louisiana black bear HRPA maps are regularly updated; the most recent update was in the spring of 2011. Those maps are designed for use with conservation programs administered by NRCS) (*e.g.,* WRP) and the Service (*e.g.,* Partners for Fish and Wildlife (PFW)), which primarily encourage reforestation of marginal and nonproductive cropland in Louisiana. The maps, using a 3-tiered point system, establish higher point zones (indicating higher importance for bear recovery and thus providing landowners competing for this conservation funding with a higher ranking) around breeding bear habitat, large forested areas, and various habitat patches that may facilitate interchange between Louisiana black bear subpopulations. Areas that would benefit breeding subpopulations and corridors thus receive the highest priority and landowners competing for WRP enrollment would receive higher rankings in those areas. Most WRP tracts are encumbered by permanent easements that protect the land from future conversion or development (refer to discussion in Factor D).

Similar conservation priority maps have been developed and are currently in use in Mississippi (Ginger et al. 2007). The TPWD and its partners have developed Land Conservation Priority Maps for East Texas and a Hardwood Habitat Cooperative that offers a cost-share program to landowners seeking to restore or enhance hardwood habitat on their lands. In East Texas, more than 500 ac (200 ha) have been restored and 1,550 ac (630 ha) were enhanced via the Hardwood Habitat Cooperative program between 2008 and 2011.

The Louisiana Black Bear Recovery Plan states that corridors providing cover may facilitate the movement of bears between highly fragmented forest tracts. It also states, however, that the Louisiana black bear has been known to

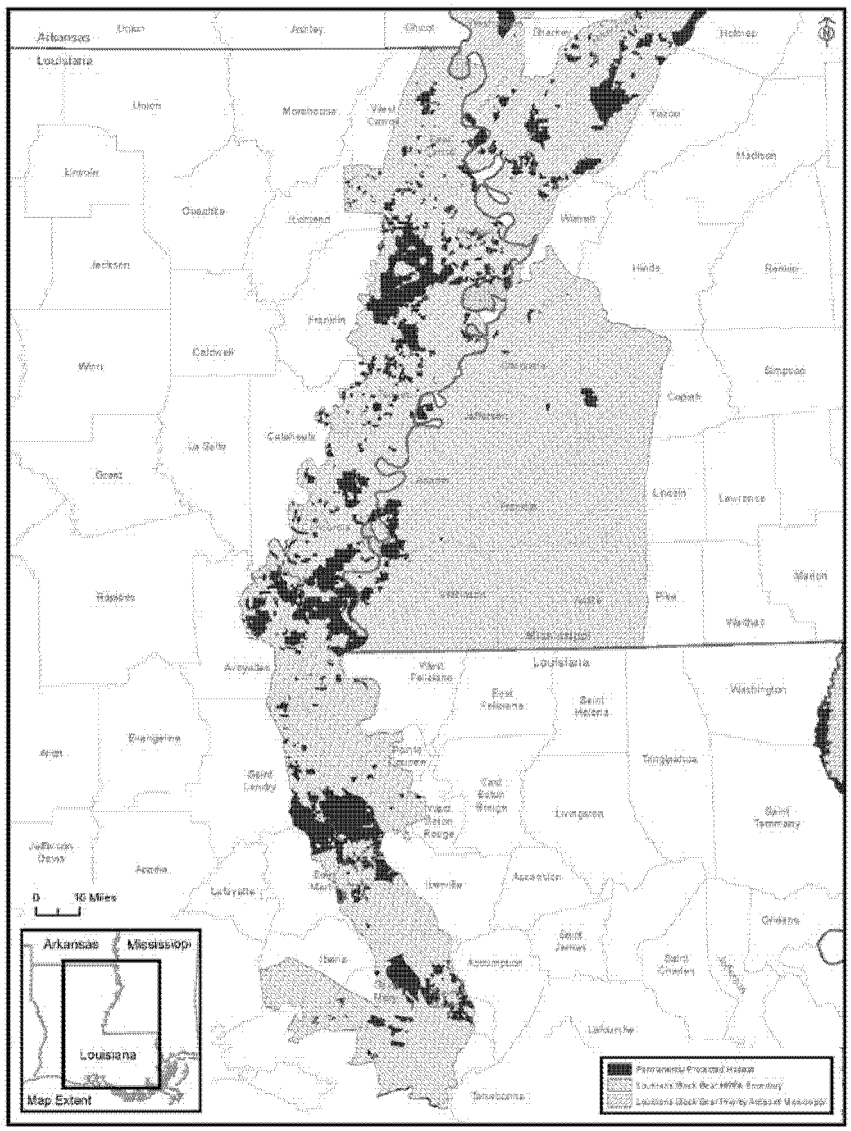
cross open, agricultural fields even when forested corridors were available, and that ''habitat blocks (large blocks of land) may provide more effective corridors'' (Service 1995, p. 6). This type of habitat-block/satellite-population corridor occurs throughout the range of the Louisiana black bear in the form of remnant forested patches and tracts of restored habitat (on private and public lands), and has been augmented by the relocation of bears into east-central Louisiana. Laufenberg and Clark (2014, p. 90) concluded, based on the result of their work, that a patchwork of natural land cover between Louisiana black bear breeding subpopulations may be sufficient for movement of individuals between subpopulations (at least for males). Laufenberg and Clark (2014, p. 85) postulated that, while such corridors may be important, they were not more effective than the presence of a broken-habitat matrix such as what is surrounding current Louisiana black bear subpopulations. As described above, research supports this corridor concept and the documented evidence of interchange between the UARB and the TRB subpopulations (and additional interchange with subpopulations in Arkansas and Mississippi) provides further validation. The Louisiana black bear recovery plan indicates ''key corridors or habitat blocks need to be identified and will be required to ease fragmentation within and between occupied habitat for the Louisiana black bear.'' We have clearly documented evidence of interchange between the TRB and UARB subpopulations by way of the TRC, and, therefore, we have met this criterion.

Criterion (3): Long-term protection of habitat and interconnecting corridors that support each of the two viable subpopulations used as justification for delisting. The recovery plan states that long-term protection is defined as having sufficient voluntary conservation agreements with private landowners and public land managers in the Tensas and Atchafalaya River Basins so that habitat degradation is unlikely to occur over 100 years (Service 1995, p. 14). Additionally, the Black Bear Restoration Plan states that criteria for determining whether long-term habitat and corridor protection has been achieved could include ''data projecting future habitat trend according to historical trend in acreage and habitat type/quality'' (BBCC 1997, p. 58). It further states that other metrics to consider may include the extent of cooperating private landowners and the nature of their respective conservation agreements, as well as ''federal legislation restricting agricultural conversion of wetlands, and the nature of conservation easements such as those being obtained from private landowners by the Corps in the Atchafalaya Floodway'' (BBCC 1997, p. 58). Employing those criteria, and based on the genetic and connectivity studies by Laufenberg and Clark (2014), it is evident that not only are corridors between the UARB and the TRB subpopulations present and functional, they are afforded long-term protection through a combination of conservation easements and environmental regulations.

Habitat Protection Through Ownership or Permanent Easements: An estimated 450,000 to 550,000 ac (182,000 to 222,000 ha) of BLH forest habitat were restored in the LMRAV within 12 years of the Louisiana black bear being listed as a threatened species (Haynes 2004, p. 173). Since 1992, more than 148,000 ac (60,000 ha) of land has been permanently protected and/or restored in the HRPA via the WRP program (mostly in the TRB and UARB areas) (Table 2). It should also be noted that, in Louisiana, there are approximately 480,000 ac (195,000 ha) of public lands within the HRPA that are managed or maintained in a manner that provides benefits to bears (Table 5). Approximately 460,000 ac (186,000 ha) of public lands in Louisiana and Mississippi directly support Louisiana black bear breeding populations (Table 6, Figure 2).

Habitat Protection Through Regulations and Mitigation: A large proportion of the remaining forested habitat that is not encumbered by perpetual conservation servitudes or public ownership and management are occasionally to frequently flooded and would not be suitable for conversion to agriculture or development without the construction of significant flood control features. The construction of such features or other activities would eliminate or reduce existing wetland habitat (including forested wetlands) and would be regulated via The Food Security Act of 1985 and/or Section 404 of the CWA. Although the CWA was initially considered insufficient to ensure the long-term protection of Louisiana black bear corridors, significant changes have occurred in the legal interpretation and authoritative limits of the CWA. As the result of multiple court cases and revised legal interpretations, the regulatory scope and enforcement authority of the Corps and the Environmental Protection Agency (EPA) under the CWA was substantially broadened (see discussion under Factor D for additional information). With the institution of those regulatory changes, the trajectory of BLH forest loss in the LMRAV has not only improved, but has also been reversed. This trend reversal is heavily supported by published accounts (Haynes 2004, p. 173), natural resource management agency records (Table 2), and our analysis of classified imagery within the Louisiana black bear HRPA (Tables 7 and 8). The habitat loss trend reversal is further supported by an analysis of data obtained from the Corps' wetland regulatory program, which demonstrates that substantially more forested habitat is restored through compensatory wetland mitigation than is eliminated via permitted wetland development projects (Table 10). Furthermore, the Corps' wetland regulatory program data indicate that the ratio of wetland habitat gains from compensatory mitigation to wetland habitat losses attributed to permitted projects is 6:1 (R.M. Stewart, Vicksburg District Corps, personal communication, 2014).

Figure 2. Permanently protected lands within Louisiana Black Bear Restoration Planning Areas in Louisiana and Mississippi in 2014.



In summary, the current distribution of habitat patches and breeding subpopulations have been documented to provide sufficient connectivity for interchange to occur between the UARB and the TRB subpopulations as detailed in Criterion 2 (Laufenberg and Clark 2014, pp. 83–84). A substantial amount of forested habitat within the Louisiana black bear HRPA system is perpetually protected through conservation easements (on private lands) and fee-title purchases (public lands) for the purpose of providing wildlife habitat (which includes Louisiana black bear habitat (Figure 2). All available data indicate that current environmental laws and regulations (in particular, the CWA) are sufficient to provide long-term protection of the Louisiana black bear corridor system. In fact, relating to the Louisiana black bear, data clearly demonstrate that the CWA regulatory program not only provides adequate protection for its habitat, but has also resulted in habitat gains due to compensatory mitigation requirements (see Table 11 and discussion under Factor A, below). The ''Swampbuster'' provisions of the Food Security Act of 1985 provide additional protections against the conversion of forested wetlands for agricultural purposes. There is no available information to suggest that either of these regulatory protections would be weakened or eliminated in the foreseeable future.

We have no information to suggest that the current trend of habitat gains within the LMRAV and the HRPA from voluntary landowner-incentive based programs and environmental regulations would not continue for the foreseeable future (Tables 2, 3, 7, 8, and 10). A substantial acreage of the habitat that supports the main breeding subpopulations in the TRB and UARB is in public ownership (*e.g.,* Tensas River NWR, Big Lake WMA, Buckhorn WMA, Richard K. Yancey WMA, Sherburne WMA, and Bayou Teche NWR) and managed to provide habitat for a variety of wildlife including the Louisiana black bear (see *State-owned lands* and *U.S. Fish and Wildlife National Wildlife Refuges* sections of Factor D). Accordingly, we believe that the habitat within the Louisiana black bear corridor system is functional, and is afforded long-term and adequate protection from

existing regulatory mechanisms and through the management efforts of our State, Federal, and non-governmental partners.

Summary of Factors Affecting the Species

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for listing, reclassifying, or removing species from the Federal Lists of Endangered and Threatened Wildlife and Plants. To list a species, we must first evaluate whether that species may be an endangered species or a threatened species because of one or more of the five factors described in section 4(a)(1) of the Act. We must consider these same five factors in reclassifying or delisting a species. The Act does not define the term ''foreseeable future.'' For the purpose of this rule, we define the foreseeable future to be the extent to which, given the amount and substance of available data, we can anticipate events or effects, or reliably extrapolate threat trends, such that we reasonably believe that reliable predictions can be made concerning the future as it relates to the status of the Louisiana black bear. A recovered species is one that no longer meets the Act's definition of a threatened or an endangered species.

The following analysis examines all five factors currently affecting, or that are likely to affect, the Louisiana black bear within the foreseeable future.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The final rule that listed the Louisiana black bear as a threatened subspecies states that it ''meets the criteria for protection under the Act on the basis of past habitat loss alone'' (57 FR 588). It also identified the threat of further habitat loss of occupied habitats due to conversion to agriculture or other non-timber uses on top of past severe losses that occurred (historical modification and reduction and reduced quality of habitat, primarily as a result of conversion to agriculture), the lack of protection of privately owned woodlands in the north Atchafalaya and Tensas River Basins, and inadequacy of existing regulatory protections to protect Louisiana black bear habitat (see Factor D for regulatory mechanism discussion).

We present multiple habitat assessment metrics to establish trends within the LMRAV and the Louisiana black bear HRPA. This relatively high level of redundancy is provided to demonstrate that habitat trends have been accurately identified, and to compensate for the limitations in geographic information system (GIS) technology at the time of listing of the Louisiana black bear. GIS technology was in its infancy in the 1990s, so our ability to accurately delineate the extent and distribution of Louisiana black bear habitat at the time of listing was determined from a best professional estimate based on hand-drawn maps. In addition, the geographic areas used for those initial estimates were not often well described and varied by study, making successive temporal comparisons quite difficult. Advances in technology, including GIS and remotely sensed data (*e.g.,* aerial and satellite imagery), currently allow for highly accurate identification and delineation of habitat based on specified characteristics. This, subsequently, provides for a more consistent and reproducible estimate of Louisiana black bear habitat distribution and trend.

According to Haynes (2004, p. 172), the forested wetlands of the LMRAV have been reduced from historic estimates of 21 to 25 million acres (8.5 to 10 million ha) to a remnant 5 to 6.5 million acres (2 to 2.6 million ha). Significant increases in soybean prices in the late 1960s and early 1970s provided the impetus for the large-scale conversion of forested habitat to agriculture, which was facilitated by improved flood control, drainage, and technology (Wilson et al. 2007, pp. 7–8). Allen et al. (2004, p. 4) concurred that the primary cause of bottomland hardwood loss has been conversion to agricultural production. According to Creasman et al. (1992) as cited by Haynes (2004, p. 170), approximately 78 percent of the bottomland forests in Arkansas, Louisiana, and Mississippi had been lost to conversion at the time of listing. When the bear was listed in 1992, the Service recognized that the rate of loss of bear habitat had leveled off (Service 1992, p. 592). Since that time (1990–2010), forested habitat within the LMRAV has increased (Oswalt 2013, p. 4).

The Black Bear Restoration Plan states that the delisting criteria standard of long-term habitat and corridor protection could involve a projection of future habitat trend based on historical trends in acreage and habitat type/quality (BBCC 1997, p. 58). In that regard, Schoenholtz et al. (2001, p. 612; 2005, p. 413) described a ''promising or encouraging'' trend in the annual increase of afforestation (planting of trees to create forested habitat) in the LMRAV. Available data indicates that over the past three decades, forest restoration in the LMRAV portions of Louisiana, Mississippi, and Arkansas has increased dramatically, and has led to a significant removal of land from agricultural production for the purpose of hardwood forest establishment (Gardiner and Oliver 2005, p. 243; and Oswalt 2013, p. 6). In some areas, these gains have been especially noteworthy. For example, West Carroll Parish, Louisiana, experienced a 92 percent loss of forested area from 1950 (45 percent forest) to 1980 (8 percent forest), and in 2013, the parish was approximately 18 percent forested (Oswalt 2013, p. 4).

As stated in Table 1, breeding habitat for the bear at the time of listing was roughly 340,400 acres. The total has grown based on implementation of recovery actions with numerous partners to more than 1,800,000 acres by the end of 2014. This is approximately five times the amount of area occupied by breeding subpopulations than was occupied at the time of listing. Examples of actions that have helped reduce habitat loss or improve suitable habitat for the Louisiana black bear are discussed below.

A major factor in this positive habitat trend is the success of incentive-based private land restoration programs, such as WRP, which was established by the Food Security Act of 1990. The WRP has been ''perhaps the most significant and effective wetland restoration program in the world'' (Haynes 2004, p. 173). According to Haynes (2004, p. 173), within 12 years of the Louisiana black bear being listed as a threatened species, an estimated 450,000 to 550,000 ac (182,000 to 222,000 ha) of BLH forest had been restored in the LMRAV. Since 1992, more than 148,000 ac (60,000 ha) of land has been permanently protected and/or restored in the HRPA via the WRP program (mostly in the TRB and UARB areas) (Table 2). The entire 148,000 ac (60,000 ha) of restored land benefits movement between populations, with approximately 97,000 ac (39,000 ha) directly benefitting breeding populations (Table 2). The use of the Louisiana Black Bear Habitat Restoration Planning Maps in conjunction with the WRP has not only increased the total amount of available Louisiana black bear habitat, but has also allowed us and our partners to directly focus on addressing the recovery criteria. When WRP permanent easement lands are added to the habitat protected on Federal and State NWRs or WMAs, mitigation banks, and the numerous Corps fee title and easements (as discussed in detail under the Factor D section), approximately 638,000 ac (258,000 ha) have been permanently protected and/or restored within the HRPA in Louisiana (Table 3). Although not permanently protected, an additional 122,000 ac (49,000 ha) of

lands currently enrolled in 10- to 15-year agreements via the CRP program of the Farm Service Agency (FSA) within the HRPA (Table 4) provide short-term habitat that can be used by bears for foraging/denning and travel.

Many of the remaining forested wetland areas (as we have detailed) have been protected within our National Wildlife Refuge System, in National Forests, in State WMAs, and on U.S. Department of Agriculture WRP or other conservation easement sites (King et al. 2006). The Partners for Fish and Wildlife Program focuses on conservation delivery adjacent to or nearby such protected areas to help meet our strategy of expanding main conservation areas and linking habitat by reducing fragmentation. Numerous projects administered through this program have provided direct habitat benefits for the Louisiana black bear. Additional details regarding the effectiveness of this program can be found in the Factor D section, titled *Partners for Fish and Wildlife Act Regulations.*

It should also be noted that in Louisiana there are approximately 480,000 ac (195,000 ha) of public lands (*e.g.,* NWRs, WMAs, and Corps lands) that are managed or maintained in a way to benefit wildlife (including bears) in the HRPA (Table 5). A description of the formal guidance and/or legal documents that direct those management actions is provided in Factor D below. Several of these public lands did not exist or were not as large in the early 1990s as they are today (*e.g.,* Bayou Teche NWR, Tensas River NWR, Buckhorn WMA). Approximately 460,000 ac (186,000 ha) of public lands (inside and outside of the HRPA) in Louisiana and Mississippi directly support Louisiana black bear breeding populations (Table 6).

In summary, there are about 460,000 ac (186,000 ha) of Federal- and State-owned conservation lands managed for wildlife in Louisiana and Mississippi that directly support Louisiana black bear subpopulations. If this proposed delisting is finalized, those areas would continue to remain permanently protected. Since listing, we have gained more than 4,000 ac (1,600 ha) of Federal land in Mississippi that benefit bears, acquired new NWRs (such as Bayou Teche NWR in Louisiana in 2001), and expanded others. In addition to the permanently protected habitat in public ownership, we have worked with States and landowners to secure 148,000 ac (60,000 ha) of permanent WRP easements. Regardless of whether the bear is delisted, these voluntary permanent easements protect wetlands and ensure that habitat will be maintained (see Factor D for associated regulatory protections). In addition to the approximately 638,000 ac (258,000 ha) of permanently protected habitat (refer to Table 3), there are roughly 122,000 ac (49,000 ha) of habitat enrolled in CRP (with 10- to 15-year contracts), which also provides benefits to the Louisiana black bear.

Forested wetlands throughout the range of the Louisiana black bear habitat that are not protected through direct public ownership or easements on private lands will continue to receive protection through Section 404 of the CWA and the ''Swampbuster'' provisions of the Food Security Act of 1985. Forested habitat trends in the LMRAV indicate that those regulations have provided adequate long-term protection of Louisiana black bear habitat since the listing of the Louisiana black bear in 1992. The trajectory of BLH forest loss in the LMRAV has been reversed with substantial gains in forested habitat being realized within both the LMRAV and the more restrictive HRPA.

To further evaluate forested wetland habitat trends within the HRPA, we employed a digital GIS analysis of landscape changes in which classified habitat types were monitored over time. To increase the confidence level of that analysis, we evaluated two independent sets of imagery (image dates were based on availability). The results of both methodologies (shown in Tables 7 and 8 below) demonstrate significant gains in potential bear habitat within the Louisiana black bear HRPA in recent decades. Those results are consistent with government agency records for forested habitat restoration through programs such as WRP, CRP, and wetland mitigation banking.

TABLE 2—PRIVATE LANDS ENROLLED IN THE USDA NATURAL RESOURCES CONSERVATION SERVICE WETLAND RESERVE PROGRAM (PERMANENT EASEMENTS) SUPPORTING BREEDING HABITAT AND WITHIN THE LOUISIANA BLACK BEAR HABITAT RESTORATION PLANNING AREAS (HRPA), LA (ac [ha])

	Tensas River Basin [1]	Upper Atchafalaya River Basin	Lower Atchafalaya River Basin	Total
Breeding Habitat [2]	90,198 [36,502]	6,500 [2,630]	0 0	96,698 [39,132]
HRPA	136,870 [55,389]	11,530 [4,666]	0 0	148,400 [60,055]

[1] Includes the TRC subpopulation.
[2] Breeding habitat is primarily contained within the HRPA, but has expanded beyond it in some areas.

TABLE 3—TOTAL AREA (NWRS, WMAS, WRPS, CORPS LANDS, FARMERS HOME ADMINISTRATION [FmHA] EASEMENT TRACTS, AND WETLAND MITIGATION BANKS) WITHIN LOUISIANA BLACK BEAR BREEDING HABITAT AND THE LOUISIANA BLACK BEAR HRPA WITHIN LOUISIANA (ac [ha])

	Tensas River Basin [1]	Upper Atchafalaya River Basin [3]	Lower Atchafalaya River Basin [3]	Total [3]
Louisiana black bear breeding habitat	1,002,750 [405,799]	290,263 [117,465]	130,839 [52,949]	1,423,853 [576,213]
Permanently protected Louisiana black bear breeding habitat [2]	493,639 [199,769]	91,880 [37,182]	7,614 [3,081]	593,133 [240,032]
Percent of Louisiana black bear breeding habitat that is permanently protected [2]	49.2	31.7	5.8	41.7

TABLE 3—TOTAL AREA (NWRS, WMAS, WRPS, CORPS LANDS, FARMERS HOME ADMINISTRATION [FmHA] EASEMENT TRACTS, AND WETLAND MITIGATION BANKS) WITHIN LOUISIANA BLACK BEAR BREEDING HABITAT AND THE LOUISIANA BLACK BEAR HRPA WITHIN LOUISIANA (ac [ha])—Continued

	Tensas River Basin [1]	Upper Atchafalaya River Basin [3]	Lower Atchafalaya River Basin [3]	Total [3]
Louisiana black bear HRPA	2,054,811 [831,553]	1,200,844 [485,964]	366,001 [148,115]	3,621,656 [1,465,632]
Permanently protected habitat within the Louisiana black bear HRPA	408,400 [165,274]	217,936 [88,195]	11,573 [4,683]	637,909 [258,152]
Percent of the Louisiana black bear HRPA that is permanently protected	19.9	18.1	3.2	17.6

[1] Includes the TRC subpopulation.
[2] Breeding habitat is primarily contained within the HRPA but has expanded beyond it in some areas.
[3] Figures shown in this table are based on currently available spatial data and represent the most accurate estimates to date. Certain protected habitat estimations presented here are lower than the figures provided in the Louisiana black bear 5-year status review document due to improved data availability and associated methodology, and not to actual reductions in protected habitat.

TABLE 4—CRP WITHIN THE LOUISIANA BLACK BEAR BREEDING HABITAT AND LOUISIANA BLACK BEAR HABITAT RESTORATION PLANNING AREAS, LA (ac [ha])

[*Numbers may not total due to rounding*]

	Tensas River Basin [1]	Upper Atchafalaya River Basin	Lower Atchafalaya River Basin	Total
Breeding Habitat [2 3]	44,766 [18,116]	21,770 [8,810]	0 [0]	66,536 [26,926]
HRPA	120,793 [48,883]	1,344 [544]	11 [5]	122,149 [49,432]

[1] Includes the TRC subpopulation.
[2] Breeding habitat area is largely a subset of (*i.e.,* contained within) the total HRPA.
[3] Breeding habitat areas have expanded beyond the HRPA boundary.

TABLE 5—STATE AND FEDERAL MANAGEMENT AREAS WITHIN THE LOUISIANA BLACK BEAR HABITAT RESTORATION PLANNING AREAS, LA (ac [ha])

[Numbers may not total due to rounding]

	Tensas River Basin [1 2]	Upper Atchafalaya River Basin [2]	Lower Atchafalaya River Basin [2]	Total [2]
NWRs	111,966 [45,311]	17,614 [7,128]	7,426 [3,005]	137,006 [55,444]
WMAs	143,933 [58,248]	59,423 [24,048]	1,474 [597]	204,830 [82,892]
Atchafalaya Basin Floodway Master Plan Easements and Acquisitions [3]	.....	126,417 [51,159]	.....	126,417 [51,159]
Total	255,899 [103,559]	226,037 [91,476]	8,900 [3,602]	480,836 [194,588]

[1] Includes the TRC subpopulation.
[2] Some acreage figures are less than that presented in the Louisiana Black Bear 5-Year Status Review due to property boundary refinements and corrections for certain NWRs and WMAs.
[3] This acreage (126,417) does not equal the 141,400 ac estimated by the Corps (Lacoste 2014). The reason for the apparent discrepancy is that the LDWF has been granted management authority over portions of the 141,400 ac (which include both fee title and easement properties). In our analysis, the management-transfer acreage was credited to LDWF (in the form of WMA acreage) rather than to the Corps. However, the total calculated protected-habitat acreage remains consistent (and accurate) regardless of that management authority reassignment.

TABLE 6—FEDERAL AND STATE NATURAL RESOURCE MANAGEMENT AREAS THAT SUPPORTS LOUISIANA BLACK BEAR BREEDING SUBPOPULATIONS (ac [ha]).

	Tensas River Basin [1]	Upper Atchafalaya River Basin [2 3]	Lower Atchafalaya River Basin	Louisiana total	Mississippi total [4]	Total
NWRs	160,815 [65,079]	16,030 [6,487]	7,355 [2,976]	184,199 [74,543]	4,383 [1,774]	188,582 [76,316]

TABLE 6—FEDERAL AND STATE NATURAL RESOURCE MANAGEMENT AREAS THAT SUPPORTS LOUISIANA BLACK BEAR BREEDING SUBPOPULATIONS (ac [ha]).—Continued

	Tensas River Basin [1]	Upper Atchafalaya River Basin [2 3]	Lower Atchafalaya River Basin	Louisiana total	Mississippi total [4]	Total
WMAs	223,926 [90620]	49,042 [19,846]	0	272,968 [110,466]	0	272,968 [110,466]
Total	384,741 [155,699]	65,071 [26,333]	7,355 [2,976]	457,167 [185,009]	4,383 [1,774]	461,550 [186,783]

[1] Includes the TRC subpopulation and the Louisiana black bear subpopulation in north-central Louisiana near the Arkansas State line.
[2] Includes the Louisiana black bear subpopulation found in the Florida parishes of Louisiana (east of the Mississippi River).
[3] These figures do not include Atchafalaya Basin Floodway Master Plan easements and acquisitions purchased by the Corps, or lands not managed as part of a Federal or State natural resource management area.
[4] Although there are Louisiana black bear breeding subpopulations in Warren, Wilkinson, Issaqueena, and Sharkey Counties, only the Issaqueena/Sharkey subpopulation is currently located by State and Federal lands.

Table 7. Changes in the extent of forested habitat coverage within the Louisiana black bear HRPA between 1998 and 2013.[1]

	Northern Zone[2]	Central Zone[2]	Southern Zone[2]
Percent Increase in Forested Landscape[3]	11.4%	7.6%	7.5%

[1] Data was detected through image classification of digital orthophoto quarter quadrangles (DOQQs; digital orthorectified aerial photography produced at a spatial resolution of 1 meter by the U.S. Geological Survey). Analysis sites were selected to avoid potential bias against landscape features that could result in an underestimation of, or failure to detect, forested habitat losses (e.g., sites with a relatively high proportion of open water, agricultural fields, publicly owned properties, or perpetual conservation easements).
[2] These zones correspond to the general geographic location of our habitat assessment sites within the large-scale monitoring grid presented in the Service's *Draft Post-Delisting Monitoring Plan for the Louisiana Black Bear* (Service 2015, p. 62, Figure 4).
[3] Percentages, rather than acreages, are provided because only a portion of the overall landscape was evaluated. The intent of this assessment is to evaluate habitat trends and not to calculate absolute habitat values.

Table 8. Forested habitat changes between 2001 and 2011[1].

2001 - 2011 Change in Landcover Within the Louisiana Black Bear Habitat Restoration Planning Area	Tensas River Basin	Upper Atchafalaya River Basin	Lower Atchafalaya River Basin	Total
Crops Open Water Other Non-Habitat	-1,833.78	-2,857.42	-4,047.68	-8,738.88
Development	521.93	181.44	362.91	1,066.28
Potential Louisiana Bear Habitat [2]	1,311.85	2,675.99	3,684.77	7,672.61

[1] as detected through satellite-based image classification produced at a spatial resolution of 30 meters within the Louisiana Black Bear Habitat Restoration Planning Area (ac[ha]). The classified image data are formally termed NLCD and are a national land cover product created by the Multi-Resolution Land Characteristics Consortium.
[2] NLCD habitat classes considered potentially suitable for the Louisiana black bear include deciduous forest, woody wetlands, mixed forest, evergreen forest, shrub scrub, emergent herbaceous wetlands, and grassland herbaceous.

In 1992, when the Louisiana black bear was listed, the lack of habitat protection within the Atchafalaya River Basin was considered a significant component of the overall habitat loss threat to Louisiana black bears. The final rule that listed the Louisiana black bear as a threatened subspecies states that ''privately owned lands of the Atchafalaya River Basin south of U.S. 190 may remain exposed to threat from clearing and conversion to agricultural uses'' (Service 1992, p. 591). It further states that approximately one-half of the forests in the northern Atchafalaya River Basin and the Tensas River Basin are ''privately owned and under no protection through conservation easements or acquisition'' (Service 1992, p. 591). The Corps' Feasibility Study for the Atchafalaya Basin Floodway System projected the ''conversion of about 200,000 ac [81,000 ha] of forestland to agricultural land'' within the Lower

Atchafalaya Basin Floodway (Corps 1982, p. 29). Partly in response to that threat, when the Corps' Atchafalaya Basin Multi-Purpose Plan was approved, it authorized the acquisition of more than 300,000 ac (121,000 ha) of non-developmental easements on private lands and the fee-title purchase of more than 50,000 ac (20,000 ha) of land for conservation purposes within the Atchafalaya Basin covering a substantial amount of land between the UARB and the LARB subpopulations (Corps 1983, p. 3). According to the most current Corps' data, approximately 94,000 ac (38,000 ha) of environmental easements have been purchased and 47,400 ac (19,000 ha) of land have been purchased in fee title for conservation purposes within the Basin (Lacoste 2014).

Developmental and environmental provisions of those easements prohibit the conversion of land from existing uses (*e.g.,* conversion of forested lands to cropland). Camp development and timber harvests within the easement area must be conducted in compliance with associated easement restrictions. The current and future acquisition of land (via easement and fee-title purchase) for environmental purposes within the Basin have substantially reduced, and will continue to substantially reduce, the threat of habitat loss within this region of the State. In addition to those protections afforded to existing forested lands, the Service estimated that more than 35,000 ac (14,000 ha) of lakes and cypress-tupelo swamps would convert to higher elevation forests within the Basin by the year 2030 (LeBlanc et al. 1981, p. 65). This prediction is supported by more recent studies documenting increased and ''substantial'' sedimentation within the Basin, to the extent that certain areas exhibit ''the highest documented sedimentation rates in forested wetlands of the United States'' (Hupp et al. 2008, p. 139). Sedimentation results in increased forest floor elevation, and areas currently subject to frequent inundation will eventually reach elevations that are significantly less prone to flooding. Such elevation and hydrology changes are typically accompanied by a shift in vegetative community (reflective of the hydrologic conditions) resulting in habitats that are more suitable for bear foraging and habitation. Such changes could ultimately expand the acreage of suitable habitat for the UARB and LARB subpopulations, and improve habitat linkage and genetic exchange between those groups.

Although trends related to agricultural conversion of forested land have been reversed since the listing of the Louisiana black bear, another possible source of future habitat loss may be development associated with increased urbanization. To assess potential future habitat losses associated with development, we acquired population trend projections for all of the parishes within the Louisiana black bear HRPA. Population projections are available through year 2030; see Table 9. The Louisiana Parish Population Projections Series (2010–2030) were developed by Louisiana State University–Department of Sociology for the State of Louisiana, Office of Information Technology, Division of Administration (*http://louisiana.gov/Explore/Population_Projections/*).

Of the 17 parishes included within our Louisiana Black Bear Habitat Restoration Planning Area, 15 were projected to experience human population declines, including several that may experience substantial reductions (population declines of 10–23 percent). St. Landry and St. Martin Parishes were the only parishes within our analysis polygon with projected population growth over the next 15 years (though increases of only 3.88 and 5.07 percent, respectively, are expected). It should be noted that significant portions of those parishes, including their largest urban areas where most future population growth and associated development would be expected, occur outside of the HRPA. In summary, based on our review of the available human population projections, it appears that there is an extremely low threat of future Louisiana black bear habitat loss from urban expansion or other types of development.

Table 9. Human population projections for Louisiana parishes within the Louisiana Black Bear Habitat Restoration Planning Area.[1]

Parish	Population Projection for 2015	Population Projection for 2030	Number - Population Change	Percent - Population Change
Avoyelles	42,550	42,380	-170	-0.40%
Catahoula	9,400	7,720	-1,680	-17.87%
Concordia	17,160	13,930	-3,230	-18.82%
East Carroll	7,600	5,960	-1,640	-21.58%
Franklin	18,450	15,460	-2,990	-16.21%
Iberia	75,990	75,450	-540	-0.71%
Iberville	29,350	24,640	-4,710	-16.05%
Madison	10,470	8,230	-2,240	-21.39%
Pointe Coupee	21,560	19,380	-2,180	-10.11%
Richland	19,260	17,460	-1,800	-9.35%
St. Landry	94,420	98,080	3,660	3.88%
St. Martin	54,250	57,000	2,750	5.07%
St. Mary	47,410	40,390	-7,020	-14.81%
Tensas	5,200	3,990	-1,210	-23.27%
West Baton Rouge	22,540	21,070	-1,470	-6.52%
West Carroll	10,750	9,190	-1,560	-14.51%
West Feliciana	15,250	14,260	-990	-6.49%
Total Population Change over the Next 15 Years in the 17 Parishes Included in the Louisiana Black Bear Habitat Restoration Planning Area			**-27,020**	
Average Percent Population Change over the Next 15 Years for the 17 Parishes Included in the Louisiana Black Bear Habitat Restoration Planning Area			**-11.13%**	

[1] The effects of Hurricanes Katrina and Rita were considered in all projections. Data represent the "Middle Series" scenario provided by the State of Louisiana, Office of Information Technology, Division of Administration (http://louisiana.gov/Explore/Population_Projections/; downloaded on December 4, 2014).

Summary of Factor A: Under current landscape conditions and forested habitat extent, the subpopulations within the Tensas and Upper Atchafalaya River Basins [specifically the TRB, UARB, and TRC]) have an overall probability of persistence of approximately 100 percent (0.996; Laufenberg and Clark 2014, p. 2). This indicates that current available habitat is sufficient in quality and quantity to meet long-term survival requirements of the Louisiana black bear. Much of that habitat is protected and the extent of protected habitat continues to increase. Since the listing of the Louisiana black bear in 1992, voluntary landowner-incentive based programs and environmental regulations have not only stopped the net loss of forested lands in the LMRAV, but have resulted in significant habitat gains within both the LMRAV and the Louisiana black bear HRPA. We do not have any data indicating that future enrollment in voluntary landowner-incentive based programs would deviate significantly from recent historic trends.

There is also a substantial amount of private land that supports Louisiana black bears, but that is not encumbered by conservation easements. To conservatively estimate long-term habitat availability for the Louisiana black bear, those lands were excluded from much of our analyses (Tables 2, 3, 5, and 6). It should be noted, however, that those lands largely consist of forested habitats that are occasionally to frequently flooded and would not be suitable for conversion to agriculture or development without the construction of significant flood control features. The construction of such features or other activities that would eliminate or reduce existing wetland habitat (including forested wetlands), and would be regulated via The Food Security Act of 1985 and/or Section 404 of the CWA (refer to the *Factor D* section for further discussions on long-term protections afforded to private land through existing regulatory mechanisms). Due to the increase in available and restored habitat following the listing of the Louisiana black bear, including more than 460,000 ac (186,000 ha) held in Federal and State ownership, the protection of a substantial portion of restored habitats with perpetual non-developmental easements (through the WRP or wetland mitigation banking programs), and the protection of remnant and restored forested wetlands through applicable conservation regulations (*e.g.,* Section 404 of the CWA), we find that the present or threatened destruction, modification, or curtailment of its habitat or range is no longer a threat to the Louisiana black bear.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Hunting During the Past 23 Years: In addition to habitat loss, prior to listing, Louisiana black bear numbers had been reduced throughout its range due to historical overexploitation (Barker et al. 2005, p. 3; Davidson et al. 2015, p. 3; St. Amant 1959, p. 42; Shropshire 1996, p. 20). For example, Keul (2007, p. i) reviewed historical literature on the black bear in East Texas and concluded the primary reason for loss of bears was due to aggressive and uncontrolled sport hunting. Currently, there are no legal commercial or recreational consumptive uses of Louisiana black bears. In the mid-1950s, the bear hunting season in Louisiana was temporarily closed due to low bear numbers (Davidson et al. 2015, p. 5). In spite of low numbers, bear hunting remained legal for short time periods in restricted areas of Louisiana until 1988, when the season was once again closed; it has not since reopened (Davidson et al. 2015, p. 5; Murphy, 2015, personal communication). Additional protection was provided by the State listing of the Louisiana black bear (listed as threatened in Louisiana in 1992, as endangered in Mississippi in 1984, and as threatened in Texas in 1987) (refer to the Factor D section for further discussions on regulatory mechanisms).

Hunting in the Future: Should the Louisiana black bear be delisted and the accompanying protection afforded under the Act removed, the bear would remain protected under State law and the State penalties for poaching or harming a Louisiana black bear would remain in place (see *Factor D discussion*) (Davidson et al. 2015, p. 57). This includes protection that would remain in place for all bear species. After the bear is no longer protected by the ESA, however, the legal harvest of bears, with approval from the Louisiana Wildlife and Fisheries Commission, could occur in Louisiana based on demographic monitoring data (Davidson et al. 2015, p. 55). Based on the 2015 Louisiana black bear management plan, LDWF has the authority, capability, and biological data to implement careful hunting restrictions and population management (Davidson et al. 2015, p. 55). If this rule is finalized, the LDWF would only consider the possibility of a limited hunt through a quota system, allocated by management area, based on harvest models accounting for such things as demographics, reproductive vital rates, genetic characteristics, and the magnitude of human-caused mortality (Davidson et al. 2015, pp. 55–56). Baseline estimates would be established for every Louisiana black bear subpopulation, and population monitoring would be conducted (Davidson et al. 2015, p. 55). The baseline estimates and population monitoring would be based on the extensive data and monitoring methods developed by LDWF and described in the PDM. The LDWF management plan states that no regulated hunt would be allowed if it compromises Louisiana black bear sustainability (Davidson et al. 2015, p. 55). Harvest seasons cannot be set without Louisiana Wildlife and Fisheries Commission approval and a public review and comment period. If approved, the harvest would be monitored by the LDWF, who would also reserve the right to revoke tags and/or cancel harvest seasons at any time (Davidson et al. 2015, p. 55).

Scientific Research and Public Safety: Bears are routinely captured and monitored for scientific and public safety purposes. During scientific research activities, there is a rare chance a bear could be accidentally killed during the capture process, but these activities are conducted via State permits and closely monitored by the State agencies to reduce the likelihood of such events. Since listing in 1992, in Louisiana there have been at least 8 documented mortalities incidental to research activities (USGS et al. 2014) and 15 euthanizations due to conditioning to anthropogenic food sources and subsequent human habitation (Davidson et al. 2015, p. 15). In Mississippi, two research-related deaths have occurred since listing (Rummel 2015, personal communication).

Summary of Factor B: The small number of mortalities occurring from research activities or removal due to public safety concerns does not represent a significant threat to the Louisiana black bear population. In addition, recreational hunting is not a threat because there has been no existing functional mechanism to hunt or take bears in the States in its range since 1984 (refer to *Factor E discussion* for a discussion of mortality due to poaching). Also if this rule is finalized, bear species would remain protected in the States where the Louisiana black bear occurs through State regulations so there is no identified threat to the Louisiana black bear (refer to *Factor D discussion* for a discussion of regulations that will remain in place). Therefore, the associated protections afforded to the American black bear due to similarity of appearance will no longer be necessary. The potential for a regulated restricted harvest of the Louisiana black bear population exists. The LDWF would not consider a harvest if existing data and simulated population dynamics models indicate a restricted hunt could potentially compromise Louisiana black bear sustainability. Louisiana's State management plan has measures in place to ensure the Louisiana black bear population would not be impacted. Based on this, we do not have any evidence to suggest that overutilization is a threat to the Louisiana black bear.

Factor C. Disease or Predation

When we listed the Louisiana black bear in 1992, we did not consider disease or predation to be limiting or threatening to the Louisiana black bear (57 FR 588). Several diseases and parasites have been reported for black bears but are not considered to have significant population impacts (Pelton 2003, p. 552). Limited information has been collected in the wild on diseases or parasites of black bears and causes of cub mortality (LeCount 1987, p. 75). Natural predation has been documented as a result of cannibalism by other bears and cub predation by other animals (LeCount 1987, pp. 77–78; Rogers 1987, p. 54; Pelton 2003, p. 552). Rogers (1987, pp. 53–54) documented four yearling bears that had been eaten (including one that had been eaten by its mother) but could not determine if they had been killed or scavenged and noted that small bears in poor condition would be more susceptible to predation. Cannibalism rates are not likely to regulate population growth (Rogers 1987, p. 55). It is unknown how many juvenile males are killed (rather than dispersed from the area) by adults, but that mortality probably has little effect population growth due to the polygamous (having more than one mate) mating system of bears (Rogers 1987, p. 55). O'Brian's (2010, p. 17), literature review of black bear disease indicated bears may be susceptible to a number of parasitic, bacterial, and viral diseases but none are likely to cause high morbidity or mortality. Similarly, Pelton (1982, p. 511) listed the following diseases of black bears—liposarcoma and unidentified tumors, Elokomin fluke, rabies, and several bacterial and parasitic infestations—noting that none appeared to have significant effects on population regulation and LeCount (1987, p. 79) did not believe disease represented a substantial mortality factor for bear populations. Disease vectors are monitored by the LDWF whenever bears are handled.

Summary of Factor C: We have no evidence or data indicating that disease or predation present a threat to the Louisiana black bear population.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

Louisiana: Overharvest was identified as one of the factors that resulted in low Louisiana black bear numbers. Currently, in addition to protections afforded by the Act, Louisiana black bears are protected from take (''Take'' is defined in Louisiana law at Title 56:8(131): In its different tenses, as the attempt or act of hooking, pursuing, netting, capturing, snaring, trapping, shooting, hunting, wounding, or killing by any means or device.), possession, and trade by State laws throughout its historical range (Louisiana: Title 56, Chapter 8, Part IV. Threatened or Endangered Species; Mississippi: Title 49, Chapter 5—Fish, Game and Bird Protections and Refuges, Nongame Endangered Species Conservation); Texas: Title 5. Wildlife and Plant Conservation, Subtitle B. Hunting and Fishing, Chapter 68. Endangered Species). The LDWF will be the sole agency responsible for Louisiana black bear management in Louisiana if the bear is delisted. The potential removal of the Louisiana black bear from protection under the Act would not alter or negate State laws or penalties protecting the bear. In Louisiana, there are nine laws and regulations

authorized under Louisiana Title 56 and Louisiana Title 76 regulating and setting violation classes for such things as taking, possessing, and feeding (Davidson et al. 2015, pp. 57–59). The LDWF Law Enforcement Division (LED) is responsible for enforcing State and Federal laws relative to fish and wildlife resources. In fiscal year 2012–2013, the LED conducted 226,427 patrol hours on land and made 730,942 contacts with the public, the majority of whom were in compliance with State and Federal wildlife and fisheries regulations (LDWF 2014a, p. 2). Agents issued more than 20,000 criminal citations and 5,700 warnings during this period, with the most common related to actions like fishing without a license, or not abiding by rules and regulations on wildlife management areas (see Factor E for a discussion of documented illegal poaching). In the last 10 years, the LDWF enforcement division has prosecuted seven black bear cases (M. Davidson, 2015, LDWF, personal communication). Operation Game Thief (OGT) is a non-profit corporation program that provides cash awards to individuals who provided LDWF with information regarding a wildlife violation that result in an arrest. Since its inception in 1984, over 700 violators, convicted of numerous State and Federal charges, have been apprehended as a result of information provided by OGT informants (LDWF 2015, *http://www.wlf.louisiana.gov/enforcement/operation-game-thief*).

The LDWF Louisiana Black Bear Management Plan (Plan) was finalized in 2015 (Davidson et al. 2015). The management objective for that Plan is to maintain a sustainable black bear population in suitable habitat and has the following key requirements: Sufficient habitat available within dispersal distance, maintaining connectivity among subpopulations, and continued monitoring of subpopulation demographics (Davidson et al. 2015, p. 2). The LDWF identified three bear management actions it will implement: (1) Continued public education and outreach; (2) minimizing human–bear conflicts; and (3) bear harvest as a management action if such actions do not impede sustainability of bears (as determined by the ongoing population monitoring program as described in the LDWF Black Bear Management Plan (Davidson et al. 2015, p. 32–33, 55–56).

Mississippi: The Mississippi Department of Wildlife, Fisheries, and Parks will be the agency responsible for black bear management in Mississippi if the bear is delisted. MDWFP developed a management plan entitled ''Conservation and Management of Black bears in Mississippi'' in 2006 (Young 2006). The purpose of that plan was to: (1) Serve as a basis for information about black bears in Mississippi; and (2) outline protocols and guidelines for dealing with the continued growth of black bear populations in Mississippi (Young 2006, p. 6). That plan covered black bear habitat management and restoration needs, public education, conflict management, and research needs (Young 2006, pp. 25–36).

Texas: The TPWD will be the agency responsible for black bear management in Texas if the bear is delisted. An East Texas Black Bear Conservation and Management Plan was developed in 2005 (Barker et al. 2005). Its purpose is to facilitate the conservation and management of black bears in East Texas through cooperative efforts. Broadly described components of the plan include: Habitat management and enhancement, public education, conflict management, and research needs (Barker 2005, pp. 31–41). Louisiana black bears currently do not exist in Texas; however, this Plan contains a framework to improve habitat and provide possibilities for future bear conservation in the State.

State-owned Lands: The LDWF is responsible for administering the many State-owned wildlife management areas in Louisiana. The WMAs within the HRPA include Big Lake WMA (19,587 ac (7,927 ha)), Buckhorn WMA (11,238 ac (4,548 ha)), Richard K. Yancy WMA (73,433 ac (29,717 ha)), and Grassy Lake WMA (13,214 ac (5,348 ha)), Sherburne WMA and the adjacent (State-managed) Corps-owned Bayou Des Ourses Area (29,883 ac (12,093 ha)), and Attakapas Island WMA (26,819 ac (10,854 ha)). Those areas are managed according to the LDWF Master Plan for Wildlife Areas and Refuges (LDWF 2014a). The vision identified is to build an interconnected system of natural areas and open spaces (a green infrastructure) consisting of core areas (*e.g.,* NWRs and WMAs), and corridors to provide essential habitat to endangered and threatened species as well as other species important to ecosystem function (LDWF 2014b, p. 18). Implementation of the strategic plan includes potential land acquisition in support of threatened and endangered species, cooperating with the Service in the recovery of listed species, and restoration of BLH forest habitat (LDWF 2014b, p. 16).

The MDWFP is responsible for administering the many State-owned wildlife management areas in Mississippi. The WMAs within the MAVU include Leroy Percy WMA (2,664 ac (1,078 ha)), Shipland WMA (4,269 ac (1,728 ha)), Copiah County WMA (6,830 ac (2,764 ha)), and O'Keefe WMA (5,918 ac (2,395 ha)). Those areas are managed according to the MDWFP Strategic Plan (MDWFP undated, p. 17) and are actively managed to provide for a diversity of wildlife species. The management goals are to manage agency-owned lands for the long-term conservation of wildlife habitat and for multiple user groups to enjoy diverse outdoor recreational opportunities that are consistent with natural resource management goals.

U.S. Fish and Wildlife National Wildlife Refuges: The NWRs shown in the following table (see Table 10) occur within the Louisiana HRPA and the Mississippi MAVU.

Table 10. Extent of NWR lands occurring within the Louisiana HRPA and the Mississippi MAVU.

	Acres	Hectares
Louisiana NWRs		
Atchafalaya NWR	15,764	6,379
Bayou Cocodrie NWR	15,149	6,131
Bayou Teche NWR	9,004	3,644
Tensas River NWR	77,956	31,548
Lake Ophlia NWR	17,427	7,052
Louisiana Total	***135,300***	***54,754***
Mississippi NWRs		
Coldwater River NWR	283	115
Hillside NWR	15,498	6,272
Matthews Brake NWR	2,393	968
Morgan Brake NWR	7,585	3,070
Panther Swamp NWR	40,859	16,535
St. Catherine Creek NWR	25,384	10,273
Tallahatchie NWR	24	10
Theodore Roosevelt NWR	6,019	2,436
Yazoo NWR	13,050	5,281
Mississippi Total	***111,095***	***44,959***
TOTAL FOR BOTH STATES	***246,395***	***99,713***

The National Wildlife Refuge System Improvement Act of 1997 requires that every refuge develop a Comprehensive Conservation Plan (CCP) and revise it every 15 years, as needed. CCPs identify management actions necessary to fulfill the purpose for which an NWR was enacted. CCPs allow refuge managers to take actions that support State Wildlife Action Plans, improve the condition of habitats, and benefit wildlife. The current generation of CCPs will focus on individual refuge actions that contribute to larger, landscape-level goals identified through the Landscape Conservation Design process. CCPs address conservation of fish, wildlife, and plant resources and their related habitats, while providing opportunities for compatible wildlife-dependent recreation uses.

An overriding consideration reflected in these plans is that fish and wildlife conservation has first priority in refuge management, and that public use be allowed and encouraged as long as it is compatible with, or does not detract from, the Refuge System mission and refuge purpose(s). Each NWR within the Louisiana black bear range addresses management actions for maintaining appropriate bear habitat on their lands as follows: Tensas River NWR (Service 2009a, pp. 77–78); Bayou Teche NWR (Service 2009b, p. 34); Atchafalaya NWR (Service 2011, pp. 68–75); Grand Cote NWR (Service 2006a, p. 54); Upper Ouachita NWR (Service 2008, pp. 85–86); Lake Ophelia NWR (Service 2005a, pp. 49–50); Bayou Cocodrie NWR (Service 2004, p. 40); Hillside, Matthews Brake, Morgan Brake, Panther Swamp, Theodore Roosevelt, and Yazoo NWRs (Service, 2006c, pp. 92–93); Coldwater and Tallahatchie NWRs (Service 2005b, pp. 78–79); and St. Catherine Creek NWR (Service 2006b, p. 58).

Morganza and Atchafalaya Basins: The lands in the Atchafalaya Basin and Morganza Floodway are prominent features of the Mississippi River and Tributaries flood control project authorized by the Flood Control Act of May 15, 1928. In 1985, the Corps enacted the Atchafalaya Basin Multipurpose Plan with the purpose to protect south Louisiana from Mississippi River floods and to retain and restore the unique environmental features and long-term productivity of the Basin. The purpose of the Morganza Floodway is to provide a controlled floodway to divert Mississippi River flood waters into the Atchafalaya basin during major floods on the Mississippi River. The Corps has acquired fee title ownership and permanent easements of approximately 600,000 ac (200,000 ha) for perpetual flowage, developmental control and environmental protection rights. The developmental control and environmental protection easement prohibits conversion of land from existing uses (*e.g.,* conversion of forested lands to cropland). Landowners may harvest timber only in compliance with specified diameter-limit and species restrictions. The construction or placement of new, permanently habitable dwellings or other new structures, including camps, except as approved by a Corps real estate camp consent and in accordance with Corps restrictions, is prohibited on the easement lands in the Atchafalaya Basin.

NRCS Administered Permanent Conservation Easements on Private Lands: The WRP is a voluntary program that provides eligible landowners the opportunity to address wetland, wildlife habitat, soil, water, and related natural resource concerns on private lands in an environmentally beneficial and cost-effective manner. The WRP is authorized by 16 U.S.C. 3837 *et seq.,* and the implementing regulations are found at 7 CFR part 1467. The first and foremost emphasis of the WRP is to protect, restore, and enhance the functions and values of wetland ecosystems to attain habitat for migratory birds and wetland-dependent wildlife, including threatened and endangered species. The WRP is administered by the Natural Resources Conservation Service (NRCS) (in agreement with the Farm Service Agency) and in consultation with the Service and other cooperating agencies and organizations. The Service participates in several ways, including assisting NRCS with land eligibility determinations; providing the biological information for determining environmental benefits; assisting in restoration planning such that easement lands achieve maximum wildlife benefits and wetland values and functions; and providing recommendations regarding the timing, duration, and intensity of landowner-requested compatible uses.

Participating landowners may request other prohibited uses such as haying, grazing, or harvesting timber. When evaluating compatible uses, the NRCS evaluates whether that proposed use is consistent with the long-term protection and enhancement of the wetland resources for which the easement was established and Federal funds expended. Requests may be approved if the NRCS determines that the activity both enhances and protects the

purposes for which the easement was acquired and would not adversely affect habitat for migratory birds and threatened and endangered species. NRCS retains the right to cancel an approved compatible use authorization at any time if it is deemed necessary to protect the functions and values of the easement. According to the authorizing language (16 U.S.C. 3837a(d)), compatible economic uses, including forest management, are permitted if they are consistent with the long-term protection and enhancement of the wetland resources for which the easement was established. Should such a modification be considered, NRCS would consult with the Service prior to making any changes.

According to the WRP Manual, prior to making a decision regarding easement modification, the Natural Resources Conservation Service (NRCS) must:

(1) Consult with the Service;

(2) evaluate any modification request under the National Environmental Policy Act (NEPA);

(3) investigate whether reasonable alternatives to the proposed action exist; and

(4) determine whether the easement modification is appropriate considering the purposes of WRP and the facts surrounding the request for easement modification or termination.

Any WRP easement modification, must:

(1) Be approved by the Director of the NRCS in consultation with the Service (the National WRP Program Manager must coordinate the consultation with the Service at the national level);

(2) not adversely affect the wetland functions and values for which the easement was acquired;

(3) offset any adverse impacts by enrolling and restoring other lands that provide greater wetland functions and values at no additional cost to the government;

(3) result in equal or greater ecological (and economic) values to the U.S. Government;

(4) further the purposes of the program and address a compelling public need; and

(5) comply with applicable Federal requirements, including the Act, NEPA (42 U.S.C. 4321 *et seq.*), Executive Order 11990 (Protection of Wetlands), and related requirements.

The WRP manual states that ''NRCS will not terminate any of its easements, except for a partial termination that may be authorized as part of an easement modification request. . .in which additional land will be enrolled in the program in exchange for the partial termination.'' Therefore, based on our assessment of these requirements, the termination of an entire WRP easement, or a reduction in the total acreage of WRP lands via authorized modifications, appears highly improbable. In addition, we have partnered with NRCS to administer WRP in Louisiana since the inception of that program in 1992. Following a comprehensive review of our local files and a search of national WRP records, we have been unable to find a single instance of a WRP easement being terminated in the history of that program (which includes nearly 10,000 projects on approximately 2 million ac (800,000 ha) of land nationwide).

Food Security Act Regulations: The Food Security Act of 1985 included Highly Erodible Land Conservation and Wetland Conservation Compliance (*i.e.,* ''Swampbuster'') provisions to deter forested wetland loss by withholding many Federal farm program benefits from producers who convert wetland areas to agricultural purposes. Persons who convert a wetland and make the production of an agricultural commodity possible are ineligible for NRCS program benefits until the functions of that wetland were restored or mitigated. According to the NRCS, those wetland conservation provisions have sharply reduced wetland conversion for agricultural uses (*http://www.nrcs.usda.gov/wps/portal/nrcs/detailfull/national/programs/alphabetical/camr/?cid=stelprdb1043554*).

Partners for Fish and Wildlife Act Regulations: The Partners for Fish and Wildlife Act of 2006 provides for the restoration, enhancement, and management of fish and wildlife habitats on private land through the Partners for Fish and Wildlife Program, a program that works with private landowners to conduct cost-effective habitat projects for the benefit of fish and wildlife resources in the United States. This program provides technical and financial assistance to private landowners for the conduct of voluntary projects to benefit Federal trust species by promoting habitat improvement, habitat restoration, habitat enhancement, and habitat establishment, as well as technical assistance to other public and private entities regarding fish and wildlife habitat restoration on private lands. Numerous projects providing direct habitat benefits for the Louisiana black bear have been accomplished via the Partners for Fish and Wildlife Program. One such example involves a 120-acre site within Louisiana black bear breeding and critical habitat. Because it is also located within the Morganza Floodway (which is encumbered with a Corps flowage easement), the site was ineligible for most other habitat restoration programs such as WRP. Prior to enrollment into the Partners for Fish and Wildlife Program, that site was maintained as a marginally productive agricultural field. In 2002, through the planting of a diverse mixture of over 36,000 native seedlings, the entire site was restored to a bottomland hardwood forest, reducing fragmentation and providing habitat benefits for a variety of species including the Louisiana black bear.

Clean Water Act Regulations: For the first several years following the passage of the CWA (enacted as the Federal Water Pollution Control Act Amendments of 1972), the Corps only regulated activities that clearly constituted a deposition of dredge and fill material in wetlands or other waters of the United States. Subsequently, large-scale clearing of BLH wetlands was largely unregulated during this era (Houck 2012, pp. 1495–1503).

In response to the considerable wetland habitat conversion throughout the LMRAV, and fueled by the ongoing clearing of the Lake Long tract, the Avoyelles Sportsmen's League and partnering organizations sued the Corps and EPA for allegedly failing to properly enforce Section 404 of the CWA. On March 12, 1981, a U.S. District Court (Western District of Louisiana–Alexandria Division) ruled in favor of the plaintiffs with a decision that would substantially alter the regulatory scope and enforcement authority of the Corps and EPA under the CWA. The decision noted: (1) The term ''wetland vegetation'' was more broadly defined which would ultimately result in the reclassification of many areas that were previously considered non-wetland (such as the Lake Long tract), and (2) the Corps' and EPA's jurisdiction were expanded beyond the limited scope of dredge and fill regulation to include all activities that may result in the placement or redistribution of earthen material, such as mechanized land clearing *(Avoyelles Sportsmen's League, Inc.* v. *Alexander,* 511 F. Supp. 278, (W.D. La. 1981)).

To summarize, though the CWA was enacted in 1972, it was a full decade later before the authority and associated protection that it affords to forested wetlands was legally recognized. In the interim, and in the decade prior, the BLH forests of the LMRAV were decimated (Creasman et al. 1992; Haynes 2004, pp. 170, 172) ultimately constituting the primary threat that warranted the listing of the Louisiana black bear (Service 1992, p. 592). After

the new legal protection of forested wetlands defined via the Avoyelles Sportsmen's League rulings on CWA authority, the trajectory of BLH forest loss in the LMRAV was reversed. Available data regarding the extent of forested wetlands in the LMRAV (*e.g.* image classification of digital orthophoto quarter quadrangles [DOQQs], analysis of NLCD data, and government agency records for forested habitat restoration in the LMRAV [via programs such as WRP, CRP, and wetland mitigation banking (see below)] clearly demonstrate that trend reversal and suggest that the long-term protection of forested wetlands (largely absent prior to the Avoyelles Sportsmen's League rulings of the early 1980s) are now being realized (See discussion under *Factor A* above).

Mitigation banking has been an additional factor responsible for alleviating wetland losses associated with the Corps' wetland regulatory program. Persons obtaining a wetland development permit from the Corps (pursuant to Section 404 of the CWA and/or Section 10 of the Rivers and Harbors Act) that authorizes impacts to waters of the United States, including wetlands, are typically required to compensate for wetland losses in a manner that ensures project implementation would result in no net loss of wetlands. Mitigation banks are intended to provide a mechanism to assist permit applicants, who may be unable or unwilling to implement an individual compensatory mitigation project, in complying with those mitigation requirements. The design and implementation of compensatory wetland mitigation projects (particularly wetland mitigation banks) are accomplished through a coordinated effort among the Corps, the Service, and other State and Federal environmental resource management agencies, and are individually authorized by a mitigation banking instrument (MBI). With a high degree of specificity, MBIs mandate restoration practices, contingencies and remedial actions, long-term monitoring and maintenance, adherence to performance standards, financial assurances, and the establishment of perpetual conservation servitudes. Without exception, wetland mitigation banks are restored and managed with the intent of providing the full array of wetland functions and values (such as providing habitat for a multitude of wildlife species, which typically includes the Louisiana black bear).

For permitted projects that would impact Louisiana black bear habitat, the Service routinely requests that any associated wetland mitigation project (or wetland mitigation bank option) be sited in a location, and conducted in a manner, that would result in the restoration of suitable Louisiana black bear habitat including all of the various functions that would be potentially impacted by the corresponding development project (*e.g.,* travel corridors or breeding habitat). The quality/functionality of habitat restored through such conservation efforts, coupled with typical compensatory mitigation ratios, outweighs any loss resulting from individual development projects.

Our analysis of impacts and mitigation associated with the Corps' wetland regulatory program suggests that substantially more forested habitat is restored through compensatory wetland mitigation than is eliminated via permitted wetland development projects (Table 11). That analysis was conducted over a 5-year period spanning July 1, 2009 through July 31, 2014. According to personnel within the Corps wetland regulatory program, a standardized electronic database to track permitted projects was not developed until 2004, and was not reliably used by permit analysts until 2009. Therefore, there is no reliable database for which to query such records prior to that time. It should also be noted that the corresponding table displays permitted wetland losses and approved wetland mitigation banks that would be available to offset those losses. We were unable to obtain the baseline data necessary to calculate a loss-to-gain wetland habitat ratio. However, personnel within the Corp's wetland regulatory program evaluated their records for specific mitigation requirements associated with each permitted activity and estimated that the ratio of wetland habitat gains from compensatory mitigation to wetland habitat losses attributed to permitted projects is 6:1 (Stewart 2014).

Table 11. Impacts (positive/negative) to potentially suitable Louisiana black bear habitat resulting from permitted losses and mitigation gains through the Corps' wetland regulatory program.

IMPACTS Number of Permits Issued via the Corps' Wetland Regulatory Program for Projects in Potentially Suitable Bear Habitat within the Louisiana Black Bear Habitat Restoration Planning Area	New Orleans District	Vicksburg District	*Total*
Projects Resulting in Permanent Impacts	137	79	216
Projects Resulting in Temporary Impacts	411	32	443
Total	**548**	**111**	**659**
Acres of Potentially Suitable Bear Habitat within the Louisiana Black Bear Habitat Restoration Planning Area Impacted/Lost by Projects Permitted via the Corps' Wetland Regulatory Program			
Permanent Impacts	221.8	37.8	259.6
Temporary Impacts	262.7	10.0	272.7
Total	**484.5**	**47.8**	**532.3**
MITIGATION			
Number of Compensatory Wetland Mitigation Banks Approved by the Corps within the Louisiana Black Bear Habitat Restoration Planning Area	7	7	14
Acres of All Habitats Restored, Enhanced, and Preserved via Wetland Mitigation Banking within the Louisiana Black Bear Habitat Restoration Planning Area	2,633.8	2,630.7	**5,264.5**
Acres of Forested Habitat Restored via Wetland Mitigation Banking within the Louisiana Black Bear Habitat Restoration Planning Area	2,323.3	2,538.7	**4,862.0**
NET ACRES OF FORESTED HABITAT GAINED	1,838.8	2,490.9	***4,329.7***

[1] Analysis conducted by the Service's Louisiana Field Office based on regulatory program data (from a 5-year period spanning July 1, 2009 through July 31, 2014) provided by the New Orleans and Vicksburg Corps Districts.

The results of our GIS landscape analysis indicate that the recent (post 1990) positive trends in forested habitat extent within the LMRAV (as documented above) have also been realized within our more focused HRPA. Regardless of our methodology (1-meter DOQQ analysis or 30-meter NLCD analysis), the analyses yielded similar results. There has been a significant gain in the acreage of potential Louisiana black bear habitat within the HRPA since the 1992 listing of the Louisiana black bear (Tables 7 and 8). Our review of available literature and research, in conjunction with our own analyses, suggest that those gains are the result of both voluntary private land restoration programs (mainly CRP and WRP) and wetland regulatory mechanisms (primarily Section 404 of the CWA).

The documented trends in Louisiana black bear population growth, population viability, and increase in the extent of forested habitat further validate the assertion that existing environmental regulatory mechanisms and conservation measures are sufficient for the Louisiana black bear. We do not have any other data indicating that current regulatory mechanisms are inadequate to provide long-term protection of the Louisiana black bear and its habitat. Accordingly, we conclude that existing regulatory mechanisms are adequate to address the threats to the Louisiana black bear posed by the other listing factors, especially habitat loss.

Summary of Factor D: Louisiana black bears are currently, and will continue to be, protected from taking, possession, and trade by State laws throughout their historical range (Louisiana: Title 56, Chapter 8, Part IV. Threatened or Endangered Species; Mississippi: Title 49, Chapter 5—Fish, Game and Bird Protections and Refuges, Nongame Endangered Species Conservation); Texas: Title 5. Wildlife and Plant Conservation, Subtitle B. Hunting and Fishing, Chapter 68. Endangered Species).

Regulatory mechanisms that currently protect Louisiana black bear habitat through conservation easements or ownership by State and Federal agencies will remain in place (*e.g.,* WRP tracts, WMAs, NWRs, FmHAs, and Corps easements in the Atchafalaya and Morganza Floodways). Forested wetlands throughout the range of the Louisiana black bear habitat that are not publicly owned or encumbered by conservation easements will continue to receive protection through Section 404 of the CWA and the ''Swampbuster'' provisions of the Food Security Act of 1985. Forested habitat trends in the LMRAV indicate that those regulations have provided adequate long-term protection of Louisiana black bear

habitat since the listing of the Louisiana black bear in 1992. Specifically, the trajectory of BLH forest loss in the LMRAV has not only improved, but has been reversed with substantial gains in forested habitat being realized within both the LMRAV and the more restrictive HRPA. Therefore, we find that existing regulatory mechanisms are adequate to address the threats to the Louisiana black bear posed by the other listing factors.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

When we listed the Louisiana black bear, the Service discussed what at the time appeared to be a threat from hybridization resulting from the introduction of bears from Minnesota (57 CFR part 588). We noted that the threat from hybridization at the subspecies level might not be a cause for significant concern and acknowledged that the subpopulations in the TRB and UARB were possibly intraspecifically hybridized and mostly unchanged (genetically) because of the low probablitity of reproductive isolation since they were relatively close geographically. Reproductive isolation is required for an extended period for the evolutionary process of differentiation to operate (57 CFR part 588). At that time, genetic investigations did not identify real differences in subpopulations and the Service noted that, to the extent a pure genetic heritage is a realistic concept when applied to a subspecies not likely to be reproductively isolated, the threat may have existed. Subsequent studies have revealed differing results on the extent of hybridization. The most recent unified analyses of genetic data by Laufenberg and Clark (2014, pp. 50–58) found varying levels of genetic structure among pairs of subpopulations and identified five genetically distinct groups (Laufenberg and Clark 2014, p. 60) and an affinity between Minnesota and UARB subpopulations (Laufenberg and Clark 2014, p. 84).

The analyses concluded that differentiation between the Louisiana black bear subpopulations within the LMRAV can be explained as the result of restricted gene flow, accelerated genetic drift, and differing levels of genetic introgression as a result of the Minnesota introductions (Laufenberg and Clark 2014, p. 84). The results also show some interchange of Louisiana black bear subpopulations with Arkansas populations and found affinities to the WRB subpopulation and Minnesota bears. The level of genetic affinity or differentiation between the Louisiana black bear subpopulations and the WRB subpopulation and Minnesota bears is not sufficient evidence for determining taxonomic status (Laufenberg and Clark 2014, p. 85). Thus, while recent genetic analyses results did indicate the existence of some effects of the Minnesota reintroductions (as postulated at listing), those effects do not seem to be great enough to pose a significant threat to this subspecies' genetic integrity by hybridization as speculated at listing. In fact, genetic exchange that is occurring among bears from Louisiana, Mississippi, and Arkansas can be considered a positive genetic and demographic contibution to the Louisiana black bear (Laufenberg and Clark 2014, p. 85) (see the Distribution and Taxonomy discussion of the Species Information Section).

Davidson et al. (2015, p. 15) described the Louisiana black bear as susceptible to drowning, maternal abandonment of cubs, and climbing accidents; but the remaining leading cause of black bear mortalities is human-related (Pelton 2003, p. 552; Simek et al. 2012, p. 164; Laufenberg and Clark 2014, p. 76). Increased movement during food shortages substantially increases their chances for human encounters and human-related mortality (Rogers 1987, p. 436; Pelton 2003, p. 549). These mortality rates are suspected to be greater for yearling and subadult black bear males dispersing from the family unit, and are probably the result of starvation, accidents (*e.g.,* vehicular collisions), and poaching.

Since listing in 1992, at least 246 black bears have been killed in vehicular collisions in Louisiana (USGS et al. 2014) and 11 bears killed in Mississippi (Rummel 2015, personal communication) making this the leading known cause of death for Louisiana black bears (Davidson et al. 2015, p. 15). In spite of these numbers, black bear populations have increased over this same time period. Black bear population growth in conjunction with urban expansion and habitat fragmentation has resulted in the increased availability of anthropogenic foods sources (Davidson et al. 2015, p. 15). Conflict management of black bears exhibiting nuisance behavior can result in mortality and, in the rare case where a bear cannot be left in the wild (as a result of nuisance behavior resulting in a demonstrable threat to human safety), it may be captured and placed into permanent captivity by management agencies or humanely euthanized. LDWF personnel have euthanized 15 black bear since 1992 (Davidson et al. 2015, p. 15).

The listing rule for the Louisiana black bear (57 FR 588) identified illegal kill as a potential threat to this species that could not be ruled out until better data could be obtained. The majority of illegal kills have been the result of direct poaching; however, there have been 3 documented mortalities incidental to the use of snares in Louisiana for nuisance animal control (Davidson, M. 2015, LDWF, personal communication). Since 1992, there have been 32 documented illegal bear killings in Louisiana (Davidson et al. 2015, p. 15) and 9 documented in Mississippi (Rummel 2015, personal communication). If all other documented deaths of unknown causes are assumed to be the result of illegal taking, a total of 75 bears have been documented as killed since listing (USGS et al. 2014). Taken altogether, since Federal listing, approximately 300 individual Louisiana black bears are known to have been killed as a result of anthropogenic conflicts in Louisiana (USGS et al. 2014), and in Mississippi, 22 bears have been reported killed (Rummel 2015, personal communication), or approximately 13 bears per year have succumbed to anthropogenic causes of mortality since 1992 in Louisiana (Davidson et al. 2015, p. 16) and approximately 1 bear per year in Mississippi (Rummel 2015, personal communication).

Hurricanes and tropical storms can affect forested habitat throughout the LMARV. The potential effects of any tropical storm event will depend on where it makes landfall and what area is receiving the brunt of the wind and force of the cyclone. They can also have additional negative effects to the LARB subpopulation due to its proximity to the coast; however, they are deemed to be a low magnitude because of the Louisiana black bear's ability to quickly adapt and move while using a variety of habitats. Murrow and Clark (2012) studied the impacts of Hurricanes Katrina and Rita on habitat of the LARB subpopulation. They did not detect in their research any significant direct impacts to forested habitat. For example, suitable bear habitat was found to have decreased only by 0.9 percent (from 348 to 345 square kilometers (km^2)) within the occupied study area and only 1.4 percent (from 34,383 to 33,891 km^2) in the unoccupied study area following the hurricanes. The analysis showed that bear habitat was not significantly degraded by the hurricanes and the effects of wind and storm surge that came with them. Hurricane Katrina represents the highest recorded storm

surge in the Southeast. If hurricane events occur during the seven year PDM monitoring period, we will assist our State partners in monitoring the possible effects of these hurricanes (*e.g.,* vegetation changes from flooding, introduction of toxic chemicals, or water quality changes).

The Intergovernmental Panel on Climate Change (IPCC) concluded that warming of the climate system is unequivocal (IPCC 2014, p. 3). The more extreme impacts from recent climate change include heat waves, droughts, accelerated snow and ice melt including permafrost warming and thawing, floods, cyclones, wildfires, and widespread changes in precipitation amounts (IPCC 2014, pp. 4, 6). Due to projected climate-change associated sea level rise, coastal systems and low-lying areas will increasingly experience adverse impacts such as submergence, coastal flooding, and coastal erosion (IPCC 2014, p. 17). In response to ongoing climate change, many terrestrial, freshwater, and marine species have shifted their geographic ranges, seasonal activities, and migration patterns (IPCC 2014, p. 4). Species that are dependent on specialized habitat types or are limited in distribution will be most susceptible to future impacts of climate change. Many species will be unable to relocate rapidly enough to keep up with their climate niche under mid- and high-range rates of climate change. The climate velocity (the rate of movement of the climate across the landscape) will exceed the maximum velocity at which many groups of organisms, in many situations, can disperse or migrate, under certain climate scenarios. Populations of species that cannot migrate at effective speeds will find themselves in unfavorable climates, unable to reach areas of potentially suitable climate. Species with low dispersal capacity (such as plants, amphibians, and some small mammals) could be especially vulnerable (IPCC 2014, p. 275).

Biological and historical evidence suggests that the Louisiana black bear is well-adapted to endure the predicted effects of climate change throughout its range. As stated above, Louisiana black bears inhabit more than 1.4 million ac (approximately 576,000 ha) of habitat in all or portions of 21 Louisiana parishes and 6 Mississippi counties. It is a generalist that uses a variety of habitat types within and adjacent to the LMRAV, including forested wetlands, scrub-shrub, marsh, spoil banks, and upland forests (including upland hardwoods and mixed pine-hardwood forests). On a larger scale and to make a comparison to the Louisiana black bear's capability to use many habitat types, American black bears (in the other portions of the United States and Canada) are known to inhabit vast mountainous areas, coastal plains, chaparral and pinyon-juniper woodlands (*Pinus* spp., *Juniperus* spp.), oak-hickory forests (*Quercus* spp., *Carya* spp.), upland and bottomland hardwood forests, redwood-sitka spruce-hemlock woodlands (*Sequoia sempervirens—Picea sitchensis-Tsuga* spp.), and ponderosa pine forests (*Pinus ponderosa*), to name only a few (Pelton 2003, pp. 549–550). There is a vast array of habitats and associated food sources available for black bears throughout their current range, and bears have demonstrated adaptability and mobility in finding such areas. Therefore, it is highly unlikely that currently predicted climate change scenarios would impact black bear habitat to the extent that the Louisiana black bear would be unable to locate suitable habitats (in both quality and quantity) to maintain a viable population for the foreseeable future.

The Louisiana black bear is capable of efficiently traversing the landscape, and individual bears incorporate relatively large expanses of habitat within their respective home ranges (which varies based on gender and subpopulation). Home ranges vary from approximately 1,000 ac [400 ha] to 84,000 ac [34,000 ha] (Beausoleil 1999, p. 60; Wagner 1995, p. 12). Numerous long-distance movements of the Louisiana black bear have been confirmed, and there is documented evidence of dispersal throughout most of their current range (Figure 1, Davidson et al. 2015, p. 24). In the event habitat is lost due to climate change effects (such as extreme flooding or drought), Louisiana black bears have demonstrated the ability not only to move at a relatively rapid pace to more suitable areas, but also to adapt to a wide range of potential habitats and food sources.

Habitat supporting the LARB subpopulation (population range from 136 to 194 adult bears (Laufenberg and Clark 2014, p. 45)) of the Louisiana black bear is more vulnerable to the impacts of global climate change than other subpopulations due to its occurrence within low-elevation coastal habitats that are susceptible to flooding from extreme rainfall events, significant tidal surges (including those associated with tropical weather systems), and riverine flooding. That subpopulation occurs entirely within the Louisiana Coastal Zone which was delineated by the Louisiana Department of Natural Resources–Office of Coastal Management (LDNR–OCM) based on storm surge data, geology, elevation, soils, vegetation, predicted subsidence/sea level rise, and boundaries of existing coastal programs (LDNR–OCM 2010, pp. 54–60). Based on the current sea level rise estimates (*http://tidesandcurrents.noaa.gov/sltrends/sltrends.shtml*), we do not anticipate a complete and persistent inundation of the coastal zone of Louisiana within the next 100 years. Any such sea level rise impacts are likely to be ameliorated to some extent by the projected successional changes in the Atchafalaya Basin that would eventually convert many of its swamps to BLH forest, thus improving the suitability of that habitat for the Louisiana black bear (*e.g.,* facilitating its dispersal to higher elevation habitats if necessary for survival).

The Service estimated that more than 35,000 ac (14,000 ha) of lakes and cypress-tupelo swamps would convert to higher elevation forests within the ARB by the year 2030 (LeBlanc et al. 1981, p. 65). This prediction is supported by studies documenting increased sedimentation within the Basin (Hupp et al. 2008, p. 139). Sedimentation increases elevation, and areas that were once wet will be naturally colonized with vegetation that will ultimately result in upland forests (Hupp et al. 2008, p. 127) that are more suitable for bear foraging and habitation. Even if the most conservative models were exceeded and the entire coastal zone of Louisiana were subject to permanent inundation in the future (prior to projected habitat changes in the Atchafalaya Basin), only a relatively small proportion of Louisiana black bears and their habitat would be affected. Specifically, more than 80 percent of the Louisiana black bear HRPA, more than 90 percent of Louisiana black bear breeding habitat, 85 percent of Louisiana black bear critical habitat, and 70 percent of the Louisiana black bear population occur outside of the Louisiana Coastal Zone.

A specific illustration of the resilience of the Louisiana black bear to survive and adapt to extreme climatic events occurred during the recent operation of the Morganza Floodway. The UARB subpopulation occupies a 175-square-mile (453-square-km) area within and adjacent to the Morganza Floodway. Much of the area inhabited by the UARB subpopulation is subject to extreme flooding, especially when Mississippi River stages rise to levels that warrant the Corps' operation of the Morganza Floodway (which has only occurred twice, in 1973 and 2011). The 2011 operation of the Morganza Flood Control Structure coincidentally occurred during an ongoing 6-year

Louisiana black bear genetics and population dynamics study that included both radio telemetry and mark-recapture (via hair snares and genetics analyses) methods within and adjacent to the Morganza Floodway (O'Connell et al. 2014, pp. 479–482). Approximately 60 percent of the breeding habitat that supports the UARB subpopulation was covered in floodwaters ranging in depth from approximately 10 to 20 feet (3 to 6 meters; O'Connell et al. 2014, p. 477). Study results indicate that most bears (88.7 percent) maintained residence within the Morganza Floodway (presumably in the remaining 40 percent of available habitat that was less severely flooded) throughout the 56-day operational period of the Morganza Flood Control Structure (O'Connell et al. 2014, p. 482). A small number of bears did temporarily disperse to higher elevation forests, but most returned to their original home ranges following floodwater recession. The study concluded that the 2011 operation of the Morganza Flood Control Structure had ''no negative biological effects'' on adult Louisiana black bears within the UARB subpopulation (O'Connell et al. 2014, p. 483). Based on their adaptability, mobility, and demonstrated resiliency, and the lack of evidence suggesting that previous and ongoing climate change has had any adverse impact on the Louisiana black bear or its habitats, we conclude that climate change is not a threat to the Louisiana black bear now or within the foreseeable future.

Summary of Factor E: Based on recent genetic analyses, the effects of Minnesota bear reintroductions, while evident to some extent in the UARB subpopulation do not represent a threat to the Louisiana black bear. Other potential threats such as anthropogenic sources of mortality (*e.g.,* poaching, vehicle strikes, and nuisance bear management) and potential effects of hurricanes or climate change do not represent significant threats to the Louisiana black bear. In spite of ongoing mortality from those anthropogenic sources, recent research concludes that the Louisiana black bear within the Tensas and Upper Atchafalaya River Basins [specifically the metapopulation composed of the TRB, UARB, and TRC subpopulations] has an overall probability of persistence in the wild for the next 100 years in spite of any random demographic, genetic, environmental, or natural catastrophic effects, of approximately 100 percent (0.996; Laufenberg and Clark 2014, p. 2) and population numbers in the LARB subpopulation have nearly doubled since listing. The effects of climate change are not threats based on the species' adaptability, mobility, and demonstrated resiliency in regard to extreme climatic events. Based on all these factors, we find that there are no other natural or manmade factors that are threats to the Louisiana black bear.

Conclusion of the 5-Factor Analysis

Under section 3 of the Act, a species 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 in the foreseeable future throughout all or a significant portion of its range.'' We have carefully assessed the best scientific and commercial information available regarding the threats faced by the Louisiana black bear in developing this proposed rule. Research has documented that the four main Louisiana subpopulations (TRB, TRC, UARB, and LARB) are stable or increasing (Hooker 2010, O'Connell 2013, Troxler 2013, Laufenberg and Clark 2014, entire documents respectively). Emigration and immigration (*i.e.,* gene flow) has been documented among several of the Louisiana and Mississippi subpopulations (Laufenberg and Clark 2014, pp. 91–94). Overall, the Louisiana black bear metapopulation (TRB, UARB, and TRC) has an estimated probability of long-term persistence (more than 100 years) of 0.996 under even the most conservative scenario (Laufenberg and Clark 2014, p. 82). The areas supporting Louisiana black bear breeding subpopulations have also increased over 430 percent, for a total of 1,806,556 ac (731,087 ha) (Table 1). Based on the analysis in this rule and given the reduction in some threats and evidence that other factors are not threats, we conclude that the Louisiana black bear is not in danger of extinction throughout all of its range or likely to become endangered within the foreseeable future throughout all of its range. With the detailed monitoring and management actions described in our PDM plan (see Post-Delisting Monitoring section) and the referenced Louisiana Black Bear Management Plan, we believe that if this rule is finalized, the Louisiana black bear metapopulation will continue to remain viable for at least the next century (Laufenberg and Clark 2014, entire document). As the PDM plan is implemented, we will monitor subpopulations and threat levels to ensure that no triggers are reached that would require instituting ESA protection for this bear. In addition, if this rule is finalized and the bear is ultimately delisted, the Service, other partners and States will continue past delisting to implement programs and conservation actions (*e.g.,* habitat restoration, protection and management) that will directly and indirectly contribute to the conservation of the Louisiana black bear across its range.

Significant Portion of the Range Analysis

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so throughout all or a significant portion of its range. Having determined that the Louisiana black bear is not endangered or threatened throughout all of its range, we next consider whether there are any significant portions of its range in which the Louisiana black bear is in danger of extinction or likely to become so. We published a final policy interpreting the phrase ''Significant Portion of its Range'' (SPR) (79 FR 37578; July 1, 2014). The final policy states that (1) if a species is found to be endangered or threatened throughout a significant portion of its range, the entire species is listed as endangered or threatened, respectively, and the Act's protections apply to all individuals of the species wherever found; (2) a portion of the range of a species is ''significant'' if the species is not currently endangered or threatened throughout all of its range, but the portion's contribution to the viability of the species is so important that, without the members in that portion, the species would be in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range; (3) the range of a species is considered to be the general geographical area within which that species can be found at the time the Service makes any particular status determination; and (4) if a vertebrate species is endangered or threatened throughout a significant portion of its range, and the population in that significant portion is a valid Distinct Population Segment (DPS), we will list the DPS rather than the entire taxonomic species or subspecies.

The procedure for analyzing whether any portion is a SPR is similar, regardless of the type of status determination we are making. The first step in our analysis of the status of a species is to determine its status throughout all of its range. If we determine that the species is in danger of extinction, or likely to become endangered in the foreseeable future, throughout all of its range, we list the species as an endangered species or threatened species and no SPR analysis will be required. If the species is neither

in danger of extinction nor likely to become so throughout all of its range, as we have found here, we next determine whether the species is in danger of extinction or likely to become so throughout a significant portion of its range. If it is, we will continue to list the species as an endangered species or threatened species, respectively; if it is not, we conclude that listing the species is no longer warranted.

When we conduct an SPR analysis, we first identify any portions of the species' range that warrant further consideration. The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose in analyzing portions of the range that have no reasonable potential to be significant or in analyzing portions of the range in which there is no reasonable potential for the species to be endangered or threatened. To identify only those portions that warrant further consideration, we determine whether substantial information indicates that: (1) The portions may be ''significant'' and (2) the species may be in danger of extinction there or likely to become so within the foreseeable future. Depending on the biology of the species, its range, and the threats it faces, it might be more efficient for us to address the significance question first or the status question first. Thus, if we determine that a portion of the range is not ''significant,'' we do not need to determine whether the species is endangered or threatened there; if we determine that the species is not endangered or threatened in a portion of its range, we do not need to determine if that portion is ''significant.'' In practice, a key part of the determination that a species is in danger of extinction in a significant portion of its range is whether the threats are geographically concentrated in some way. If the threats to the species are affecting it uniformly throughout its range, no portion is likely to have a greater risk of extinction, and thus would not warrant further consideration. Moreover, if any concentration of threats apply only to portions of the range that clearly do not meet the biologically based definition of ''significant'' (*i.e.,* the loss of that portion clearly would not be expected to increase the vulnerability to extinction of the entire species), those portions would not warrant further consideration.

Applying the process described above, we have already determined that the species is no longer endangered or threatened throughout its range. We next evaluated the range of this subspecies to determine if any areas could be considered a significant portion of its range. One way to identify portions for further analyses is to identify any natural divisions within the range that might be of biological or conservation importance. While there is some minor variability in the habitats occupied by the Louisiana black bear across its range, the basic ecological components required for the species to complete its life cycle (*e.g.,* BLH or upland forest habitat having a high species and age class diversity that provides for hard and soft mast supplies, denning sites, and escape cover) are present throughout the habitats occupied by this species. No specific location within the current range of the species provides a unique or biologically significant function that is not found in other portions of the range.

We next examined whether any threats are geographically concentrated in some way that would indicate the Louisiana black bear would be in danger of extinction, or likely to become so in that area. In Louisiana, both the Louisiana and Mississippi black bear breeding populations occur in the LMRAV. These subpopulations make up the majority of the overall Louisiana black bear bear population and all face the same type of potential threats—primarily habitat conversion. We have already discussed that trends in that threat have been significantly reduced and in some cases reversed (see Factors A and D). Estimates of long-term viability of the TRB and the UARB subpopulations were greater than 95 percent except for the two most conservative models for the UARB (long-term viability estimates of 85 percent and 92 percent).

Through our review of potential threats we identified the LARB subpopulation as one that that may be at greater risk of extinction due to its additional threats from future anticipated development and sea level rise. We thus considered whether this subpopulation may warrant further consideration as a significant portion of the Louisiana black bear range. The LARB is located within the coastal area of Louisiana in St. Mary, Iberia, and Vermillion Parishes in forested habitat similar to other Louisiana black bear subpopulations. That subpopulation is separated from the other subpopulations and the habitat between them within the Basin is believed to be too wet currently to support breeding females, although bears have been observed along the higher areas on both sides of the Basin. The probability of interchange between the LARB and the other subpopulations is low (Laufenberg and Clark 2014, p. 93); however, reports of bear live-captures, known natal dens, and confirmed sightings indicate bears can and do move out (at least temporarily) of this subpopulation (Figure 1, Davidson et al. 2015, p. 24). Dispersal by male bears of more than 100 miles by males is not unusual and combined with the documented occurrences of bears (likely males) on the higher portions (levees and ridges) of the Atchafalaya Basin spanning the area between the UARB and LARB subpopulations, movement of individuals among other subpopulations cannot be ruled out. Increased sedimentation is occurring in the interconnecting habitat in the Atchafalaya Basin (Hupp et al. 2008, p. 139) as predicted by LeBlanc et al. (1981, p. 65). The increase in sedimentation is resulting in higher elevations within the Basin that will produce suitable bear habitat (*e.g.,* less wet and more food sources).

Additionally, range expansion by bears from the northern subpopulations would take advantage of the improved Atchafalaya Basin habitats. At the current time, the LARB subpopulation is stable to increasing, although we did not have data to determine its long-term viability. The LARB has been characterized by some, based on its genetic uniqueness, as more representative of the Louisiana black bear and thus should be given special consideration for its integrity (Triant et al. 2003, p. 647). However, Csiki et al. (2003, p. 699) suggested that the distinctness of the Louisiana black bear was the result of a genetic bottleneck rather than a true genetic difference. Since 2003, our understanding of genetic markers has improved. Studies by Troxler (2013) and Laufenberg and Clark (2014) reached similar conclusions (*e.g.,* that distinctness is likely due to isolation resulting in restricted gene flow and genetic drift) as Csiki et al. (2003) concluded.

Habitat supporting the LARB subpopulation (population range from 136 to 194 adult bears (Laufenberg and Clark 2014, p. 45)) of the Louisiana black bear is more vulnerable to one of the particular effects of global climate change, the long term threat of sea level rise, than other subpopulations due to its occurrence within low-elevation coastal habitats. However, as discussed above, in the event of coastal bear habitat loss due to climate change effects, bears have demonstrated the ability to adapt and move to more suitable areas and would likely move into suitable areas. Additionally, any long-term threat of sea level rise would likely be ameliorated to some extent by

the projected successional changes in the Atchafalaya Basin that would eventually convert many of its swamps to BLH forest, thus improving the suitability of that habitat for the Louisiana black bear. It is unlikely that such changes would cause the loss of this subpopulation or appreciably reduce the long-term viability of the Louisiana black bear.

We also evaluated whether the other occurrences that we cannot currently consider self-sustaining in Mississippi and northern Louisiana could be considered a significant portion of the species' range. However, those subpopulations have formed as the result of emigration from nearby subpopulations. Therefore, based on examination of information on the biology and life history of the Louisiana black bear, we determined that there are no separate areas of the range that are significantly different from others or that are likely to be of greater biological or conservation importance than any other areas.

In conclusion, we have determined that none of the existing or potential threats, either alone or in combination with others, are likely to cause the Louisiana black bear to be in danger of extinction throughout all or a significant portion of its range, nor is it likely to become endangered within the foreseeable future throughout all or a significant portion of its range. On the basis of this evaluation, we conclude the Louisiana black bear no longer requires the protection of the Act, and propose to remove the Louisiana black bear from the Federal List of Endangered and Threatened Wildlife (50 CFR 17.11(h)).

Effects of This Proposed Rule

This rule, if finalized, would revise 50 CFR 17.11(h) to remove Louisiana black bear from the List of Endangered and Threatened Wildlife. In addition, the rule would revise § 17.11(h) to remove similarity of appearance protections for the American black bear, which are in effect within the historical range of the Louisiana black bear. This designation is assigned for law enforcement purposes to an unlisted species that so closely resembles the listed species that its taking represented an additional threat to the Louisiana black bear at the time of listing. With the delisting of the Louisiana black bear, such a designation would no longer be necessary.

If this proposed rule is finalized, the prohibitions and conservation measures provided by the Act would no longer apply to the Louisiana black bear. Federal agencies would no longer be required to consult with us under section 7 of the Act to ensure that any action authorized, funded, or carried out by them is not likely to jeopardize the bear's continued existence. The prohibitions under section 9(a)(1) of the Act would no longer make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce, or take, possess, sell, deliver, carry, transport, or ship Louisiana black bears. Finally, this rule would also remove the Federal regulations related to the Louisiana black bear listing: The special rule provisions at 50 CFR 17.40(i) and the critical habitat designation at 50 CFR 17.95(a).

Post-Delisting Monitoring

Section 4(g)(1) of the Act requires us to implement a system in cooperation with the States to monitor effectively, for not less than 5 years the status of all species that have recovered and been removed from the Federal List of Endangered and Threatened Wildlife and Plants (List). Section 4(g)(2) of the Act directs us to make prompt use of its emergency listing authorities under section (4)(b)(7) to prevent significant risk to the well-being of any recovered species. PDM refers to activities undertaken to verify that a species delisted due to recovery remains secure from the risk of extinction after the protections of the Act no longer apply. The primary goal of PDM is to ensure that the species' status does not deteriorate, and if a decline is detected, to take measures to halt the decline so that proposing it as threatened or endangered is not again needed. If at any time during the monitoring period, data indicate that protective status under the Act should be reinstated, we can initiate listing procedures, including, if appropriate, emergency listing. At the conclusion of the monitoring period, we will review all available information to determine if relisting, the continuation of monitoring, or the termination of monitoring is appropriate.

Section 4(g) of the Act explicitly requires that we cooperate with the States in development and implementation of PDM programs. However, we remain ultimately responsible for compliance with section 4(g) and, therefore, must remain actively engaged in all phases of PDM. We also seek active participation of other entities that are expected to assume responsibilities for the species' conservation after delisting. In August 2013, LDWF and the Service agreed to be cooperators in the PDM of the Louisiana black bear.

We have prepared a Draft PDM Plan for the Louisiana black bear (*Ursus americanus luteolus*) (Service 2015). This plan is designed to detect significant declines in Louisiana black bear populations with reasonable certainty and precision. The draft Plan:

(1) Summarizes the species' status at the time of delisting;

(2) Defines thresholds or triggers for potential monitoring outcomes and conclusions;

(3) Lays out frequency and duration of monitoring;

(4) Articulates monitoring methods including sampling considerations;

(5) Outlines data compilation and reporting procedures and responsibilities; and

(6) Proposes a PDM implementation schedule including timing and responsible parties.

Concurrent with this proposed delisting rule, we announce the draft plan's availability for public review. The draft PDM plan can be viewed in its entirety at: *http://www.fws.gov/lafayette/* or at *http://www.regulations.gov* under Docket Number FWS–R4–ES–2015–0014. Copies can also be obtained from the U.S. Fish and Wildlife Service, Louisiana Ecological Services Field Office, Lafayette, Louisiana (see **FOR FURTHER INFORMATION CONTACT** section). We seek information, data, and comments from the public regarding the Louisiana black bear and the PDM strategy. We are also seeking peer review of this draft plan concurrently with this comment period. We anticipate finalizing this plan, considering all public and peer review comments, prior to making a final determination on the proposed delisting rule.

Peer Review

In accordance with our policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), and the OMB's Final Information Quality Bulletin for Peer Review, dated December 16, 2004, we will solicit the expert opinions of at least three appropriate and independent specialists regarding the science in this proposed rule and the draft PDM plan. The purpose of such review is to ensure that we base our decisions on scientifically sound data, assumptions, and analyses. We will send peer reviewers copies of this proposed rule and the draft PDM plan immediately following publication of this proposed rule in the **Federal Register**. We will invite peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed delisting rule and draft PDM plan. We will summarize the opinions of these

reviewers in the final decision documents, and we will consider their input and any additional information we receive as part of our process of making a final decision on this proposal and the draft PDM plan. Such communication may lead to a final decision that differs from this proposal.

Clarity of This Proposed Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Required Determinations

Paperwork Reduction Act of 1995

This proposed rule does not contain collections of information that require approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed rule will not impose recordkeeping or reporting requirements on state or local governments, individuals, businesses, or organizations. We may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment or Environmental Impact Statement, as defined in the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that no tribal lands or interests are affected by this proposal.

References Cited

A complete list of references cited is available on *http://www.regulations.gov* under Docket Number FWS–R4–ES–2015–0014.

Author

The primary author of this document is Deborah Fuller, Louisiana Field Office (see **FOR FURTHER INFORMATION CONTACT** section).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

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

PART 17—[AMENDED]

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

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

§ 17.11 [Amended]

■ 2. Amend § 17.11(h) by removing the entries for ''Bear, American black'' and ''Bear, Louisiana black'' under ''MAMMALS'' from the List of Endangered and Threatened Wildlife.

§ 17.40 [Amended]

■ 3. Amend § 17.40 by removing and reserving paragraph (i).

§ 17.95 [Amended]

■ 4. Amend § 17.95(a) by removing the entry for ''Louisiana Black Bear (*Ursus americanus luteolus*)''.

Dated: May 5, 2015.

Stephen Guertin,

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

[FR Doc. 2015–11748 Filed 5–20–15; 8:45 am]

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Part III

Department of Commerce

Bureau of Industry and Security

15 CFR Parts 738, 740, 742, *et al.*

Wassenaar Arrangement 2014 Plenary Agreements Implementation and Country Policy Amendment; Final Rule

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 738, 740, 742, 743, 772 and 774

[Docket No. 150304217–5217–01]

RIN 0694–AG44

Wassenaar Arrangement 2014 Plenary Agreements Implementation and Country Policy Amendments

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) maintains, as part of its Export Administration Regulations (EAR), the Commerce Control List (CCL), which identifies certain of the items subject to Department of Commerce jurisdiction. This final rule revises the CCL to implement changes made to the Wassenaar Arrangement's List of Dual-Use Goods and Technologies (Wassenaar List) maintained and agreed to by governments participating in the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (Wassenaar Arrangement, or WA) at the December 2014 WA Plenary Meeting (the Plenary). The twentieth Plenary meeting of the Wassenaar Arrangement was held in Vienna on 2 to 3 December 2014. The Wassenaar Arrangement advocates implementation of effective export controls on strategic items with the objective of improving regional and international security and stability.

Wassenaar Participating States agreed to new export controls in a number of areas, including spacecraft equipment (Category 9) and technology for fly-by-wire/flight-by-light systems (Category 7), while texts for the control of machine tools (Category 2) and optical equipment for military utility and fiber laser components (Category 6) were substantially revised. In addition, significant reviews of several categories resulted in the deletion of obsolete controls relating to vessels (Category 8) and in refined controls on Unmanned Aerial Vehicles—UAVs (Category 9), specifically taking note of the substantial progress of technology in that area. Wassenaar Participating States modified controls in a number of other areas, such as equipment for production of electronic devices (Category 3), certain telecommunications equipment where encryption and other ''information security'' functionality is limited to operations, administration, or maintenance (OAM) tasks (Category 5P2), and general purpose computers or servers where standard ''information security'' functionality is provided by embedded mass market microprocessors (CPUs) or operating systems (also Category 5P2).

This rule amends the CCL by implementing the changes agreed to by the WA at the Plenary by revising 42 Export Control Classification Numbers (ECCNs), adding one ECCN and removing one ECCN, as well as amending the General Technology Note, WA reporting requirements, adding seven (7) definitions and revising six (6) definitions in the EAR.

This rule also revises 3 ECCNs to add License Exception CIV eligibility for Anisotropic plasma dry etching equipment and related software and technology for the development and production of this equipment, as a result of BIS' foreign availability assessment.

Country Group A column 1, the Coordinating Committee (CoCom) member countries, is replaced with the successor national security export regime the Wassenaar Arrangement Participating States. In addition, the second national security column and the second regional stability column of the Commerce Country Chart are amended to harmonize with each other, as well as make changes based on the risk of diversion to unauthorized end user, end uses or destinations.

DATES: This rule is effective: May 21, 2015.

FOR FURTHER INFORMATION CONTACT: For general questions contact Sharron Cook, Office of Exporter Services, Bureau of Industry and Security, U.S. Department of Commerce at 202–482–2440 or by email: *Sharron.Cook@bis.doc.gov.*

For technical questions contact:

Categories 0, 1 & 2: Michael Rithmire at 202–482–6105

Category 3: Brian Baker at 202–482–5534

Categories 4 & 5: ITCD staff 202–482–0707

Category 5 (Satellites): Mark Jaso at 202–482–0987 or Reynaldo Garcia at 202–482–3462

Category 6 (optics): Chris Costanzo at 202–482–0718

Category 6 (lasers): Mark Jaso at 202–482–0987

Category 6 (sensors and cameras): John Varesi 202–482–1114

Category 8: Darrell Spires 202–482–1954

Categories 7 & 9: Daniel Squire 202–482–3710 or Reynaldo Garcia 202–482–3462

SUPPLEMENTARY INFORMATION:

Background

The Wassenaar Arrangement (WA) on Export Controls for Conventional Arms and Dual-Use Goods and Technologies is a group of 41 like-minded states committed to promoting responsibility and transparency in the global arms trade, and preventing destabilizing accumulations of arms. As a Participating State, the United States has committed to controlling for export all items on the WA control lists. The lists were first established in 1996 and have been revised annually thereafter. Proposals for changes to the WA control lists that achieve consensus are approved by Participating States at annual December Plenary meetings. Participating States are charged with implementing the agreed list changes as soon as possible after approval. Implementation of WA list changes ensures U.S. companies have a level playing field with their competitors in other WA Participating States.

Unless otherwise indicated, the changes to the EAR described below are made in order to implement changes to the WA control lists approved at the December 2014 Plenary meeting.

Revisions to the Commerce Control List

Revises (42): 0A606, 1A613, 1C002, 1C007, 1C008, 1C010, 1E002, 2B001, 3A001, 3A002, 3A991, 3B001, 4D001, 4E001, 5D001, 5E001, 5A002, 6A001, 6A003, 6A004, 6A005, 6C005, 6D003, 7A003, 7D004, 7E004, 7E001, 8A001, 8A002, 8A620, 8E002, 9A001, 9A003, 9D003, 9A004, 9A010, 9A012, 9B001, 9B010, 9D003, 9D004, and 9E003.

Adds (1): 9D005.

Removes (1): 4D002.

Revises because of the Foreign Availability Assessment (3): 3B001, 3D001, and 3E001.

Category 0—Nuclear Materials, Facilities, and Equipment [And Miscellaneous Items]

0A606 Ground Vehicles and Related Commodities

ECCN 0A606 is amended by revising paragraph .b in Note 2 to paragraph .a in order to remove a comma after the word ''parts'' to correct the punctuation.

Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms,'' and ''Toxins''

1A613 Armored and Protective ''Equipment'' and Related Commodities

ECCN 1A613 is amended by adding ''metallic or non-metallic'' to the beginning of Items paragraph .a to clarify that 1A613 includes plates made from metal or non-metal materials, such as ceramics, glass, composites, or any

combination of metal or non-metal materials.

1C002 Metal Alloys, Metal Alloy Powder and Alloyed Materials

ECCN 1C002 is amended by revising Item paragraphs c.2.f and c.2.g, and adding Item paragraph c.2.h. Paragraph c.2.f is revised by removing the word ''or'' from the end of this paragraph. Paragraph c.2.g is revised by replacing the ''and'' with an ''or'' at the end of this paragraph. This rule adds new paragraph c.2.h to control metal alloy powder or particulate material specified in 1C002.c.1 made in a controlled environment by ''plasma atomization,'' because this process is capable of producing fine spherical powders having the composition specified in 1C002.c.1 and can produce powder sizes finer than those processes already listed 1C002.c.2. Also, the definition for ''plasma atomization'' is added to § 772.1 of the EAR.

1C007 Ceramic Powders, Non-''Composite'' Ceramic Materials, Ceramic-''Matrix'' ''Composite'' Materials and Precursor Materials

ECCN 1C007 is amended by revising the Heading and Item paragraph a. The Heading is revised by replacing ''ceramic base materials'' with ''ceramic powders,'' because this term is not commonly used in literature for ceramics, not commonly recognised by ceramics manufacturers, and is prone to misinterpretation. For the same reason, Items paragraph .a is amended by replacing ''base materials'' with ''ceramic powders.''

1C008 Non-Fluorinated Polymeric Substances as Follows (see List of Items Controlled)

ECCN 1C008 is amended by removing and reserving Items paragraph .b (Thermoplastic liquid crystal copolymers), because thermoplastics have not been able to compete in structural applications with thermosetting material controlled in 1C008.a.2.

1C010 ''Fibrous or Filamentary Materials''

ECCN 1C010 is amended by moving the Technical Notes from below paragraph .c and adding them to the beginning of the Items paragraph of the List of Items Controlled section, because it applies to the whole ECCN. This rule also revises Items paragraph d.1.b by replacing the reference to ''1C008.b to 1C008.f'' with ''1C008.d to 1C008.f'' in order to harmonize with the revision this rule made to 1C008.

1E002 Other ''Technology''

ECCN 1E002 is amended by revising the List Based License Exceptions and Items paragraphs .c, .c.1., .c.1.c.1., .c.1.c.2. and .g; removing Items paragraphs .c.1.c.3 through .c.1.c.3.c.; removing and reserving Items paragraph .d; and removing the Technology Note to paragraph .g.

1E002.f is removed from License Exception TSR eligibility because the General Technology Note, Supplement No. 2 to part 774, which indicates that License Exception TSU is not available for repair ''technology'' controlled by 1E002.e or .f. A License Requirement Note is added to explain this in the ECCN.

Items paragraphs .c, .c.1, .c.1.c.1, and .c.1.c.2 are amended by replacing the term ''base materials'' with ''ceramic powders,'' because this term is not commonly used in literature for ceramics, not commonly recognised by ceramics manufacturers and is prone to misinterpretation.

This rule removes Items paragraphs .c.1.c.3 through .c.1.c.3.c (technology for the design or production of ceramic powders or non-composite ceramic materials having platelets, whiskers, and continuous or chopped fibers), because the advancement of technology in this area has made the use of these materials outdated and it is very unlikely that these materials would ever be used in the same ceramic composition formulation.

Items paragraph .d (aromatic polyamide ''production'' ''technology'') is removed and reserved because this technology is adequately covered by ECCN 1E001.

Items paragraph .g is amended by adding double quotes around the term ''libraries'', removing the parenthetical phrase ''(parametric technical databases)'' and removing the Technology Note to paragraph .g that provided a definition for the term ''library,'' because the term ''libraries'' is changed from a locally defined term to a globally defined term. See § 774.1(d) regarding the quote system used in the CCL. This rule adds the term ''libraries'' to § 772.1 of the EAR to harmonize with the WA agreement to make it a global definition because it is used in both the WA Military List (ML17) and in 1E002.

Category 2—Materials Processing

Technical Notes for 2B001 to 2B009, 2B201, 2B290 and 2B991 to 2B999

Changes are made in the Technical Notes under 2B, to provide guidance for the measurement of ''unidirectional positioning repeatability'' (UPR).

2B001 Machine Tools and any Combination Thereof, for Removing (or Cutting) Metals, Ceramics or ''Composites'', Which, According to the Manufacturer's Technical Specifications, Can Be Equipped With Electronic Devices for ''Numerical Control''

ECCN 2B001 is amended by revising Items paragraphs a.1, b.1.a, b.2.a through b.3, c.1.a, c.2 through c.2.c, Notes 2B001.c paragraph b., and e.2.b. Items paragraphs a.1, b.1.a, b.2.a through b.3, c.1.a, c.2 through c.2.c, Notes 2B001.c paragraph b amendments change the control parameter for turning, milling, jig boring and grinding machine tools from positioning accuracy (A) to ''unidirectional positioning repeatability'' (UPR). This includes adding a definition for ''unidirectional positioning repeatability'' in § 772.1 of the EAR. Machine tools for milling and turning having five or more axes are grouped in 3 divisions depending on the travel length of axis (length < 1m, 1m ≤ length < 4m and length ≥ 4m) to which specific control thresholds are associated (1.1 μm, 1.4 μm and 6 μm). Other machines (Turning, milling, grinding and jig boring) would be controlled based upon a specific UPR value and, as appropriate, their number of linear/rotary axes. The main reason for the change is that UPR represents the best possible accuracy for machine tools. Additionally, there is no systematic error in the measurement of UPR therefore there is no need for compensation. In particular, this may solve a loophole that currently exists with the measurement of positioning accuracy which is dependent on compensation. In the course of discussions at WA, delegations also addressed the question of used machines for which UPR values may not be specified or available. Generally there is a factor of 1 to 3 (According to ISO) between A and UPR. This ratio could be another tool that can assist in classifying used machine tools.

Items paragraph e.2.b is amended to add double quotes around the term ''accuracy'' to indicate that the term is defined in § 772.1 of the EAR. See § 774.1(d) regarding the quote system used in the CCL.

Category 3—Electronics

3A001 Electronic Components and ''Specially Designed'' ''Components'' Therefor

ECCN 3A001 is amended by revising Items paragraphs a.5.b.1 and a.5.b.2, a.7, a.7.a and a.7.b, the Technical Notes following a.7.b, b.7, b.10, and b.11.f and

b.11.g. Items paragraph a.5.b., which describes Digital-to-Analog Converters (DAC) having resolution of 10 bit or more, is amended by replacing the ''or greater'' with ''greater than'' for the 'adjusted updated rate.' Items paragraph a.5.b.2, which describes DACs having resolution of 12 bit or more, is amended by removing the text ''equal to or.'' Items paragraphs a.7.a and a.7.b, which specify parameters for Field Programmable Logic Devices (FPLDs), are amended by raising the maximum number of single-ended digital input/outputs from ''500 or greater'' to ''greater than 700'' and 'aggregate one-way peak serial transceiver data rate' from ''of 200 Gb/s or greater'' to ''500 Gb/s or greater.'' These revisions are made to reflect the advances made in recent years to Field Programmable Gate Arrays (FPGA) and to reduce controls on used devices. Technical Note 1 that follows Items paragraph a.7.b is removed because the Note above it already specifies FPGAs and Field Programmable Logic Arrays (FPLAs) in the list of devices included in 3A007.a.7.

Items paragraph b.7, converters and harmonic mixers, is amended to add detailed parameters, (*e.g.,* output power, frequency range, operating range), for converters and harmonic mixers that can extend the frequency range of equipment in 3A002.c through .f (signal analyzers, signal generators, network analyzers, and microwave test receivers).

Items paragraph b.10, oscillators or oscillator assemblies, is amended to clarify that 3A001.b.10 applies not only between 10 Hz and 10 kHz, but also at those frequencies, which ensures that oscillators are properly controlled. The revisions to 3A001.b.10 seek to adjust the formula defining the control thresholds so that they closely approximate the actual shape of the phase noise curve in real oscillators/instruments. This will increase the effectiveness of the controls.

3A001.b.11.f and b.11.g are revised by raising the upper frequency limit of 75 GHz to 90 GHz to align the specified maximum frequency to a standard waveguide frequency breakpoint that is relevant to current commercial applications.

3A002 General Purpose Electronic Equipment

ECCN 3A002 is amended by revising Items paragraphs a.5.a through a.5.c; adding paragraph 3. to the Technical Notes following Items paragraph a.5.c; revising Items paragraphs .c through c.3, c.4.a, .d through d.1.a, d.2, d.3.b through d.4.b, d.5, Note 1 after d.5, Technical Note 1 after d.5, and e.1 through e.2.

3A002.a.5.c and Technical Note paragraph 3 are added to the recording equipment and oscilloscopes control to clarify the scope of controls and, in particular, to address an issue of overlap between waveform digitizers and transient recorders specified by 3A002.a.5 and digital instrumentation data recorder systems specified by 3A002.a.6.

3A002.c (Signal analyzers) is amended by removing the term 'radio frequency,' which is no longer consistent with the scope of controls specified by this entry. The term 'radio frequency' indicates frequencies up to 6 GHz, but the subparagraphs 3A002.c.1 through c.3, in which frequencies are specified, all refer to frequencies of 31.8 GHz and higher.

In 3A002.c.1, although the frequency breakpoint for this band has been 37.5 GHz, it is now recognized that the breakpoint is 37 GHz, as per ETSI EN 300 197.

In 3A002.c.2, c.3, d.2 (Signal analyzers and generators), e.1 and e.2 (network analyzers) the high-frequency maximum limit is raised to 90 GHz. This figure corresponds to the maximum frequency of E-band waveguide (60–90 GHz), which is relevant to current commercial applications.

3A002.c.4.a is revised by increasing the control threshold (real-time bandwidth) from 85 to 170 MHz. Civilian data communication networks have increased in bandwidth to facilitate and promote these legitimate commercial uses. The updated threshold for real-time bandwidth addresses the 802.11ac WiFi standard.

3A002.d (signal generators) is revised to align the controls with current commercial technology requirements, specifically driven by commercial RF (Radio Frequency)/MW (Microwave) communication systems, while maintaining control on equipment of national security interests. The bandwidth (frequency change) is increased uniformly to 2.2 GHz and the frequency switching time is decreased uniformly to 100 μs (except in the range 31.8–37 GHz, for which the bandwidth and frequency switching time thresholds remain, unchanged). These changes are motivated by developments in modern commercial communication applications that are utilizing the modulation formats of the IEEE 802.11ad standard.

3A991 Electronic Devices, and ''Components'' not Controlled by 3A001

ECCN 3A991 is amended by revising the introductory text to Items paragraph .d (field programmable logic devices) by raising the maximum limit of input/outputs from 500 to 700 in order to accommodate technological advances in this area and to correspond to the change made to 3A001.a.7, *i.e.,* greater than 700. In addition, the text of this paragraph is simplified by replacing the phrase ''input/outputs of 200 or greater and less than 700'' to ''input/outputs between 200 and 700,'' which means the range includes 200 and 700.

3B001 Equipment for the Manufacturing of Semiconductor Devices or Materials and ''Specially Designed'' ''Components'' and ''Accessories'' Therefor

ECCN 3B001 is amended by revising the License Exception CIV eligibility paragraph and revising Items paragraphs f.1.a through f.2. The License Exception CIV eligibility paragraph is revised by adding 3B001.c (anisotropic plasma dry etching equipment) in light of a foreign availability assessment completed by BIS that concluded that equivalent items are available in China and therefore, no longer warrant CIV eligibility. Two lithography equipment parameters in 3B001.f are revised to recognize the movement of the state of the art of lithography equipment and feature size of advanced integrated circuits of significance to the military. A modernization of ''Minimum Resolvable Feature size'' (MRF) from 95 nm to 45 nm in Items paragraph f.1.b also required a change to the source wavelength in Items paragraph f.1.a used in direct step wafer lithography equipment. Therefore, Items paragraph f.1.a is revised by lowering the light source wavelength from ''shorter than 245 nm'' to ''shorter than 193 nm.'' In addition, the feature control parameter for imprint lithography in Items paragraph f.2 is revised from 95 nm to 45 nm to be consistent with the changes to direct step wafer equipment in Items paragraph f.1.

3D001 and 3E001

The License Exception CIV eligibility paragraphs are revised by adding software and technology for 3B001.c (anisotropic plasma dry etching equipment), because of the foreign availability assessment completed by BIS that concluded that equivalent items are available in China and therefore, no longer warrant control.

Category 4—Computers

4D001 ''Software''

ECCN 4D001 is amended by revising the License Exception TSR eligibility paragraph in the List Based License Exceptions section; revising the License Exception STA ineligibility paragraph in the Special Conditions for STA section; and revising Items paragraph b.1 in the List of Items Controlled section. Because the Adjusted Peak Performance in Items paragraph .b is raised from 0.60 Weighted TeraFLOPS (WT) to 1.0 WT, the License Exception TSR eligibility paragraph and the License Exception STA ineligibility paragraphs are adjusted from 1.0 WT to 2.0 WT to account for technological advancements in software for the development and production of computers.

4D002 ''Software'' ''Specially Designed'' or Modified To Support ''Technology'' Controlled by 4E (Except 4E980, 4E992, and 4E993)

4D002 is removed from the Commerce Control List, because is it no longer in use and not of national security concern.

4E001 ''Technology''

ECCN 4E001 is amended by revising the License Exception TSR eligibility paragraph in the List Based License Exceptions section; revising the License Exception STA ineligibility paragraph in the Special Conditions for STA section; and revising Items paragraph b.1 in the List of Items Controlled section. Because the Adjusted Peak Performance in Items paragraph .b is raised from 0.60 Weighted TeraFLOPS (WT) to 1.0 WT, the License Exception TSR eligibility paragraph and the License Exception STA ineligibility paragraphs are adjusted from 1.0 WT to 2.0 WT to account for technological advancements in software for the development and production of computers.

Technical Note on ''Adjusted Peak Performance'' (''APP'')

Note 6 of the Technical Note on ''APP'' is amended by removing the requirement to calculate the APP value for multiple memory/processor combinations operating simultaneously utilizing ''specially designed'' hardware, such as external interconnection equipment controlled under 4A003.g. Two Technical Notes are added after Note 6 for clarification on APP requirements for multi-processor systems. The revision to Note 6 simplifies the Note, eliminates an instance of ''specially designed,'' and tightens the focus of the control on the more capable shared-memory computer systems. The Technical Note is added to define when processors actually share memory.

Category 5 Part 1—''Telecommunications''

5D001 ''Software''

ECCN 5D001 is amended by removing and reserving Items paragraph .b, ''Software'' ''specially designed'' or modified to support ''technology'' controlled by 5E001, because this control is outdated and no longer in use.

5E001 ''Technology''

ECCN 5E001 is amended by revising Items paragraph c.1, infrastructure transmission and switching ''technology'', to raise the ''total digital transfer rate'' from 120 Gbit/s to 560 Gbit/s in order to accommodate advances in technology and in public standards.

Category 5 Part 2—''Information Security''

Category 5 Part 2 is amended to revise Note 1 to Category 5 Part 2, 5A002.a and 5A002.b to clarify that these entries apply to any system, equipment or component that meet the control parameters specified in a particular 5A002 or 5B002 entry. Prior to this revision there was a risk that exporters would interpret the current language to exclude some items that have ''information security'' functionality but are not specifically listed. The definition of ''cryptanalytic items'' in § 772.1 of the EAR is similarly revised, for the same reasons.

ECCN 5A002 is amended by revising the Related Controls paragraph in the List of Items Controlled section to add recently added paragraphs, *i.e.,* (k), (l), and (m) to Related Controls Note 2.

This rule also revises paragraph (j) in the Note at the beginning of the Items section, 5A002.b, 5D002.d and 5E002.b and the definition of ''cryptographic activation'' in order to address a loophole regarding the 'cryptographic activation' controls. The concept of ''cryptographic activation'' was introduced in 2010. The purpose of (j) is to release from control cryptographic equipment where the cryptographic capability cannot be enabled without some kind of additional mechanism such as a license key that is securely kept and bound to the equipment being activated. However, it was found that the original wording of the definition did not explicitly exclude certain circumstances by which export controls on cryptography could be circumvented by a manufacturer.

A new paragraph (l) is added to the Note at the beginning of Items paragraph to exclude from 5A002 routers, switches or relays, where the ''information security'' functionality is limited to the tasks of ''Operations, Administration or Maintenance—OAM,'' implementing only published or commercial cryptographic standards. In addition, a definition for ''Operations, Administration or Maintenance'' (''OAM'') is added to § 772.1 of the EAR, as well as a new Note under 5D002.c.

New paragraph (m) is added to the Note at the beginning of the Items paragraph to exclude from 5A002 general purpose computing equipment or servers having standard 'information security' functionality from their embedded mass market microprocessors (CPUs) and operating systems, in addition to OAM functionality.

The Note to 5A002.a.2 (Equipment performing cryptanalytic functions) is amended by replacing the word 'cryptanalysis' with 'cryptanalytic functions' and adding a new Technical Note to clarify the meaning of 'cryptanalytic functions'. This eliminates ambiguity by explicitly defining the term 'cryptanalytic functions' for purposes of the control, while keeping the term 'cryptanalysis' as a local definition to the overall definition of ''information security.''

The definition of ''cryptanalytic items'' in § 772.1 of the EAR is similarly revised to make clear references to 'cryptanalytic functions' and 'cryptanalysis.'

Items paragraph a.9 and the Technical Note following Items paragraph a.9 are corrected by replacing the single quotes with double quotes around the term ''quantum cryptography'' and removing Technical Note 1, which is the definition for ''quantum cryptography,'' because that term is now defined in § 772.1 of the EAR. See § 774.1(d) regarding the quote system used in the CCL.

Category 6—Sensors and Lasers

6A001 Acoustic Systems, Equipment and ''Components''

ECCN 6A001 is amended by revising Items paragraph a.1.a.2.a.2; the Technical Note after Items paragraph a.1.a.2.a.2; and Items paragraph a.1.a.3. Items paragraph a.1.a.2.a.2 (Underwater survey equipment designed for seabed topographic mapping) is amended to add the unit ''m/s'' to the sounding rate parameter. The Technical Note that defines 'sounding rate' is amended by adding the guidance, ''for systems that produce soundings in two directions (3D sonars), the maximum of the

'sounding rate' in either direction should be used.''

Items paragraph a.1.a.3 (Side Scan Sonar (SSS) or Synthetic Aperture Sonar (SAS), designed for seabed imaging) is amended by adding a control for ''specially designed transmitting and receiving acoustic arrays therefor,'' because the quality and size of the transmitting and receiving hydrophone arrays is a key component to the performance of the overall system.

This rule also revises the introductory text of Items paragraph a.1.c to add two commas and 1 set of parentheticals for clarity; adds the phrase ''not specified by 6A001'' to Note 1 that appears after Items paragraph a.1.c; removes Items paragraph a.1.c.1 and adds in its place Items paragraphs a.1.c.1, a.1.c.1.a and a.1.c.1.b; removes the Technical Note after Items paragraph a.1.c.1 and adds a Technical Note after Items paragraph a.1.c.1.b; and removes and reserves Items paragraph a.1.c.2. The revised text of 6A001.a.1.c (Acoustic Projectors) is intended to address an issue with the former text that did not specify the conditions under which the specified criteria were to be determined.

6A003 Cameras, Systems or Equipment, and ''Components'' Therefor

ECCN 6A003 is amended by removing the special license requirement for Hong Kong in the License Requirement Table, because 6A003.b.4.b already requires a license under NS:2, RS:1 and RS:2 for these items.

ECCN 6A003 is amended by revising the Reporting Requirement Note, under the License Requirement Table, by replacing the list of countries with a reference to the newly revised Country Group A:1 of Supplement No. 1 to part 740. This is to align with the revision of the Regional Stability requirements for these items in § 742.6 and the overall national security country group amendments.

ECCN 6A003 is amended by revising Items paragraphs a.3 through a.3.b, paragraph b.4.c.1 in Note 3 to 6A003.b.4.b that appears after Items paragraph b.4.c; and revising paragraph .b in Note 4 to 6A003.b.4.c that appears after Items paragraph b.4.c. Items paragraph a.3 through a.3.b (mechanical or electronic streak cameras) are amended by restructuring the control text in a cascading format to apply the writing speed parameter to mechanical camera and a temporal resolution to electronic tube cameras. As a result, plug-ins for streak cameras are decontrolled, which are relatively simple devices and do not represent a concern.

Note 3 and 4 to 6A003.b.4.b and 6A003.b.4.c respectively are amended to adjust the parameters in order to decontrol imaging cameras as a component of a night vision system for civil passenger land vehicles.

6A004 Optical Equipment and ''Components,''

ECCN 6A004 is amended by revising the GBS and CIV paragraphs under the List Based License Exceptions section, adding a Technical Note after introductory Items paragraph 6A004.a; revising Items paragraph a.1, including adding subparagraphs a.1.a through a.1.b.2; and removing and reserving Items paragraph d.4. 6A004.a.1 is revised to address an issue with the text that essentially captured all deformable mirrors (DMs) on the market, irrespective of their military significance. The revised text includes new parameters that more closely identifies DMs with clear military utility and significance.

In addition, this rule revises Items paragraph a.4, including adding subparagraphs a.4.a through a.4.b.2.b and N.B after a.4.b.2.b. The revised text of 6A004.a.4 (Mirrors for beam steering mirror stages) and 6A004.d.2 (Beam steering mirrors stages and resonator alignment equipment) are updated to align the parameters with technological advancements in this area.

This rule also revises Items paragraph d.2, including adding subparagraphs d.2.a through d.2.b in order to separate and modernize the beam steering mirror controls in 6A004.a.4 and mirror control equipment listed 6A004.d.2.

Optical control equipment for segmented mirror alignment in 6A004.d.4 is removed because space qualified segmented mirror systems are already captured by 6A004.c.3, which makes the 6A004.d.4 control entirely redundant. Any non-space qualified optical control equipment for segmented mirror alignment is widely available and does not warrant control. License Exception GBS and CIV paragraphs are amended to remove reference to 6A004.d.4.

6A005 ''Lasers,'' ''Components'' and Optical Equipment

ECCN 6A005 is amended by removing the Note to 6A005.c that appears after the Items paragraph .c; revising Items paragraph e.2; adding a Note to Items paragraph e.2; and adding Items paragraph e.3.

The Note to 6A005.c is removed because some of the referenced laser technologies no longer exist. However, this does not mean that all the lasers listed in this Note are decontrolled, and exporters should look to specific ECCNs related to specific lasers to confirm control status.

Items paragraph e.2 (optical mirrors or transmissive or partially transmissive optical or electro-optical-''components,'') is amended to move ''fused tapered fiber combiners and Multi-Layer Dielectric gratings (MLDs)'' to Items paragraph e.3.c. Items paragraph e.3 (fiber laser components) is added to specify parameters for fiber laser components of concern.

6C005 Laser Material

The Heading of 6C005 is amended to be more general, because specific items paragraphs are added to this entry. What was previously specified by the Heading is now specified in Items paragraph 6C005.a. Rare-earth-metal doped double-clad fibers are added to 6C005.b to specify components of concern.

6D003 Other ''Software''

6D003.d is added to control ''software'' specially designed to maintain the alignment and phasing of segmented mirror systems consisting of mirror segments having a diameter or major axis length equal to or larger than 1 m. While this rule removes optical control equipment specially designed to maintain the alignment and phasing of segmented mirror systems from 6A004.d.4, because it is widely available, the software for such purposes is not widely available and still warrants controls.

Category 7—Navigation and Avionics

7A003 'Inertial Measurement Equipment or Systems'

This rule replaces the reference to 'civil aviation authorities in a Wassenaar Arrangement Participating State' with 'civil aviation authorities of one or more Wassenaar Arrangement Participating States' in various entries of the control lists (7A003 Note 2, 9A001.a, 9E003.h). This change acknowledges the fact that, for example in Europe the authority for certifying civil aircraft and components for airworthiness is the European Aviation Safety Agency (EASA). It would ensure that the Notes continue to apply to aircraft and components certified in European countries that may no longer have a Civil Aviation Authority.

7D004 & 7E004 Fly-by-Wire and Fly-by-Light ''Source Code'' and ''Technology''

ECCN 7D004 and 7E004 are amended by revising the Related Controls paragraph in the List of Items Controlled section to remove reference to ECCNs 0D521 and 0E521, because these items

have been added to 7D004.c and 7E004.b.7 and b.8. Accordingly, 0D521 No. 2 and 0E521 No. 6 are removed from the Table of Supplement No. 5 to part 774 of the EAR.

These changes are intended to address an issue with the current text which only controls 'active flight control systems' for protection-predictive diagnosis (7E004.b.3 and 7E004.b.4) and the related software in 7D004. The revised text will cover technology and software ''know-how'' related to high performance fly-by-wire/fly-by-light systems that could enhance the performance capabilities of systems of concern. Source code for fly-by-wire/fly-by-light systems is addressed in a new entry 7D004.c.

There are two main revisions to 7E004: Addition of a 7E004.b.7, which is intended to control the ''development'' ''technology'' for specific fly-by-wire functions/capabilities, which enable or enhance critical military capabilities; and addition of 7E004.b.8, which controls the technology to design a fault tolerant fly-by-wire system that has a Probability of Loss of Control (PLOC) rate of less (better) than 1×10^{-9}. Also the Note that appeared after paragraph b.6 is moved to after paragraph b.8.b, as well as adding double quotes around the word ''technology'' within the Note.

7E001 Technology for Items Controlled in Category 7

7E001 Heading is corrected to reinsert the exceptions to 7A994 and 7B994 that were inadvertently removed by the last WA implementation rule.

Category 8—Marine

8A001 Submersible Vehicles and Surface Vessels

ECCN 8A001 is amended by removing Items paragraphs .f (surface-effect vehicles (fully skirted variety)), .g (surface-effect vehicles (rigid sidewalls)), .h (hydrofoil vessels with active systems for automatically controlling foil systems), and .i (small waterplane area vessels), because these control entries are obsolete. Commodities no longer controlled in 8A001 may now be controlled in ECCN 8A992 (Vessels, marine systems or equipment, not controlled by 8A001 or 8A002, and ''specially designed'' ''parts'' and ''components'' therefor, and marine boilers and ''parts,'' ''components,'' ''accessories,'' and ''attachments''). ''Technology'' according to the General Technology Note for the ''development'' or ''production'' of the equipment removed from 8A001 remains controlled in newly added 8E002.c.

8A002 Marine Systems, Equipment, ''Parts'' and ''Components''

ECCN 8A002 is amended by removing Items paragraphs .k (skirts, seals and fingers), .l (Lift fans), .m (fully submerged subcavitating or supercavitating hydrofoils, ''specially designed'' for vessels controlled by 8A001.h), .n (active systems ''specially designed'' or modified to control automatically the sea-induced motion of vehicles or vessels, controlled by 8A001.f, 8A001.g, 8A001.h or 8A001.i), and o.1 (Water-screw propeller or power transmission systems, ''specially designed'' for surface effect vehicles (fully skirted or rigid sidewall variety), hydrofoils or 'small waterplane area vessels' controlled by 8A001.f, 8A001.g, .8A001.h or 8A001.i), because these are support systems for the items being deleted in 8A001. Commodities no longer controlled in 8A002 may now be controlled in ECCN 8A992 (Vessels, marine systems or equipment, not controlled by 8A001 or 8A002, and ''specially designed'' ''parts'' and ''components'' therefor, and marine boilers and ''parts,'' ''components,'' ''accessories,'' and ''attachments'').

8A620 Submersible Vessels, Oceanographic and Associated Commodities

ECCN 8A620 is amended by revising Items paragraph .f (Closed and semi-closed circuit (rebreathing) apparatus ''specially designed'' for military use and not enumerated elsewhere in the CCL or in the USML) by removing the control for ''specially designed'' ''components'' for use in the conversion of open-circuit apparatus to military use, because none have been identified.

8E002 Other ''Technology''

ECCN 8E002 is amended by removing License Exception TSR eligibility, because 8E002.a is specifically ineligible for License Exception TSU pursuant to the Note in the General Technology Note (GTN) of Supplement No. 2 to part 774. This rule also adds a License Exception Note to the List Based License Exceptions section to reference the Note to the GTN, which makes this ECCN ineligible for License Exception TSU, so that people do not overlook the Note to the GTN that has been in existence for more than a decade. In addition, this rule adds Items paragraph .c to maintain controls on ''technology'' according to the General Technology Note for the ''development'' or ''production'' of equipment deleted from 8A001.f through .i. Even though this equipment is obsolete to those that have advanced technology, the technology still warrants controls because of the usefulness of the equipment.

Category 9—Aerospace and Propulsion

9A001 Aero Gas Turbine Engines

ECCN 9A001 is amended by revising Notes 1 and 2 in Items paragraph .a for reasons explained under 7A003 above.

9A003 and 9D003 (Components and Software for Gas Turbine Engines)

ECCNs 9A003 and 9D003 are amended by revising the Headings by replacing the ''and'' with ''or'' and to also control the ''specially designed'' assemblies or components of the Auxiliary Power Unit (APU) (which incorporate ''technologies'' controlled by 9E003.a and 9E003.h) and FADEC software of the APU until it becomes decontrolled by Note 2 under 9A001 (APU's). The changes also make clear that when an APU becomes decontrolled by Note 2 under 9A001, then the specially designed assemblies or components, as well as the FADEC software, can be exported without any further licensing requirements. Item paragraph .b is revised to align the country scope with the Wassenaar Participating States of Supplement No. 1 to part 743 of the EAR.

9A004 Space Launch Vehicles and ''Spacecraft,'' ''Spacecraft Buses'', ''Spacecraft Payloads'', ''Spacecraft'' On-Board Systems or Equipment, and Terrestrial Equipment

ECCN 9A004 is amended by revising the Heading; revising the License Requirements section; redesignating Items paragraph .a as .w; adding paragraphs .a through .f.2; and revising the range of paragraphs that are Reserved from ''b. through w.'' to ''g. through v.''

Items paragraph .a (the International Space Station) is moved to Items paragraph .w, in order to add newly designated Items paragraphs .a (space launch vehicles), .b (''spacecraft''), .c (''spacecraft buses''), .d (''spacecraft payloads''), .e (on-board systems or equipment, specially designed for ''spacecraft''), and .f (terrestrial equipment, specially designed for ''spacecraft''). Even though these Items paragraphs .a–.f are controlled under a different ECCN 9A515, as indicated by the new License Requirement Note, they are listed here so they harmonize with the placement of them in the Wassenaar Arrangement Dual-use List in order to create a pointer to ECCN 9A515 for those that look for them here first. BIS

will keep using 9A515 for these items because it works best with the unique export controls of the U.S., in that the ''15'' in the number corresponds to the category on the USML where related military items are specified.

Prior to publication of this rule, only some specific components were controlled on their own merits in the relevant categories (*e.g.,* sensors), and when exported separately. The new controls capture the major sub-assemblies or equipment of a satellite that represent a high level of technology and are sensitive in terms of the potential military application they confer. This is the case of ''spacecraft buses'' (9A004.c), ''spacecraft payloads'' incorporating specific items controlled elsewhere in the CCL (9A004.d), on-board systems or equipment performing specific functions such as Attitude and Orbit Control (9A004.e) and terrestrial equipment—telemetry and telecommand equipment or simulators—(9A004.f).

Finally, the terms ''spacecraft bus'' and ''spacecraft payload'' are added to § 772.1 to avoid any ambiguity in the terms used, reflecting the technical state of the art and the commercial practices, and to facilitate common interpretation of both concepts.

9A010 ''Specially Designed'' ''Parts,'' ''Components,'' Systems and Structures, for Launch Vehicles, Launch Vehicle Propulsion Systems or ''Spacecraft''

ECCN 9A010 is amended by adding a List of Items Controlled section and Items paragraph heading; and adding Items paragraphs .a through .d in order to harmonize with the Wassenaar Dual-Use List placement and to direct people who may look for them here first to the ITAR. These items are ''subject to the ITAR'' (See 22 CFR parts 120 through 130).

9A012 Non-Military ''Unmanned Aerial Vehicles,'' (''UAVs''), Unmanned ''Airships'', Related Equipment and ''Components''

ECCN 9A012 is amended by revising the Heading, the MT paragraph in the License Requirements section, and Items paragraphs .a through b.2, and b.4. The word 'system' is deleted from the Heading because the revised text no longer includes systems. The capitalization of words that are abbreviated for the first time is corrected in the MT license requirement paragraph. The revised text of 9A012.a limits the control of UAVs to those designed to have controlled flight out of the direct 'natural vision' of the 'operator' and having either: 1) A maximum 'endurance' greater than or equal to 30 minutes but less than 1 hour and designed to take-off and have stable controlled flight in wind gusts of 25 knots or greater, or 2) A maximum 'endurance' of 1 hour or greater. Three new Technical Notes explain what is meant by 'operator,' 'endurance,' 'natural vision.' Items paragraphs b.1 and b.2 are deleted because remote control components are very hard to distinguish from model aircraft remote control units for smaller platforms, or they are not considered as critical enabling equipment for larger platforms. Items paragraph b.4 is amended to make the SI system (International System of Quantities ISO) the main reference for parameters as agreed to by WA.

9B001 Equipment, Tooling or Fixtures, ''Specially Designed'' for Manufacturing Gas Turbine Engine Blades, Vanes or ''Tip Shrouds''

ECCN 9B001 is amended by revising the Heading; the Special Conditions for STA section; Items paragraph .b; and adding Items paragraph .c. The Heading is amended by replacing the ''and'' with ''or,'' adding the word ''engine'' before ''blades,'' replacing ''tip shroud'' with ''tip shrouds,'' and removing the word ''castings'' to clarify the scope of the entry. Paragraph .b includes a control on cores or shells made from refractory metals. The Special Conditions for STA that apply to Country Group A:6 are revised to expand the scope to all of 9B001 to reflect the limited availability of 9B001.a equipment outside of WA Participating countries and the emerging technology of 9B001.c. This change is also reflected in Supplement No. 6 to part 774 ''Sensitive List.'' Items paragraph .b is revised to update the current entry and provide a more comprehensive description of the critical production tools for the manufacture of gas turbine blades, vanes or tip shrouds. Paragraph 9B001.c is added to control additive manufacturing equipment for turbine components.

9B010 Equipment ''Specially Designed'' for the Production of Items Specified by 9A012

ECCN 9B010 is amended by revising the Heading to harmonize with the changes made to ECCN 9A012.

9D003 ''Software'' Incorporating ''Technology'' Specified by ECCN 9E003.h and Used in ''FADEC Systems'' for Systems Controlled by ECCN 9A001 to 9A003, 9A101 (Except for Items in 9A101.b that are ''Subject to the ITAR'', See 22 CFR Part 121), 9A106.d or .e, or 9B (Except for ECCNs 9B604, 9B610, 9B619, 9B990, and 9B991)

The Heading of 9D003 is amended by removing the word ''propulsion'' to clarify the scope of the entry and by removing 9A004 from the range of systems related to ''FADEC Systems.'' ECCN 9A004 now controls spacecraft items, which have no gas turbine engines. FADEC Systems are defined for gas turbine engines.

9D004 Other ''Software''

ECCN 9D004 is amended by revising Items paragraphs .c and .e to specify software that is specially designed to control the crystal growth process in casting or additive manufacturing equipment specified in 9B001.a or 9B001.c, respectively.

9D005 ''Software'' Specially Designed or Modified for the Operation of Items Specified by 9A004.e or 9A004.f. (This ''Software'' Is Controlled by ECCN 9D515)

A new entry 9D005 is added to the CCL to control related software to the new spacecraft controls added to 9A004. However, these Items are already controlled under ECCN 9D515 on the CCL, as indicated by the text in the parentheticals. This entry is added to the CCL to harmonize with the placement of them in the Wassenaar Arrangement Dual-use List and so that people who look for them here first will be directed to ECCN 9D515 where they are controlled in the CCL. BIS will keep using 9D515 for this software because it works best with the unique export controls of the U.S., in that the ''15'' in the number corresponds to the category on the USML that specifies related military items.

9E003 Other ''Technology''

ECCN 9E003 is amended by revising the SI License Requirement paragraph in the License Requirements section, the items paragraphs a.3 through a.4, redesignating paragraph .j as .k, and adding new Items paragraph .j. The SI license requirement paragraph is amended by replacing the reference to paragraph .j with .k, because .j was redesignated as .k. Item paragraph a.3 is amended to address an overlap between entries 1E001, 9E003.a.3.a and 9E003.a.3.c. Item paragraph a.4 is updated to align with 9E003.a.2 and 9E003.a.5. The Note to 9E003.h that

appears after Items paragraph h.3 is revised to align the country scope with the Wassenaar Participating States of Supplement No. 1 to part 743 of the EAR. Items paragraph .j is added to control wing-folding systems on large, high-speed civil jet aircraft that represent an emerging technology in the civilian sector, as current wing folding systems are generally limited to military aircraft designed to operate from aircraft carriers and to smaller general aviation aircraft.

Supplement No. 5 to Part 774 ''Items Classified Under ECCNS 0A521, 0B521, 0C521, 0D521 and 0E521''

Supplement No. 5 to part 774 is amended by removing and reserving 0D521 No. 2 ''Source code'' for the ''development'' of fly-by-wire control systems''; and removing 0E521 No. 6 ''Technology'' for fly-by-wire control systems,'' because this software and technology are now controlled in 7D004 and 7E004.

Supplement No. 6 to Part 774 ''Sensitive List''

Supplement No. 6 to part 774 ''Sensitive List'' is amended by revising paragraph (2), removing and reserving paragraph (5)(iv), and revising ''9B001.b'' to read ''9B001'' in paragraph (9)(ii). Paragraph (2) ''2D001, 2E001, and 2E002'' are revised to harmonize with changes made to Category 2 of the CCL, *e.g.,* changing ''stated positioning accuracy'' to ''unidirectional positioning repeatability.'' Paragraph (5)(iv) ''5D001.b—''Software'' specially designed or modified to support ''technology'' controlled by this Supplement's description of 5E001.a'' is removed and reserved because this control is outdated and no longer used. Paragraph (9)(ii) is amended to expand the scope to all of 9B001 to reflect the limited availability of 9B001.a equipment outside of WA Participating countries and the emerging technology of 9B001.c.

Part 740—License Exceptions and Country Groups

In order to align Country Group A:1 (formerly Coordinating Committee (CoCom) member countries) with its successor the Wassenaar Arrangement, BIS is adding Argentina, Austria, Bulgaria, Croatia, Czech Republic, Estonia, Finland, Hungary, Iceland, Ireland, South Korea, Latvia, Lithuania, Mexico, New Zealand, Poland, Romania, Slovakia, Slovenia, South Africa, Sweden, and Switzerland to Country Group A:1 in Supplement No. 1 to part 740. The new name of column A:1 is Wassenaar Participating States. Footnote 1, which was used to identify the cooperating countries, *i.e.,* those countries that cooperated with the policies of CoCom, is removed because all of the cooperating countries are now in A:1, except for Hong Kong. New Footnote 1 is added to the title of Column A:1 to say, ''Country Group A:1 is a list of the Wassenaar Arrangement Participating States, except for Malta, Russia and Ukraine.'' Footnote 2 is added to the title of Country Group A:4 Nuclear Suppliers Group to say, ''Country Group A:4 is a list of the Nuclear Suppliers Group countries, except for the People's Republic of China (PRC).''

License Exception GOV in § 740.11 is amended by revising the country scope of the term ''cooperating governments'' in paragraph (c)(1). Argentina, Austria, Finland, Ireland, Korea (Republic of), New Zealand, Sweden, and Switzerland are removed from the definition of ''cooperating governments,'' because these countries are now included in the newly revised Country Group A:1, which is already included in the definition of cooperating government. The revision of Country Group A:1 expands the country scope of the term ''cooperating government'' in § 740.11(c)(1) by adding Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Iceland, Latvia, Lithuania, Mexico, Poland, Romania, Slovakia, Slovenia, and South Africa. These countries are now eligible destinations under § 740.11(c) of License Exception GOV, which authorizes exports, reexports and transfers (in-country) of items listed in paragraph § 740.11(c)(2) consigned to or for official use of any agency of a cooperating government within the national territory of cooperating governments, except items excluded by paragraph § 740.11(c)(3). ''Official use'' includes exports, reexports and transfers (in-country) to and for the official use of a military end user or military end use or an agency of NATO. This authorization also extends to exports, reexports and transfers (in-country) to and for the official use of a diplomatic or consular mission located in any country in Country Group B, which includes all of the newly added countries. Paragraph (f) of § 744.17 (Restrictions on certain exports, reexports and transfers (in-country) of microprocessors and associated ''software'' and ''technology'' for ''military end uses'' and to ''military end users.''), excludes agencies of a cooperating government from the license requirements set forth in § 744.17. While the License Exception GOV authorization for cooperating governments is referenced in § 743.1(b)(1) for WA reporting requirements, the expansion of the country scope for cooperating governments does not change the scope of the reporting requirements, because the reports are only required for exports outside of the WA Participating Countries and all the additional countries are WA Participating Countries.

§ 740.16—License Exception APR

Expanding the country scope of Country Group A:1 also affects License Exception APR in § 740.16(a) and (b). Prior to publication of this rule, paragraph (a) authorized reexports from countries in Country Group A:1 and cooperating countries. As this rule removes the term ''cooperating countries,'' the authorization is now for destinations in Country Group A:1 and Hong Kong. The same change is made to paragraph (b), which authorizes reexports to and among destinations in Country Group A:1 and Hong Kong. In addition, the list of countries in paragraph (b)(3) that pertain to cameras is replaced by a reference to Country Group A:1. This revision removes Albania, Cyprus and Malta from License Exception APR eligibility for cameras in paragraph (b)(3), because of the high risk of diversion to unauthorized end users, end uses and destinations.

Supplement No. 1 to Part 738—Commerce Country Chart

The Commerce Country Chart is amended by revising the second columns for national security (NS:2), and regional stability (RS:2) in order to harmonize these columns with the newly revised Country Group A:1, making the license requirement consistent with the risk of diversion to unauthorized end users, end uses and destinations. Specifically, this rule would remove the X, *i.e.,* license requirement, in the NS:2 Column for Argentina, as well as removing the X in the RS:2 Column for South Korea, because the risk of diversion to unauthorized destinations, parties or uses is low for these countries. Both Argentina and South Korea are WA Participating States, but are not NATO member countries. This rule also harmonizes the license requirements between the NS:2 and RS:2 columns by adding an X for Albania in the RS:2 column, because the RS controls generally mirror the NS license requirements in order to promote regional stability. Albania is not a WA Participating State, but it is a NATO member country; however this rule adds an X for RS:2, because the risk of

diversion to unauthorized destinations, parties or uses is high. The only difference between NS:2 and RS:2 after these revisions is that there is not an X under RS:2 for India. On January 23, 2015 (80 FR 3463), BIS published a rule that removed the X under RS:2 for India in order to further implement the November 8, 2010 bilateral understanding.

§ 742.4—National Security

Section 742.4(a) is amended by replacing the reference to Country Group A:5 with a reference to Country Group A:1. The difference between Country Group A:5 and the newly formulated Country Group A:1 is that Mexico and South Africa are included in A:1, but are not in A:5. Mexico and South Africa are Wassenaar Participating States and do not pose a risk of diversion to unauthorized end users or end uses. This rule also removes the special country scope for ECCN 6A003.b.4.b cameras, because this rule is aligning the country scope for these cameras with NS:2, which adds a license requirement for Albania, Cyprus and Malta because of the high risk of diversion of these cameras to unauthorized end users, end uses and destinations.

§ 742.6—Regional Stability

Section 742.6 is amended by revising paragraphs (a)(2)(iii), (a)(2)(v), (a)(3) and (a)(4)(ii) in order to replace the lists of countries with a reference to the newly revised Country Group A:1 of Supplement No. 1 to part 740. This revision aligns this section with the revised Country Group A:1 and Columns NS:2 and RS:2 in the Commerce Country Chart in Supplement No. 1 to part 738. Paragraph (a)(4)(i) is amended by replacing a reference to ''Australia, India, Japan, New Zealand and countries in the North Atlantic Treaty Organization (NATO)'' with a reference to ''Country Group A:1 (see Supplement No. 1 to part 740 of the EAR) and India.'' These countries are excepted from an RS:2 license requirement. Newly revised RS Column 2 does not have an X for India, which makes it different from NS:2 and Country Group A:1. On January 23, 2015, BIS published a rule (80 FR 3463) that removed the X under RS:2 for India in order to further implement the November 8, 2010 bilateral understanding.

§ 743.1—Wassenaar Arrangement

Section 743.1 is amended by correcting a reference to License Exception GOV in paragraph (b)(1) and revising paragraphs (g) and (h) to add an Email address for submission of the Wassenaar reports and to update the contact information for Wassenaar reports.

§ 743.3—Thermal Imaging Camera Reporting

Paragraph (b) in § 743.3 is amended by replacing the list of countries with a reference to the newly revised Country Group A:1 of Supplement No. 1 to part 740. This revision aligns these reporting requirements with the revised Regional Stability requirements for these items in § 742.6 and the overall national security country group amendments.

Part 772—Definitions

Section 772.1 is amended by adding in alphabetical order the terms: fly-by-light system, fly-by-wire system, library, operations, administration or maintenance (OAM), plasma atomization, quantum cryptography, spacecraft bus, and spacecraft payload; and revising the terms: civil aircraft, cryptanalytic items, cryptographic activation, end-effectors, information security, local area network, and technology.

See § 774.1(d) regarding the quote system used in the CCL. If a term on the CCL uses double quotes it means there is a defined term in part 772. However, the absence of double quotes does not mean that a term used on the CCL is not defined in part 772.

The reason for revising the definition of the term ''civil aircraft'' is stated under the explanation for amendments of ECCN 7A003 above.

The definition of ''cryptographic activation'' was restructured, and in places reworded, to more clearly and precisely reflect the 2010 Wassenaar agreements, without changing the scope. The words ''of an item'' were added after ''Any technique that activates or enables cryptographic capability,'' and additional wording makes clear that the 'mechanism for ''cryptographic activation'' ' must be ''uniquely bound'' to ''a single instance of the item'' or to ''one customer, for multiple instances of the item.'' These clarifications convey that ''cryptographic activation'' ' does not include changing or upgrading the controlled cryptographic functionality of a previously exported item, or using a single license key or digitally-signed certificate to activate multiple types of items. For editorial reasons, the explanation that license keys or digitally-signed certificates can be 'mechanisms for ''cryptographic activation'' ' was moved into the Technical Notes.

The definition for the term ''end-effectors'' is amended by replacing the double quotes with single quotes around the term ''active tooling units,'' because the definition for ''active tooling unit'' is in the Note to the definition of ''end-effectors'' and is not a separate term defined in Section 772.1 of the EAR.

The terms ''fly-by-wire'' and ''fly-by-light'' are added to Section 772.1 in order to help the exporting community understand the scope of the new controls in ECCNs 7D004 and 7E004.

The reference for the term ''information security'' is amended by replacing the reference to (Cat 5) with (Cat 4, 5P1, 5P2, 8, GSN) because this term is used in all these locations. In addition, double quotes are replaced by single quotes around the term 'cryptanalysis' because this term is defined in the Technical Note to the definition of ''information security.''

The definition of ''local area network'' is amended by replacing double quotes with single quotes around the term 'data devices,' because the term is defined in a Note to the term ''local area network.''

The terms ''operations, administration or maintenance'' (''OAM'') and ''quantum cryptography'' are added to § 772.1 and the term ''cryptanalytic items'' is revised for reasons stated under ''Category 5 Part 2—''Information Security'' above.

The term ''plasma atomization'' is added to § 772.1 for reasons stated under ECCN 1C002 above.

The terms ''spacecraft bus'' and ''spacecraft payload'' are added to § 772.1 for reasons stated under ECCN 9A004.

The reference list for the term ''technology'' is amended by adding ''throughout the EAR,'' because this term is used throughout the EAR. In addition, double quotes are replaced by single quotes around the terms 'technical data' and 'technical assistance,' because these terms are defined in the Technical Notes to this definition and not as separate terms within § 772.1.

The term ''unidirectional positioning repeatability'' is added to § 772.1 for reasons stated in under ECCN 2B001 above.

Export Administration Act

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013) and as extended by the Notice of August 7, 2014, 79 FR 46957 (August 11, 2014), has continued the Export Administration Regulations in effect under the International Emergency

Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222 as amended by Executive Order 13637.

Saving Clause

Shipments of items removed from license exception eligibility or eligibility for export, reexport, or transfer (in-country) without a license as a result of this regulatory action that were on dock for loading, on lighter, laden aboard a carrier, or en route aboard a carrier to a port, on May 21, 2015, pursuant to actual orders to a destination, may proceed to that destination under the previous license exception eligibility or without a license so long as they have been exported, reexported, or transferred (in-country) before July 20, 2015. Any such items not actually exported, reexported, or transferred (in-country) before midnight, on July 20, 2015, require a license in accordance with this regulation.

Rulemaking Requirements

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

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule involves two collections of information subject to the PRA. One of the collections has been approved by OMB under control number 0694–0088, ''Multi-Purpose Application,'' and carries a burden hour estimate of 58 minutes for a manual or electronic submission. The other of the collections has been approved by OMB under control number 0694–0106, ''Reporting and Recordkeeping Requirements under the Wassenaar Arrangement,'' and carries a burden hour estimate of 21 minutes for a manual or electronic submission. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to OMB Desk Officer, New Executive Office Building, Washington, DC 20503; and to Jasmeet Seehra, OMB Desk Officer, by email at *Jasmeet_K._Seehra@omb.eop.gov* or by fax to (202) 395–7285; and to the Office of Administration, Bureau of Industry and Security, Department of Commerce, 1401 Constitution Ave. NW., Room 6622, Washington, DC 20230.

3. This rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a 30-day delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Immediate implementation of these amendments fulfills the United States' international obligation to the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies. The Wassenaar Arrangement contributes to international security and regional stability by promoting greater responsibility in transfers of conventional arms and dual use goods and technologies, thus preventing destabilizing accumulations of such items. The Wassenaar Arrangement consists of 41 member countries that act on a consensus basis and the changes set forth in this rule implement agreements reached at the December 2014 plenary session of the WA. Because the United States is a significant exporter of the items covered by this rule, implementation of this rule is necessary for the WA to achieve its purpose. Any delay in implementation will create a disruption in the movement of affected items globally because of disharmony between export control measures implemented by WA members, resulting in tension between member countries. Export controls work best when all countries implement the same export controls in a timely manner. If this rulemaking were delayed to allow for notice and comment and a 30-day delay in effectiveness, it would prevent the United States from fulfilling its commitment to the WA in a timely manner and would injure the credibility of the United States in this and other multilateral regimes.

Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Sharron Cook, Office of Exporter Services, Bureau of Industry and Security, Department of Commerce, 14th and Pennsylvania Ave. NW., Room 2099, Washington, DC 20230.

List of Subjects

15 CFR Parts 738 and 772

Exports.

15 CFR Part 740

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 742

Exports, Terrorism.

15 CFR Part 743

Administrative practice and procedure, Reporting and recordkeeping requirements.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

Accordingly, parts 738, 740, 742, 743, 772 and 774 of the Export Administration Regulations (15 CFR parts 730 through 774) are amended as follows:

PART 738 [AMENDED]

■ 1. The authority citation for part 738 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2014, 79 FR 46959 (August 11, 2014).

Supplement No. 1 to Part 738—[AMENDED]

■ 2. Supplement No. 1 is amended by:

■ a. Revising the NS:2 column by removing the X for Argentina;

■ b. Revising the RS:2 column by adding an X for Albania; and
■ c. Revising the RS:2 column by removing the X for South Korea.

PART 740 [AMENDED]

■ 3. The authority citation for part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 7201 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2014, 79 FR 46959 (August 11, 2014).

■ 4. Section 740.11 is amended by revising paragraph (c)(1) to read as follows:

§ 740.11 Governments, international organizations, international inspections under the Chemical Weapons Convention, and the International Space Station (GOV).

* * * * *

(c) * * *

(1) *Scope.* The provisions of this paragraph (c) authorize exports, reexports, and transfers (in-country) of the items listed in paragraph (c)(2) of this section to agencies of cooperating governments or agencies of the North Atlantic Treaty Organization (NATO). 'Agency of a cooperating government' includes all civilian and military departments, branches, missions, and other governmental agencies of a cooperating national government. 'Cooperating governments' are the national governments of countries listed in Country Group A:1 (see Supplement No. 1 to this part) and the national governments of Hong Kong, Singapore and Taiwan.

* * * * *

■ 5. Section 740.16 is amended by revising the introductory text to paragraph (a), and paragraphs (b)(1) and (3), to read as follows:

§ 740.16 Additional permissive reexports (APR).

* * * * *

(a) *Reexports from Country Group A:1 and Hong Kong.* Reexports may be made from countries in Country Group A:1 or from Hong Kong, provided that:

* * * * *

(b) *Reexports to and among specified countries.* (1) Commodities that are not controlled for nuclear nonproliferation or missile technology reasons, described in 3A001.b.2 or b.3 (except those that are being reexported for use in civil telecommunications applications), nor listed in paragraph (b)(2) or (3) of this section may be reexported to and among destinations in Country Group A:1 and Hong Kong, provided that eligible commodities are for use or consumption within a destination in Country Group A:1 (see Supplement No. 1 to this part) or Hong Kong, or for reexport from such country in accordance with other provisions of the EAR.

* * * * *

(3) Cameras described in ECCN 6A003.b.3 (having the characteristics listed in 6A002.a.2.a or a.2.b), 6A003.b.4.b, or 6A003.b.4.c may be exported or reexported to and among destinations in Country Group A:1 (see Supplement No. 1 to this part) if:

(i) Such cameras are fully packaged for use as consumer ready civil products; or,

(ii) Such cameras with not more than 111,000 elements are to be embedded in civil products.

* * * * *

■ 6. Supplement No. 1 to part 740 is amended by:
■ a. Revising the first two columns of Country Group A;
■ b. Revising footnote 1 of Country Group A; and
■ c. Adding footnote 2 to the heading for column A:4 of Country Group A.

The revisions and addition read as follows:

Supplement No. 1 to Part 740—Country Groups

COUNTRY GROUP A

Country	[A:1] Wassenaar Participating States [1]	* * * * *	[A:4] Nuclear Suppliers Group [2]	* * * * *
Albania		* * * * *		* * * * *
Argentina	X			
Australia	X			
Austria	X			
Belarus				
Belgium	X			
Brazil				
Bulgaria	X			
Canada	X			
Croatia	X			
Cyprus				
Czech Republic	X			
Denmark	X			
Estonia	X			
Finland	X			
France	X			
Germany	X			
Greece	X			
Hong Kong				
Hungary	X			
Iceland	X			
India				
Ireland	X			
Israel				
Italy	X			
Japan	X			
Kazakhstan				
Korea, South	X			
Latvia	X			
Lithuania	X			
Luxembourg	X			

COUNTRY GROUP A—Continued

Country	[A:1] Wassenaar Participating States [1]	* * * * *	[A:4] Nuclear Suppliers Group [2]	* * * * *
Malta				
Mexico	X			
Netherlands	X			
New Zealand	X			
Norway	X			
Poland	X			
Portugal	X			
Romania	X			
Russia				
Serbia				
Singapore				
Slovakia	X			
Slovenia	X			
South Africa	X			
Spain	X			
Sweden	X			
Switzerland	X			
Taiwan				
Turkey	X			
Ukraine				
United Kingdom	X			
United States	X			

[1] Country Group A:1 is a list of the Wassenaar Arrangement Participating States, except for Malta, Russia and Ukraine.
[2] Country Group A:4 is a list of the Nuclear Suppliers Group countries, except for the People's Republic of China (PRC).

* * * * *

PART 742—[AMENDED]

■ 7. The authority citation for part 742 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003—23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 7, 2014, 79 FR 46959 (August 11, 2014); Notice of November 7, 2014, 79 FR 67035 (November 12, 2014).

■ 8. Section 742.4 is amended by revising paragraph (a) to read as follows:

§ 742.4 National security.

(a) *License requirements.* It is the policy of the United States to restrict the export and reexport of items that would make a significant contribution to the military potential of any other country or combination of countries that would prove detrimental to the national security of the United States. Accordingly, a license is required for exports and reexports to all destinations, except Canada, for all items in ECCNs on the CCL that include NS Column 1 in the Country Chart column of the ''License Requirements'' section. A license is required to all destinations except those in Country Group A:1 (see Supplement No. 1 to part 740 of the EAR), for all items in ECCNs on the CCL that include NS column 2 in the Commerce Country Chart column of the ''License Requirements'' section except those cameras in ECCN 6A003.b.4.b that have a focal plane array with 111,000 or fewer elements and a frame rate of 60 Hz or less. A license is required to all destinations except those in Country Group A:1 (see Supplement No. 1 to part 740) for those cameras in ECCN 6A003.b.4.b that have a focal plane array with 111,000 or fewer elements and a frame rate of 60 Hz or less and for cameras being exported or reexported pursuant to an authorization described in § 742.6(a)(2)(iii) or (v) of the EAR. The purpose of the controls is to ensure that these items do not make a contribution to the military potential of countries in Country Group D:1 (see Supplement No. 1 to part 740 of the EAR) that would prove detrimental to the national security of the United States. License Exception GBS is available for the export and reexport of certain national security controlled items to Country Group B (see § 740.4 and Supplement No. 1 to part 740 of the EAR).

■ 9. Section 742.6 is amended by revising paragraphs (a)(2)(iii), (a)(2)(v), (a)(3), (a)(4)(i) and (a)(4)(ii), as follows:

§ 742.6 Regional stability.

(a) * * *

(2) * * *

(iii) BIS may issue licenses for cameras subject to the license requirement of paragraph (a)(2)(ii) of this section that are fully-packaged for use as consumer-ready civil products that, in addition to the specific transactions authorized by such license, authorize exports and reexports of such cameras without a license to any civil end-user to whom such exports or reexport are not otherwise prohibited by U.S. law in a destination in Country Group A:1 (see Supplement No. 1 to part 740 of the EAR). The license requirements of this paragraph (a)(2) shall not apply to exports or reexports so authorized. In this paragraph, the term ''civil end-user'' means any entity that is not a national armed service (army, navy, marine, air force, or coast guard), national guard, national police, government intelligence organization or government reconnaissance organization, or any person or entity whose actions or functions are intended to support ''military end-uses'' as defined in § 744.17(d) of the EAR.

* * * * *

(v) BIS may also issue licenses for the cameras described in paragraph (a)(2)(iv) of this section that, in addition to the specific transactions authorized by such license, authorize exports and reexports to authorized companies described in the license for the purpose

of embedding such cameras into a completed product that will be distributed only in countries in Country Group A:1 (see Supplement No. 1 to part 740 of the EAR). The license requirements of this paragraph (a)(2) shall not apply to exports or reexports so authorized. In this paragraph, the term ''authorized companies'' means companies that have been previously licensed for export, are not the subject of relevant negative intelligence or open source information, have not been the subject of a Department of Commerce or Department of State enforcement action within the past two years, have demonstrable production capacity, and do not pose an unacceptable risk of diversion.

(3) *Special RS Column 1 license requirement applicable to military commodities.* A license is required for reexports to all destinations except Canada for items classified under ECCN 0A919 except when such items are being reexported as part of a military deployment by a unit of the government of a country in Country Group A:1 (see Supplement No. 1 to part 740 of the EAR) or the United States.

(4) * * *

(i) *License requirements applicable to most RS Column 2 items.* As indicated in the CCL and in RS Column 2 of the Commerce Country Chart (see Supplement No. 1 to part 738 of the EAR), a license is required to any destination except those in Country Group A:1 (see Supplement No. 1 to part 740 of the EAR) and India for all items in ECCNs on the CCL that include RS Column 2 in the Country Chart column of the ''License Requirements'' section. A license continues to be required for items controlled under ECCNs 6A003.b.4.b and 9A515.e for RS Column 2 reasons when destined to India.

(ii) *Special RS Column 2 license requirements applicable only to certain cameras.* As indicated by the CCL, and RS column 2 and footnote number 4 to the Commerce Country Chart, a license is required to any destination except a country in Country Group A:1 (see Supplement No. 1 to part 740 of the EAR) for fully-packaged thermal imaging cameras for use as consumer-ready civil products controlled by 6A003.b.4.b when incorporating ''focal plane arrays'' that have not more than 111,000 elements and a frame rate of 60Hz or less and that are not being exported or reexported to be embedded in a civil product.

* * * * *

PART 743 [AMENDED]

■ 10. The authority citation for part 743 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013); 78 FR 16129; Notice of August 7, 2014, 79 FR 46959 (August 11, 2014).

■ 11. Section 743.1 is amended by:

■ a. Removing the phrase ''(§§ 740.11(b)(2)(iii) and 740.11(b)(2)(iv) of the EAR)'' and adding in its place ''(§§ 740.11(c) of the EAR)'' in paragraph (b)(1); and

■ b. Revising paragraphs (g) and (h).

The revisions read as follows:

§ 743.1 Wassenaar Arrangement.

* * * * *

(g) *Where to submit Wassenaar reports*—(1) *Email.* Reports may be Emailed to *WAreports@bis.doc.gov.*

(2) *Mail.* If mailed, two (2) copies of reports are required to be delivered via courier to: Bureau of Industry and Security, U.S. Department of Commerce, Attn: ''Wassenaar Reports'', Room 2099B, 14th Street and Pennsylvania Ave. NW., Washington, DC 20230. BIS will not accept reports sent C.O.D.

(3) *Facsimile.* Reports may also be sent by facsimile to: (202) 482–3345 or 202–482–1373, Attn: ''Wassenaar Reports''.

(h) *Contacts.* General information concerning the Wassenaar Arrangement and reporting obligations thereof is available from the Office of National Security and Technology Transfer Controls, Tel. (202) 482–4479, Fax: (202) 482–3345 or (202) 482–1373, or Email: *WAreports@bis.doc.gov.*

■ 12. Section 743.3 is amended by revising paragraph (b) to read as follows:

§ 743.3 Thermal imaging camera reporting.

* * * * *

(b) *Transactions to be reported.* Exports that are not authorized by an individually validated license of thermal imaging cameras controlled by ECCN 6A003.b.4.b to a destination in Country Group A:1 (see Supplement No. 1 to part 740 of the EAR) must be reported to BIS.

* * * * *

PART 772 [AMENDED]

■ 13. The authority citation for part 772 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2014, 79 FR 46959 (August 11, 2014).

■ 14. Section 772.1 is amended by:

■ a. Adding definitions in alphabetical order for: ''Fly-by-light system'', ''Fly-by-wire system'', ''Library'', ''Operations, Administration or Maintenance (OAM)'', ''Plasma atomization'', ''Quantum cryptography'', ''Spacecraft bus'', ''Spacecraft payload'', and ''Unidirectional positioning repeatability'';

■ b. Removing the definition for ''Cooperating country''; and

■ c. Revising the definitions for: ''Civil aircraft'', ''Cryptanalytic items'', ''Cryptographic activation'', ''End-effectors'', ''Information security'', ''Local area network'', and ''Technology''.

The additions and revisions read as follows:

§ 772.1 Definitions of terms as used in the Export Administration Regulations (EAR).

* * * * *

Civil aircraft. (Cat 1, 3, 4, 7 and 9) Those ''aircraft'' listed by designation in published airworthiness certification lists by civil aviation authorities of one or more Wassenaar Arrangement Participating States to fly commercial civil internal and external routes or for legitimate civil, private or business use. (see also ''aircraft'')

* * * * *

Cryptanalytic items. (Cat 5P2) Systems, equipment or components designed or modified to perform 'cryptanalytic functions', software having the characteristics of cryptanalytic hardware or performing 'cryptanalytic functions', or technology for the development, production or use of cryptanalytic commodities or software.

Notes: *1. 'Cryptanalytic functions' are functions designed to defeat cryptographic mechanisms in order to derive confidential variables or sensitive data, including clear text, passwords or cryptographic keys. These functions may include 'cryptanalysis,' which is the analysis of a cryptographic system or its inputs and outputs to derive confidential variables or sensitive data, including clear text. (ISO 7498–2–1988 (E), paragraph 3.3.18).*

2. Functions specially designed and limited to protect against malicious computer damage or unauthorized system intrusion (e.g., viruses, worms and trojan horses) are not construed to be 'cryptanalytic functions.').

Cryptographic activation. (Cat 5P2) Any technique that activates or enables cryptographic capability of an item, by means of a secure mechanism implemented by the manufacturer of the item, where this mechanism is uniquely bound to any of the following:

(a) A single instance of the item; *or*

(b) One customer, for multiple instances of the item.

Technical Notes to definition of ''Cryptographic activation'': 1. ''Cryptographic activation'' techniques and mechanisms may be implemented as hardware, ''software'' or ''technology''.

2. Mechanisms for ''cryptographic activation'' can, for example, be serial number-based license keys or authentication instruments such as digitally signed certificates.

* * * * *

End-effectors. (Cat 2) Grippers, 'active tooling units' and any other tooling that is attached to the baseplate on the end of a ''robot'' manipulator arm.

Technical Note to definition of ''End-effectors'': 'Active tooling unit': a device for applying motive power, process energy or sensing to the workpiece.

* * * * *

Fly-by-light system. (Cat 7) A primary digital flight control system employing feedback to control the aircraft during flight, where the commands to the effectors/actuators are optical signals.

Fly-by-wire system. (Cat 7) A primary digital flight control system employing feedback to control the aircraft during flight, where the commands to the effectors/actuators are electrical signals.

* * * * *

Information security. (Cat 4, 5P1, 5P2, 8, GSN)—All the means and functions ensuring the accessibility, confidentiality or integrity of information or communications, excluding the means and functions intended to safeguard against malfunctions. This includes ''cryptography'', ''cryptographic activation'', ''cryptanalysis'', protection against compromising emanations and computer security.

Technical Note to definition of ''Information security'': 'Cryptanalysis': the analysis of a cryptographic system or its inputs and outputs to derive confidential variables or sensitive data, including clear text. (ISO 7498–2–1988 (E), paragraph 3.3.18)

* * * * *

Library. (Cat 1) (parametric technical database) A collection of technical information, reference to which may enhance the performance of the relevant systems, equipment or components.

* * * * *

Local area network. (Cat 4 and 5 Part 1)—A data communication system that:

(a) Allows an arbitrary number of independent 'data devices' to communicate directly with each other; and

(b) Is confined to a geographical area of moderate size (*e.g.,* office building, plant, campus, warehouse).

Technical Note to definition of ''Local area network'': 'Data device' means equipment capable of transmitting or receiving sequences of digital information.

* * * * *

Operations, Administration or Maintenance (''OAM''). (Cat 5P2) Means performing one or more of the following tasks:

(a) Establishing or managing any of the following:

(1) Accounts or privileges of users or administrators;

(2) Settings of an item; or

(3) Authentication data in support of the tasks described in paragraphs (a)(1) or (2) of this definition;

(b) Monitoring or managing the operating condition or performance of an item; or

(c) Managing logs or audit data in support of any of the tasks described in paragraphs (a) or (b) of this definition.

Note to definition of ''Operations, Administration or Maintenance'': ''OAM'' does not include any of the following tasks or their associated key management functions:

a. Provisioning or upgrading any cryptographic functionality that is not directly related to establishing or managing authentication data in support of the tasks described in paragraphs (a)(1) or (2) of this definition; or

b. Performing any cryptographic functionality on the forwarding or data plane of an item.

* * * * *

Plasma atomization. (Cat 1) A process to reduce a molten stream or solid metal to droplets of 500 μm diameter or less, using plasma torches in an inert gas environment.

* * * * *

Quantum cryptography. (Cat 5P2) A family of techniques for the establishment of a shared key for ''cryptography'' by measuring the quantum-mechanical properties of a physical system (including those physical properties explicitly governed by quantum optics, quantum field theory, or quantum electrodynamics).

* * * * *

Spacecraft bus. (Cat 9) Equipment that provides the support infrastructure of the ''spacecraft'' and location for the ''spacecraft payload''.

Spacecraft payload. (Cat 9) Equipment, attached to the ''spacecraft bus'', designed to perform a mission in space (*e.g.,* communications, observation, science).

* * * * *

Technology. (General Technology Note, throughout EAR) Specific information necessary for the ''development'', ''production'', or ''use'' of a product. The information takes the form of 'technical data' or 'technical assistance'.

N.B.: Controlled ''technology'' is defined in the General Technology Note and in the Commerce Control List (Supplement No. 1 to part 774 of the EAR).

Note 1 to definition of ''Technology'': ''Technology'' also is specific information necessary for any of the following: Operation, installation (including on-site installation), maintenance (checking), repair, overhaul, refurbishing, or other terms specified in ECCNs on the CCL that control ''technology.''

Note 2 to definition of ''Technology'': ''Technology'' not elsewhere specified on the CCL is designated as EAR99, unless the ''technology'' is subject to the exclusive jurisdiction of another U.S. Government agency (see § 734.3(b)(1) of the EAR) or is otherwise not subject to the EAR (see § 734.4(b)(2) and (3) and §§ 734.7 through 734.11 of the EAR).

Technical Notes to definition of ''Technology'': 1.'Technical data' May take forms such as blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals and instructions written or recorded on other media or devices such as disk, tape, read only memories.

2. 'Technical assistance' may take forms such as instruction, skills, training, working knowledge, consulting services. 'Technical assistance' may involve transfer of 'technical data'. 'Technical assistance' may involve transfer of 'technical data'.

* * * * *

Unidirectional positioning repeatability. (Cat 2) The smaller of values R↑ and R↓ (forward and backward), as defined by 3.21 of ISO 230–2:2014 or national equivalents, of an individual machine tool axis.

* * * * *

PART 774 [AMENDED]

■ 15. The authority citation for part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p.

228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2014, 79 FR 46959 (August 11, 2014).

Supplement No. 1 to Part 774—[Amended]

■ 16. In Supplement No. 1 to part 774, ECCN 0A606 is amended by revising paragraph b in Note 2 to paragraph .a to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

0A606 Ground Vehicles and Related Commodities, as Follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items: a. * * *

Note 2 to paragraph .a: * * *

b. Armored protection of vital ''parts'' (e.g., fuel tanks or vehicle cabs);

* * * * *

■ 17. In Supplement No. 1 to part 774, ECCN 1A613 is amended by revising Items paragraph a to read as follows:

1A613 Armored and Protective ''Equipment'' and Related Commodities, as Follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items: a. Metallic or non-metallic armored plate ''specially designed'' for military use and not controlled by the USML.

Note to paragraph a: For controls on body armor plates, see ECCN 1A613.d.2 and USML Category X(a)(1).

* * * * *

■ 18. In Supplement No. 1 to part 774, ECCN 1C002 is amended by revising Item paragraphs c.2.f and c.2.g and adding Item paragraph c.2.h to read as follows:

1C002 Metal Alloys, Metal Alloy Powder and Alloyed Materials, as Follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

* * * * *

c. * * *

c.2. * * *

c.2.f. ''Melt extraction'' and ''comminution'';

c.2.g. ''Mechanical alloying''; *or*

c.2.h. ''Plasma atomization''; *and*

* * * * *

■ 19. In Supplement No. 1 to part 774, ECCN 1C007 is amended by revising the heading and Item paragraph a to read as follows:

1C007 Ceramic Powders, Non-''Composite'' Ceramic Materials, Ceramic-''Matrix'' ''composite'' Materials and Precursor Materials, as Follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items: a. Ceramic powders of single or complex borides of titanium, having total metallic impurities, excluding intentional additions, of less than 5,000 ppm, an average particle size equal to or less than 5 μm and no more than 10% of the particles larger than 10 μm;

* * * * *

■ 20. In Supplement No. 1 to part 774, ECCN 1C008 is amended by removing and reserving Items paragraph b.

■ 21. In Supplement No. 1 to part 774, ECCN 1C010 is amended by:

■ a. Adding Technical Notes at the beginning of the Items paragraph of the List of Items Controlled section;

■ b. Removing the Technical Notes below Items paragraph c; and

■ c. Revising Items paragraph d.1.b.

The additions and revision read as follows:

1C010 ''Fibrous or Filamentary Materials'' as Follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

Technical Notes: 1. For the purpose of calculating ''specific tensile strength'', ''specific modulus'' or specific weight of ''fibrous or filamentary materials'' in 1C010.a, 1C010.b, 1C010.c or 1C010.e.1.b, the tensile strength and modulus should be determined by using Method A described in ISO 10618 (2004) or national equivalents.

2. Assessing the ''specific tensile strength'', ''specific modulus'' or specific weight of non-unidirectional ''fibrous or filamentary materials'' (e.g., fabrics, random mats or braids) in 1C010 is to be based on the mechanical properties of the constituent unidirectional monofilaments (e.g., monofilaments, yarns, rovings or tows) prior to processing into the non-unidirectional ''fibrous or filamentary materials''.

* * * * *

d. * * *

d.1. * * *

d.1.b. Materials controlled by 1C008.d to 1C008.f; *or*

* * * * *

■ 22. In Supplement No. 1 to part 774, ECCN 1E002 is amended by:

■ a. Revising License Exception TSR in the List Based License Exceptions section;

■ b. Adding a Note at the end of the List Based License Exceptions section;

■ c. Revising Items paragraphs c introductory text, c.1., c.1.c.1., and c.1.c.2.;

■ d. Removing Items paragraphs c.1.c.3.;

■ e. Removing and reserving Items paragraph d;

■ f. Revising Items paragraph g; and

■ g. Removing the Technology Note to paragraph g.

The revisions and addition read as follows:

1E002 Other ''Technology'' as Follows (see List of Items Controlled).

* * * * *

List Based License Exceptions (See Part 740 for a description of all license exceptions)

* * * * *

TSR: Yes, except for 1E002.e and .f.

License Exceptions Note: License Exception TSU is not applicable for the repair ''technology'' controlled by 1E002.e or .f, see Supplement No. 2 to this part.

* * * * *

List of Items Controlled

* * * * *

Items: * * *

c. ''Technology'' for the design or ''production'' of the following ceramic powders or non-''composite'' ceramic materials:

c.1. Ceramic powders having all of the following:

* * * * *

c.1.c. * * *

c.1.c.1. Zirconia (CAS 1314–23–4) with an average particle size equal to or less than 1 μm and no more than 10% of the particles larger than 5 μm; *or*

c.1.c.2. Other ceramic powders with an average particle size equal to or less than 5 μm and no more than 10% of the particles larger than 10 μm;

* * * * *

g. ''Libraries'' ''specially designed'' or modified to enable equipment to perform the functions of equipment controlled under 1A004.c or 1A004.d.

■ 23. In Supplement No. 1 to part 774, the Technical Notes for 2B001 to 2B009, 2B201, 2B290 and 2B991 to 2B999 at the beginning of Category 2, Product Group B are revised to read as follows:

Category 2—Materials Processing

* * * * *

B. ''Test'', ''Inspection'' and ''Production Equipment''

Technical Notes for 2B001 to 2B009, 2B201, 2B290 and 2B991 to 2B999:

1. Secondary parallel contouring axes, (e.g., the w-axis on horizontal boring mills or a secondary rotary axis the center line of which is parallel to the primary rotary axis) are not counted in the total number of contouring axes. Rotary axes need not rotate over 360°. A rotary axis can be driven by a linear device (e.g., a screw or a rack-and-pinion).

2. The number of axes which can be coordinated simultaneously for ''contouring control'' is the number of axes along or around which, during processing of the workpiece, simultaneous and interrelated motions are performed between the

workpiece and a tool. This does not include any additional axes along or around which other relative motions within the machine are performed, such as:

2.a. Wheel-dressing systems in grinding machines;

2.b. Parallel rotary axes designed for mounting of separate workpieces;

2.c. Co-linear rotary axes designed for manipulating the same workpiece by holding it in a chuck from different ends.

3. Axis nomenclature shall be in accordance with International Standard ISO 841:2001, Industrial automation systems and integration—Numerical control of machines—Coordinate system and motion nomenclature.

4. A ''tilting spindle'' is counted as a rotary axis.

5. 'Stated ''unidirectional positioning repeatability'' ' may be used for each specific machine model as an alternative to individual machine tests, and is determined as follows:

5.a. Select five machines of a model to be evaluated;

5.b. Measure the linear axis repeatability (R↑,R↓) according to ISO 230–2:2014 and evaluate ''unidirectional positioning repeatability'' for each axis of each of the five machines;

5.c. Determine the arithmetic mean value of the ''unidirectional positioning repeatability''-values for each axis of all five machines together. These arithmetic mean values ''unidirectional positioning repeatability'' (UPR) become the stated value of each axis for the model...) (UPR_x, UPR_y, . . .);

5.d. Since the Category 2 list refers to each linear axis there will be as many 'stated ''unidirectional positioning repeatability'' ' values as there are linear axes;

5.e. If any axis of a machine model not controlled by 2B001.a. to 2B001.c. has a 'stated ''unidirectional positioning repeatability'' ' equal to or less than the specified ''unidirectional positioning repeatability'' of each machine tool model plus 0.7 µm, the builder should be required to reaffirm the accuracy level once every eighteen months.

6. For the purpose of 2B, measurement uncertainty for the ''unidirectional positioning repeatability'' of machine tools, as defined in the International Standard ISO 230–2:2014, shall not be considered.

7. For the purpose of 2B, the measurement of axes shall be made according to test procedures in 5.3.2. of ISO 230–2:2014. Tests for axes longer than 2 meters shall be made over 2 m segments. Axes longer than 4 m require multiple tests (e.g., two tests for axes longer than 4 m and up to 8 m, three tests for axes longer than 8 m and up to 12 m), each over 2 m segments and distributed in equal intervals over the axis length. Test segments are equally spaced along the full axis length, with any excess length equally divided at the beginning, in between, and at the end of the test segments. The smallest ''unidirectional positioning repeatability''-value of all test segments is to be reported.

■ 24. In Supplement No. 1 to part 774, ECCN 2B001 is amended by:

■ a. Revising Items paragraphs a.1, b.1.a, b.2.a through b.3, c.1.a, c.2, the Notes to 2B001.c, and e.2.b; and

■ b. Adding Items paragraphs c.2.a through c.2.c.

The revisions and additions read as follows:

2B001 Machine Tools and Any Combination Thereof, for Removing (or Cutting) Metals, Ceramics or ''Composites'', Which, According to the Manufacturer's Technical Specifications, Can Be Equipped With Electronic Devices for ''Numerical Control''; as Follows (see List of Items Controlled)

* * * * *

List of Items Controlled

* * * * *

Items:

* * * * *

a. * * *

a.1. ''Unidirectional positioning repeatability'' equal to or less (better) than 1.1 µm along one or more linear axis; *and*

* * * * *

b. * * *

b.1. * * *

b.1.a. ''Unidirectional positioning repeatability'' equal to or less (better) than 1.1 µm along one or more linear axis; *and*

* * * * *

b.2. * * *

b.2.a. ''Unidirectional positioning repeatability'' equal to or less (better) than 1.1 µm along one or more linear axis with a travel length less than 1 m;

b.2.b. ''Unidirectional positioning repeatability'' equal to or less (better) than 1.4 µm along one or more linear axis with a travel length equal to or greater than 1 m and less than 4 m;

b.2.c. ''Unidirectional positioning repeatability'' equal to or less (better) than 6.0 µm along one or more linear axis with a travel length equal to or greater than 4 m; *or*

b.2.d. Being a 'parallel mechanism machine tool';

Technical Note: A 'parallel mechanism machine tool' is a machine tool having multiple rods which are linked with a platform and actuators; each of the actuators operates the respective rod simultaneously and independently.

b.3. A ''unidirectional positioning repeatability'' for jig boring machines,, equal to or less (better) than 1.1 µm along one or more linear axis; *or*

* * * * *

c. * * *

c.1. * * *

c.1.a. ''Unidirectional positioning repeatability'' equal to or less (better) than 1.1 µm along one or more linear axis; *and*

c.1.b. Three or more axes which can be coordinated simultaneously for ''contouring control''; *or*

c.2. Five or more axes which can be coordinated simultaneously for ''contouring control'' having any of the following:

c.2.a. ''Unidirectional positioning repeatability'' equal to or less (better) than 1.1 µm along one or more linear axis with a travel length less than 1m;

c.2.b. ''Unidirectional positioning repeatability'' equal to or less (better) than 1.4 µm along one or more linear axis with a travel length equal to or greater than 1 m and less than 4 m; *or*

c.2.c. ''Unidirectional positioning repeatability'' equal to or less (better) than 6.0 µm along one or more linear axis with a travel length equal to or greater than 4 m.

Notes: 2B001.c does not control grinding machines as follows:

a. Cylindrical external, internal, and external-internal grinding machines, having all of the following:

a.1. Limited to cylindrical grinding; and

a.2. Limited to a maximum workpiece capacity of 150 mm outside diameter or length.

b. Machines designed specifically as jig grinders that do not have a z-axis or a w-axis, with a ''unidirectional positioning repeatability'' less (better) than 1.1 µm.

c. Surface grinders.

* * * * *

e. * * *

e.2. * * *

e.2.b. A positioning ''accuracy'' of less (better) than 0.003°;

* * * * *

■ 25. In Supplement No. 1 to part 774, ECCN 3A001 is amended by revising Items paragraphs a.5.b.1, the introductory text of a.5.b.2, a.7.a, a.7.b, the Technical Notes following a.7.b, b.7, b.10, b.11.f and b.11.g to read as follows:

3A001 Electronic Components and ''Specially Designed'' ''Components'' Therefor, as Follows (see List of Items Controlled)

* * * * *

List of Items Controlled

* * * * *

Items: a. * * *

a.5. * * *

a.5.b. * * *

a.5.b.1. A resolution of 10 bit or more with an 'adjusted update rate' of greater than 3,500 MSPS; *or*

a.5.b.2. A resolution of 12-bit or more with an 'adjusted update rate' of greater than 1,250 MSPS and having any of the following:

* * * * *

a.7. * * *

a.7.a. A maximum number of single-ended digital input/outputs of greater than 700; or

a.7.b. An 'aggregate one-way peak serial transceiver data rate' of 500 Gb/s or greater;

* * * * *

Technical Notes: 1. Maximum number of digital input/outputs in 3A001.a.7.a is also referred to as maximum user input/outputs or maximum available input/outputs, whether the integrated circuit is packaged or bare die.

2. 'Aggregate one-way peak serial transceiver data rate' is the product of the peak serial one-way transceiver data rate times the number of transceivers on the FPGA.

* * * * *

b. * * *

b.7. Converters and harmonic mixers, that are any of the following:

b.7.a. Designed to extend the frequency range of ''signal analyzers'' beyond 90 GHz;

b.7.b. Designed to extend the operating range of signal generators as follows:

b.7.b.1. Beyond 90 GHz;

b.7.b.2. To an output power greater than 100 mW (20 dBm) anywhere within the frequency range exceeding 43.5 GHz but not exceeding 90 GHz;

b.7.c. Designed to extend the operating range of network analyzers as follows:

b.7.c.1. Beyond 110 GHz;

b.7.c.2. To an output power greater than 31.62 mW (15 dBm) anywhere within the frequency range exceeding 43.5 GHz but not exceeding 90 GHz;

b.7.c.3. To an output power greater than 1 mW (0 dBm) anywhere within the frequency range exceeding 90 GHz but not exceeding 110 GHz; *or*

b.7.d. Designed to extend the frequency range of microwave test receivers beyond 110 GHz;

* * * * *

b.10. Oscillators or oscillator assemblies, specified to operate with a single sideband (SSB) phase noise, in dBc/Hz, less (better) than—$(126 + 20\log_{10}F - 20\log_{10}f)$ anywhere within the range of $10\ Hz \leq F \leq 10\ kHz$;

Technical Note: In 3A001.b.10, F is the offset from the operating frequency in Hz and f is the operating frequency in MHz.

b.11. * * *

b.11.f. Less than 1 ms for any frequency change exceeding 2.2 GHz within the synthesized frequency range exceeding 56 GHz but not exceeding 90 GHz; *or*

b.11.g. Less than 1 ms within the synthesized frequency range exceeding 90 GHz;

N.B.: For general purpose ''signal analyzers'', signal generators, network analyzers and microwave test receivers, see 3A002.c, 3A002.d, 3A002.e and 3A002.f, respectively.

* * * * *

■ 26. In Supplement No. 1 to part 774, ECCN 3A002 is amended by:

■ a. Revising Items paragraphs a.5.a and a.5.b and adding Items paragraph a.5.c before the Technical Notes;

■ b. Adding paragraph 3. to the Technical Notes following Items paragraph a.5.c; and

■ c. Revising Items paragraphs c introductory text through c.3, c.4.a, d introductory text through d.1.a, d.2, d.3.b through d.4.b, d.5, Note 1 after d.5, Technical Note 1 after d.5, e.1, and e.2.

The revisions and addition read as follows:

3A002 General Purpose Electronic Equipment, as Follows (see List of Items Controlled)

* * * * *

List of Items Controlled

* * * * *

Items: a. * * *

a.5. * * *

a.5.a. Digitizing rates equal to or more than 200 million samples per second and a resolution of 10 bits or more;

a.5.b. A 'continuous throughput' of 2 Gbit/s or more; *and*

a.5.c. Triggered acquisition of transients or aperiodic signals;

Technical Notes: * * *

3. For the purposes of 3A002.a.5.c, acquisition can be triggered internally or externally.

* * * * *

c. ''Signal analyzers'' as follows:

c.1. ''Signal analyzers'' having a 3 dB resolution bandwidth (RBW) exceeding 10 MHz anywhere within the frequency range exceeding 31.8 GHz but not exceeding 37 GHz;

c.2. ''Signal analyzers'' having Displayed Average Noise Level (DANL) less (better) than—150 dBm/Hz anywhere within the frequency range exceeding 43.5 GHz but not exceeding 90 GHz;

c.3. ''Signal analyzers'' having a frequency exceeding 90 GHz;

c.4. * * *

c.4.a. ''Real-time bandwidth'' exceeding 170 MHz; *and*

* * * * *

d. Signal generators having any of the following:

d.1. Specified to generate pulse-modulated signals having all of the following, anywhere within the frequency range exceeding 31.8 GHz but not exceeding 37 GHz:

d.1.a. 'Pulse duration' of less than 25 ns; *and*

* * * * *

d.2. An output power exceeding 100 mW (20 dBm) anywhere within the frequency range exceeding 43.5 GHz but not exceeding 90 GHz;

d.3. * * *

d.3.b. Less than 100 µs for any frequency change exceeding 2.2 GHz within the frequency range exceeding 4.8 GHz but not exceeding 31.8 GHz;

d.3.c. [Reserved]

d.3.d. Less than 500 µs for any frequency change exceeding 550 MHz within the frequency range exceeding 31.8 GHz but not exceeding 37 GHz; *or*

d.3.e. Less than 100 µs for any frequency change exceeding 2.2 GHz within the frequency range exceeding 37 GHz but not exceeding 90 GHz;

d.3.f. [Reserved]

d.4. Single sideband (SSB) phase noise, in dBc/Hz, specified as being any of the following:

d.4.a. Less (better) than—$(126 + 20\log_{10} F - 20\log_{10}f)$ for anywhere within the range of $10\ Hz \leq F \leq 10\ kHz$ anywhere within the frequency range exceeding 3.2 GHz but not exceeding 90 GHz; *or*

d.4.b. Less (better) than—$(206 - 20\log_{10}f)$ for anywhere within the range of $10\ kHz < F \leq 100\ kHz$ anywhere within the frequency range exceeding 3.2 GHz but not exceeding 90 GHz; *or*

Technical Note: In 3A002.d.4, F is the offset from the operating frequency in Hz and f is the operating frequency in MHz.

d.5. A maximum frequency exceeding 90 GHz;

Note 1: For the purpose of 3A002.d, signal generators include arbitrary waveform and function generators.

* * * * *

Technical Notes: 1. The maximum frequency of an arbitrary waveform or function generator is calculated by dividing the sample rate, in samples/second, by a factor of 2.5.

* * * * *

e. * * *

e.1. An output power exceeding 31.62 mW (15 dBm) anywhere within the operating frequency range exceeding 43.5 GHz but not exceeding 90 GHz;

e.2. An output power exceeding 1 mW (0 dBm) anywhere within the operating frequency range exceeding 90 GHz but not exceeding 110 GHz;

* * * * *

■ 27. In Supplement No. 1 to part 774, ECCN 3A991 is amended by revising introductory text to Items paragraph d to read as follows:

3A991 Electronic Devices, and ''Components'' Not Controlled by 3A001

* * * * *

List of Items Controlled

* * * * *

Items:

* * * * *

d. Field programmable logic devices having a maximum number of single-ended digital input/outputs between 200 and 700;

* * * * *

■ 28. In Supplement No. 1 to part 774, ECCN 3B001 is amended by:

■ a. Revising the CIV paragraph of the List Based License Exceptions section; and

■ b. Revising Items paragraphs f.1.a through f.2.

The revisions read as follows:

3B001 Equipment For the Manufacturing of Semiconductor Devices or Materials, as Follows (see List of Items Controlled) and ''Specially Designed'' ''Components'' and ''Accessories'' therefor

* * * * *

List Based License Exceptions (See Part 740 for a description of all license exceptions)

* * * * *

CIV: Yes for equipment controlled by 3B001.a.1, a.2 and .c.

List of Items Controlled

* * * * *

Items: * * *

f. * * *

f.1. * * *

f.1.a. A light source wavelength shorter than 193 nm; *or*

f.1.b. Capable of producing a pattern with a ''Minimum Resolvable Feature size'' (MRF) of 45 nm or less;

***Technical Note**: The 'Minimum Resolvable Feature size' (MRF) is calculated by the following formula:*

$$MRF = \frac{\text{(an exposure light source wavelength in nm) x (K factor)}}{\text{numerical aperture}}$$

where the K factor = 0.35

f.2 Imprint lithography equipment capable of production features of 45 nm or less;

* * * * *

■ 29. In Supplement No. 1 to part 774, ECCN 3D001 is amended by revising the CIV paragraph in the List Based License Exceptions section to read as follows:

3D001 ''Software'' ''Specially Designed'' for the ''Development'' or ''Production'' of Equipment Controlled by 3A001.b to 3A002.g or 3B (Except 3B991 and 3B992)

* * * * *

List Based License Exceptions (See Part 740 for a description of all license exceptions)

CIV: Yes for ''software'' ''specially designed'' for the ''development'' or ''production'' of equipment controlled by 3B001.c.

* * * * *

■ 30. In Supplement No. 1 to part 774, ECCN 3E001 is amended by revising the CIV paragraph in the List Based License Exceptions section to read as follows:

3E001 ''Technology'' according to the General Technology Note for the ''Development'' or ''Production'' of Equipment or Materials controlled by 3A (except 3A292, 3A980, 3A981, 3A991 3A992, or 3A999), 3B (Except 3B991 or 3B992) or 3C (Except 3C992)

* * * * *

List Based License Exceptions (See Part 740 for a description of all license exceptions)

CIV: Yes for ''Technology'' According to the General Technology Note for the ''Development'' or ''Production of Equipment in 3B001.c.

* * * * *

■ 31. In Supplement No. 1 to part 774, ECCN 4D001 is amended by:

■ a. Revising the TSR paragraph in the List Based License Exceptions section;

■ b. Revising the STA paragraph in the Special Conditions for STA section; and

■ c. Revising Items paragraph b.1 in the List of Items Controlled section.

The revisions read as follows:

4D001 ''Software'' as follows (see List of Items Controlled)

* * * * *

List Based License Exceptions (See Part 740 for a description of all license exceptions)

TSR: Yes, except for ''software'' for the ''development'' or ''production'' of commodities with an ''Adjusted Peak Performance'' (''APP'') exceeding 2.0 WT.

* * * * *

Special Conditions for STA

STA: License Exception STA may not be used to ship or transmit ''software'' ''specially designed'' for the ''development'' or ''production'' of equipment specified by ECCN 4A001.a.2 or for the ''development'' or ''production'' of ''digital computers'' having an 'Adjusted Peak Performance' ('APP') exceeding 2.0 Weighted TeraFLOPS (WT) to any of the destinations listed in Country Group A:6 (See Supplement No.1 to part 740 of the EAR).

List of Items Controlled

* * * * *

Items: * * *

b. * * *

b.1. ''Digital computers'' having an ''Adjusted Peak Performance'' (''APP'') exceeding 1.0 Weighted TeraFLOPS (WT);

* * * * *

■ 32. In Supplement No. 1 to part 774, ECCN 4D002 is removed.

■ 33. In Supplement No. 1 to part 774, ECCN 4E001 is amended by:

■ a. Revising the TSR paragraph in the List Based License Exceptions section;

■ b. Revising the STA paragraph in the Special Conditions for STA section; and

■ c. Revising Items paragraph b.1 in the List of Items Controlled section.

The revisions read as follows:

4E001 ''Technology'' as Follows (see List of Items Controlled)

* * * * *

List Based License Exceptions (See Part 740 for a description of all license exceptions)

* * * * *

TSR: Yes, except for ''technology'' for the ''development'' or ''production'' of commodities with an ''Adjusted Peak Performance'' (''APP'') exceeding 2.0 WT.

* * * * *

Special Conditions for STA

STA: License Exception STA may not be used to ship or transmit ''technology'' according to the General Technology Note for the ''development'' or ''production'' of any of the following equipment or ''software'': a. Equipment specified by ECCN 4A001.a.2; b. ''Digital computers'' having an 'Adjusted Peak Performance' ('APP') exceeding 2.0 Weighted TeraFLOPS (WT); or c. ''software'' specified in the License Exception STA paragraph found in the License Exception section of ECCN 4D001 to any of the destinations listed in Country Group A:6 (See Supplement No. 1 to part 740 of the EAR).

List of Items Controlled

* * * * *

Items: * * *

b. * * *

b.1. ''Digital computers'' having an ''Adjusted Peak Performance'' (''APP'') exceeding 1.0 Weighted TeraFLOPS (WT);

* * * * *

■ 34. In Supplement No. 1 to part 774, the Technical Note on ''Adjusted Peak Performance'' after ECCN EAR99 is amended by:

■ a. Revising Note 6; and

■ b. Adding Technical Notes after Note 6.

The revision and addition read as follows:

Technical Note on ''Adjusted Peak Performance'' (''APP'')

* * * * *

Note 6: ''APP'' values must be calculated for processor combinations containing processors ''specially designed'' to enhance performance by aggregation, operating simultaneously and sharing memory

Technical Notes: 1. Aggregate all processors and accelerators operating simultaneously and located on the same die.

2. Processor combinations share memory when any processor is capable of accessing any memory location in the system through the hardware transmission of cache lines or memory words, without the involvement of any software mechanism, which may be achieved using ''electronic assemblies'' specified in 4A003.c.

* * * * *

■ 35. In Supplement No. 1 to part 774, ECCN 5D001 is amended by removing and reserving Items paragraph b.

■ 36. In Supplement No. 1 to part 774, ECCN 5E001 is amended by revising Items paragraph c.1 to read as follows:

5E001 ''Technology'' as Follows (see List of Items Controlled)

* * * * *

List of Items Controlled

* * * * *

Items: * * *

c. * * *

c.1. Equipment employing digital techniques designed to operate at a ''total digital transfer rate'' exceeding 560 Gbit/s;

* * * * *

■ 37. In Supplement No. 1 to part 774, Category 5, Part 2 is amended by revising Note 1 to read as follows:

Category 5—Telecommunications and ''Information Security''

* * * * *

Part 2—''Information Security''

Note 1: The control status of ''information security'' items or functions is determined in Category 5, Part 2 even if they are components, ''software'' or functions of other systems or equipment.

N.B. to Note 1: Commodities and software ''specially designed'' for medical end-use that incorporate an item in Category 5, part 2 are not classified in any ECCN in Category 5, part 2.

* * * * *

■ 38. In Supplement No. 1 to part 774, ECCN 5A002 is amended by:

■ a. Revising the Related Controls paragraph in the List of Items Controlled section;

■ b. Revising paragraphs (j) and (k) of the Note at the beginning of the Items paragraph;

■ c. Adding paragraphs (l) and (m) to the of the Note at the beginning of the Items paragraph;

■ d. Revising the introductory text of Items paragraph a;

■ e. Revising Items paragraph a.2 and the Note to 5A002.a.2;

■ f. Adding a Technical Note following the Note to 5A002.a.2;

■ g. Revising Items paragraph a.9 and the Technical Notes following paragraph a.9; and

■ h. Revising Items paragraph b.

The revisions and additions read as follows:

5A002 ''Information Security'' Systems, Equipment and ''Components'' Therefor, as Follows (see List of Items Controlled)

* * * * *

List of Items Controlled

Related Controls: (1) ECCN 5A002.a controls ''components'' providing the means or functions necessary for ''information security.'' All such ''components'' are presumptively ''specially designed'' and controlled by 5A002.a. (2) 5A002 does not control the commodities listed in paragraphs (a), (d), (e), (f), (g), (i), (j), (k), (l) and (m) in the Note in the items paragraph of this entry. These commodities are instead classified under ECCN 5A992, and related software and technology are classified under ECCNs 5D992 and 5E992 respectively. (3) After encryption registration to or classification by BIS, mass market encryption commodities that meet eligibility requirements are released from ''EI'' and ''NS'' controls. These commodities are classified under ECCN 5A992.c. See § 742.15(b) of the EAR.

* * * * *

Items:

Note: * * *

(j) Equipment, having no functionality specified by 5A002.a.2, 5A002.a.4, 5A002.a.7, 5A002.a.8 or 5A002.b, meeting all of the following:

1. All cryptographic capability specified by 5A002.a meets any of the following:

a. It cannot be used; or

b. It can only be made useable by means of ''cryptographic activation''; and

2. When necessary as determined by the appropriate authority in the exporter's country, details of the equipment are accessible and will be provided to the authority upon request, in order to ascertain compliance with conditions described above;

N.B.1: See 5A002.a for equipment that has undergone ''cryptographic activation.''

N.B.2: See also 5A002.b, 5D002.d and 5E002.b.

(k) Mobile telecommunications Radio Access Network (RAN) equipment designed for civil use, which also meet the provisions 2. to 5. of part a. of the Cryptography Note (Note 3 in Category 5, Part 2), having an RF output power limited to 0.1W (20 dBm) or less, and supporting 16 or fewer concurrent users;

(l) Routers, switches or relays, where the ''information security'' functionality is limited to the tasks of ''Operations, Administration or Maintenance'' (''OAM'') implementing only published or commercial cryptographic standards; or

(m) General purpose computing equipment or servers, where the ''information security'' functionality meets all of the following:

1. Uses only published or commercial cryptographic standards; and

2. Is any of the following:

a. Integral to a CPU that meets the provisions of Note 3 to Category 5-Part 2;

b. Integral to an operating system that is not specified by 5D002; or

c. Limited to ''OAM'' of the equipment.

a. Systems, equipment and components, for ''information security'', as follows:

* * * * *

a.2. Designed or modified to perform 'cryptanalytic functions';

Note: 5A002.a.2 includes systems or equipment, designed or modified to perform 'cryptanalytic functions' by means of reverse engineering.

Technical Note: 'Cryptanalytic functions' are functions designed to defeat cryptographic mechanisms in order to derive confidential variables or sensitive data, including clear text, passwords or cryptographic keys.

* * * * *

a.9. Designed or modified to use or perform ''quantum cryptography.''

Technical Note: ''Quantum cryptography'' is also known as Quantum Key Distribution (QKD).

b. Systems, equipment and components, designed or modified to enable, by means of ''cryptographic activation'', an item to achieve or exceed the controlled performance levels for functionality specified by 5A002.a that would not otherwise be enabled.

■ 39. In Supplement No. 1 to part 774, ECCN 5D002 is amended by

■ a. Adding a Note to 5D002.c after Items paragraph c.2; and

■ b. Revising Items paragraph d.

The revisions read as follows:

5D002 ''Software'' as Follows (see List of Items Controlled)

* * * * *

List of Items Controlled

* * * * *

Items: * * *

c. * * *

c.2. * * *

Note: 5D002.c does not apply to ''software'' limited to the tasks of ''OAM'' implementing only published or commercial cryptographic standards.

d. ''Software'' designed or modified to enable, by means of ''cryptographic activation,'' an item to achieve or exceed the controlled performance levels for functionality specified by 5A002.a that would not otherwise be enabled.

■ 40. In Supplement No. 1 to part 774, ECCN 5E002 is amended by revising Items paragraph b and the Note to 5E002 to read as follows:

5E002 ''Technology'' as Follows (see List of Items Controlled)

* * * * *

List of Items Controlled

* * * * *

*Items:** * *

b. ''Technology'' to enable, by means of ''cryptographic activation,'' an item to achieve or exceed the controlled performance levels for functionality specified by 5A002.a that would not otherwise be enabled.

Note: 5E002 includes ''information security'' technical data resulting from procedures carried out to evaluate or determine the implementation of functions, features or techniques specified in Category 5-Part 2.

■ 41. In Supplement No. 1 to part 774, ECCN 6A001 is amended by:

■ a. Revising Items paragraph a.1.a.2.a.2 and the Technical Note following Items paragraph a.1.a.2.a.2;
■ b. Revising the introductory text of Items paragraph a.1.a.3;
■ c. Revising Note 1 after Items paragraph a.1.c;
■ d. Revising Items paragraph a.1.c.1;
■ e. Removing and reserving Items paragraph a.1.c.2 and removing the Technical Note following Items paragraph a.1.c.2; and
■ f. Adding a N.B. after paragraph a.1.c.2.

The revisions and additions read as follows:

6A001 Acoustic Systems, Equipment and ''Components'', as Follows (see List of Items Controlled)

* * * * *

List of Items Controlled

* * * * *

Items: a. * * *

a.1. * * *

a.1.a. * * *

a.1.a.2 * * *

a.1.a.2.a. * * *

a.1.a.2.a.2. 'Sounding rate' greater than 3,800 m/s; *or*

Technical Note: 'Sounding rate' is the product of the maximum speed (m/s) at which the sensor can operate and the maximum number of soundings per swath assuming 100% coverage. For systems that produce soundings in two directions (3D sonars), the maximum of the 'sounding rate' in either direction should be used.

* * * * *

a.1.a.3. Side Scan Sonar (SSS) or Synthetic Aperture Sonar (SAS), designed for seabed imaging and having all of the following, and specially designed transmitting and receiving acoustic arrays therefor:

* * * * *

a.1.c. * * *

Notes: 1. The control status of acoustic projectors, including transducers, ''specially designed'' for other equipment not specified by 6A001 is determined by the control status of the other equipment.

* * * * *

a.1.c.1. Operating at frequencies below 10 kHz and having any of the following:

a.1.c.1.a. Not designed for continuous operation at 100% duty cycle and having a radiated 'free-field Source Level (SL_{RMS})' exceeding (10log(f) + 169.77)dB (reference 1 μPa at 1 m) where f is the frequency in Hertz of maximum Transmitting Voltage Response (TVR) below 10 kHz; *or*

a.1.c.1.b. Designed for continuous operation at 100% duty cycle and having a continuously radiated 'free-field Source Level (SL_{RMS})' at 100% duty cycle exceeding (10log(f) + 159.77)dB (reference 1 μPa at 1 m) where f is the frequency in Hertz of maximum Transmitting Voltage Response (TVR) below 10 kHz; *or*

Technical Note: The 'free-field Source Level (SL_{RMS})' is defined along the maximum response axis and in the far field of the acoustic projector. It can be obtained from the Transmitting Voltage Response using the following equation: SL_{RMS} = (TVR + 20log V_{RMS}) dB (ref 1μPa at 1 m), where SL_{RMS} is the source level, TVR is the Transmitting Voltage Response and V_{RMS} is the Driving Voltage of the Projector.

* * * * *

N.B.: See 6A001.a.1.c.1 for items previously specified in 6A001a.1.c.2.

* * * * *

■ 42. In Supplement No. 1 to part 774, ECCN 6A003 is amended by:
■ a. Remove the entry ''RS applies to 6A003.b.4.b'' from the table in the License Requirements section;
■ b. Revising the Reporting Requirements in the License Requirements section;
■ c. Revising Items paragraph a.3;
■ d. Revising paragraph b.4.c in Note 3 to 6A003.b.4.b; and
■ e. Revising paragraph b in Note 4 to 6A003.b.4.c.

The revisions read as follows:

6A003 Cameras, Systems or Equipment, and ''Components'' Therefor, as Follows (see List of Items Controlled)

* * * * *

License Requirements

* * * * *

Reporting Requirements See § 743.3 of the EAR for thermal camera reporting for exports that are not authorized by an individually validated license of thermal imaging cameras controlled by ECCN 6A003.b.4.b to destinations in Country Group A:1 (see Supplement No. 1 to part 740 of the EAR), must be reported to BIS.

* * * * *

List of Items Controlled

* * * * *

Items: a. * * *

a.3. Mechanical or electronic streak cameras as follows:

a.3.a. Mechanical streak cameras having writing speeds exceeding 10 mm/μs;

a.3.b. Electronic streak cameras having temporal resolution better than 50 ns;

* * * * *

b. ***

b.4. ***

b.4.c. ***

*Note 3: ****

*b. ****

*4. ****

c. The camera is ''specially designed'' for installation into a civilian passenger land vehicle and having all of the following:

1. The placement and configuration of the camera within the vehicle are solely to assist the driver in the safe operation of the vehicle;

2. Is operable only when installed in any of the following:

a. The civilian passenger land vehicle for which it was intended and the vehicle weighs less than 4,500 kg (gross vehicle weight); or

b. A ''specially designed'', authorized maintenance test facility; and

3. Incorporates an active mechanism that forces the camera not to function when it is removed from the vehicle for which it was intended.

Note: When necessary details of the items will be provided, upon request, to the Bureau of Industry and Security in order to ascertain compliance with the conditions described in Note 3.b.4 and Note 3.c in this Note to 6A003.b.4.b.

*Note 4: ****

b. Where the camera is ''specially designed'' for installation into a civilian passenger land vehicle or passenger and vehicle ferries and having all of the following:

1. The placement and configuration of the camera within the vehicle or ferry are solely to assist the driver or operator in the safe operation of the vehicle or ferry;

2. Is only operable when installed in any of the following:

a. The civilian passenger land vehicle for which it was intended and the vehicle weighs less than 4,500 kg (gross vehicle weight);

b. The passenger and vehicle ferry for which it was intended and having a length overall (LOA) 65 m or greater; or

c. A ''specially designed'', authorized maintenance test facility; and

3. Incorporates an active mechanism that forces the camera not to function when it is removed from the vehicle for which it was intended;

* * * * *

■ 43. In Supplement No. 1 to part 774, ECCN 6A004 is amended by:
■ a. Revising the GBS and CIV paragraphs under the List Based License Exceptions section;
■ b. Adding a Technical Note after the introductory text of Items paragraph a;
■ c. Revising Items paragraph a.1;
■ d. Revising Items paragraph a.4;
■ e. Revising Items paragraph d.2;
■ f. Removing and reserving Items paragraph d.4.

The revisions and additions read as follows:

6A004 Optical Equipment and ''Components,'' as Follows (see List of Items Controlled)

* * * * *

List Based License Exceptions (See Part 740 for a description of all license exceptions)

* * * * *

GBS: Yes for 6A004.a.1, a.2, a.4, b, and d.2.

CIV: Yes for 6A004.a.1, a.2, a.4, b, and d.2.

* * * * *

List of Items Controlled

* * * * *

Items: a. ***

Technical Note: For the purpose of 6A004.a, Laser Induced Damage Threshold (LIDT) is measured according to ISO 21254–1:2011.

a.1. ''Deformable mirrors'' having an active optical aperture greater than 10 mm and having any of the following, and specially designed components therefor:

a.1.a. Having all the following:

a.1.a.1. A mechanical resonant frequency of 750 Hz or more; *and*

a.1.a.2. More than 200 actuators; *or*

a.1.b. A Laser Induced Damage Threshold (LIDT) being any of the following:

a.1.b.1. Greater than 1 kW/cm² using a ''CW laser''; *or*

a.1.b.2. Greater than 2 J/cm² using 20 ns ''laser'' pulses at 20 Hz repetition rate;

* * * * *

a.4. Mirrors specially designed for beam steering mirror stages specified in 6A004.d.2.a with a flatness of λ/10 or better (λ is equal to 633 nm) and having any of the following:

a.4.a. Diameter or major axis length greater than or equal to 100 mm; *or*

a.4.b. Having all of the following:

a.4.b.1. Diameter or major axis length greater than 50 mm but less than 100 mm; *and*

a.4.b.2. A Laser Induced Damage Threshold (LIDT) being any of the following:

a.4.b.2.a. Greater than 10 kW/cm2 using a ''CW laser''; *or*

a.4.b.2.b. Greater than 20 J/cm2 using 20 ns ''laser'' pulses at 20 Hz repetition rate;

N.B. For optical mirrors specially designed for lithography equipment, see 3B001.

* * * * *

d. ***

d.2. Steering, tracking, stabilisation and resonator alignment equipment as follows:

d.2.a. Beam steering mirror stages designed to carry mirrors having diameter or major axis length greater than 50 mm and having all of the following, and specially designed electronic control equipment therefor:

d.2.a.1. A maximum angular travel of ±26 mrad or more;

d.2.a.2. A mechanical resonant frequency of 500 Hz or more; *and*

d.2.a.3. An angular accuracy of 10 μrad (microradians) or less;

d.2.b. Resonator alignment equipment having bandwidths equal to or more than 100 Hz and an accuracy of 10 μrad or less;

* * * * *

■ 44. In Supplement No. 1 to part 774, ECCN 6A005 is amended by:

■ a. Removing the Note to 6A005.c after Items paragraph c;

■ b. Revising Items paragraph e.2; and

■ c. Adding Items paragraph e.3.

The revision and additions read as follows:

6A005 ''Lasers,'' ''Components'' and Optical Equipment, as Follows (see List of Items Controlled), Excluding Items That Are Subject to the Export Licensing Authority of the Nuclear Regulatory Commission (see 10 CFR part 110)

* * * * *

List of Items Controlled

* * * * *

Items:

* * * * *

e. ***

e.2. Optical mirrors or transmissive or partially transmissive optical or electro-optical-''components,'' other than fused tapered fiber combiners and Multi-Layer Dielectric gratings (MLDs), ''specially designed'' for use with controlled ''lasers'';

Note to 6A005.e.2: Fiber combiners and MLDs are specified by 6A005.e.3.

e.3. Fiber laser ''components'' as follows:

e.3.a. Multimode to multimode fused tapered fiber combiners having all of the following:

e.3.a.1. An insertion loss better (less) than or equal to 0.3 dB maintained at a rated total average or CW output power (excluding output power transmitted through the single mode core if present) exceeding 1,000 W; *and*

e.3.a.2. Number of input fibers equal to or greater than 3;

e.3.b. Single mode to multimode fused tapered fiber combiners having all of the following:

e.3.b.1. An insertion loss better (less) than 0.5 dB maintained at a rated total average or CW output power exceeding 4,600 W;

e.3.b.2. Number of input fibers equal to or greater than 3; *and*

e.3.b.3. Having any of the following:

e.3.b.3.a. A Beam Parameter Product (BPP) measured at the output not exceeding 1.5 mm mrad for a number of input fibers less than or equal to 5; *or*

e.3.b.3.b. A BPP measured at the output not exceeding 2.5 mm mrad for a number of input fibers greater than 5;

e.3.c. MLDs having all of the following:

e.3.c.1. Designed for spectral or coherent beam combination of 5 or more fiber lasers; *and*

e.3.c.2. CW Laser Induced Damage Threshold (LIDT) greater than or equal to 10 kW/cm²;

* * * * *

■ 45. In Supplement No. 1 to part 774, ECCN 6C005 is amended by:

■ a. Revising the heading; and

■ b. Revising the Items paragraphs.

■ The revisions read as follows:

6C005 ''Laser'' Materials as Follows (see List of Items Controlled)

* * * * *

List of Items Controlled

* * * * *

Items: a. Synthetic crystalline ''laser'' host material in unfinished form as follows:

a.1. Titanium doped sapphire;

a.2. [Reserved]

b. Rare-earth-metal doped double-clad fibers having any of the following:

b.1. Nominal laser wavelength of 975 nm to 1,150 nm and having all of the following:

b.1.a. Average core diameter equal to or greater than 25 μm; *and*

b.1.b. Core 'Numerical Aperture' ('NA') less than 0.065; *or*

Note to 6C005.b.1: 6C005.b.1 does not apply to double-clad fibers having an inner glass cladding diameter exceeding 150 μm and not exceeding 300 μm.

b.2. Nominal laser wavelength exceeding 1,530 nm and having all of the following:

b.2.a. Average core diameter equal to or greater than 20 μm; *and*

b.2.b. Core 'NA' less than 0.1.

Technical Notes: 1. For the purposes of 6C005, the core 'Numerical Aperture' ('NA') is measured at the emission wavelengths of the fiber.

2. 6C005.b includes fibers assembled with end caps.

■ 46. In Supplement No. 1 to part 774, ECCN 6D003 is amended by:

■ a. Adding an undesignated center heading before Items paragraph d; and

■ b. Revising Items paragraph d.

The addition and revision read as follows:

6D003 Other ''Software'' as Follows (see List of Items Controlled)

* * * * *

List of Items Controlled

* * * * *

Items:

* * * * *

OPTICS

d. ''Software'' specially designed to maintain the alignment and phasing of segmented mirror systems consisting of mirror segments having a diameter or major axis length equal to or larger than 1 m;

* * * * *

■ 47. In Supplement No. 1 to part 774, ECCN 7A003 is amended by revising Note 2 in the Items paragraph to read as follows:

7A003 'Inertial Measurement Equipment or Systems', Having Any of the Following (see List of Items Controlled)

* * * * *

List of Items Controlled

* * * * *

Items:

* * * * *

Note 2: 7A003 does not apply to 'inertial measurement equipment or systems' which are certified for use on ''civil aircraft'' by civil aviation authorities of one or more Wassenaar Arrangement Participating States, see Supplement No. 1 to part 743 of the EAR.

* * * * *

■ 48. In Supplement No. 1 to part 774, ECCN 7D004 is amended by:

■ a. Revising the Related Controls paragraph in the List of Items Controlled section; and

■ b. Revising Items paragraph c.

The revisions read as follows:

7D004 ''Source Code'' Incorporating ''Development'' ''Technology'' Specified by 7E004.a.1 to a.6 or 7E004.b, For Any of the Following: (see List of Items Controlled)

* * * * *

List of Items Controlled

Related Controls: See also 7D103 and 7D994

* * * * *

Items: ***

c. ''Fly-by-wire systems'' or ''fly-by-light systems'';

* * * * *

■ 49. In Supplement No. 1 to part 774, ECCN 7E001 is amended by revising the heading to read as follows:

7E001 ''Technology'' According to the General Technology Note for the ''Development'' of Equipment or ''Software'', Specified by 7A. (except 7A994), 7B. (except 7B994), 7D001, 7D002, 7D003 or 7D005.

* * * * *

■ 50. In Supplement No. 1 to part 774, ECCN 7E004 is amended by:
■ a. Revising the Related Controls paragraph in the List of Items Controlled;
■ b. Revising Items paragraphs b introductory text and b.1;
■ c. Removing the Note after Items paragraph b.6;
■ d. Adding Items paragraphs b.7 and b.8.

The revisions and additions read as follows:

7E004 Other ''Technology'' as Follows (see List of Items Controlled)

* * * * *

List of Items Controlled

Related Controls: (1) See also 7E001, 7E002, 7E101, and 7E994. (2) In addition to the Related Controls in 7E001, 7E002, and 7E101 that include MT controls, also see the MT controls in 7E104 for design ''technology'' for the integration of the flight control, guidance, and propulsion data into a flight management system, designed or modified for rockets or missiles capable of achieving a ''range'' equal to or greater than 300 km, for optimization of rocket system trajectory; and also see 9E101 for design ''technology'' for integration of air vehicle fuselage, propulsion system and lifting control surfaces, designed or modified for unmanned aerial vehicles capable of achieving a ''range'' equal to or greater than 300 km, to optimize aerodynamic performance throughout the flight regime of an unmanned aerial vehicle.

* * * * *

Items: ***

b. ''Development'' ''technology'', as follows, for ''active flight control systems'' (including ''fly-by-wire systems'' or ''fly-by-light systems''):

b.1. Photonic-based ''technology'' for sensing aircraft or flight control component state, transferring flight control data, or commanding actuator movement, ''required'' for ''fly-by-light systems'' ''active flight control systems'';

* * * * *

b.7. ''Technology'' ''required'' for deriving the functional requirements for ''fly-by-wire systems'' having all of the following:

b.7.a. 'Inner-loop' airframe stability controls requiring loop closure rates of 40 Hz or greater; *and*

Technical Note: 'Inner-loop' refers to functions of ''active flight control systems'' that automate airframe stability controls.

b.7.b. Having any of the following:

b.7.b.1. Corrects an aerodynamically unstable airframe, measured at any point in the design flight envelope, that would lose recoverable control if not corrected within 0.5 seconds;

b.7.b.2. Couples controls in two or more axes while compensating for 'abnormal changes in aircraft state';

Technical Note: 'Abnormal changes in aircraft state' include in-flight structural damage, loss of engine thrust, disabled control surface, or destabilizing shifts in cargo load.

b.7.b.3. Performs the functions specified in 7E004.b.5; *or*

Note: 7E004.b.7.b.3 does not apply to autopilots.

b.7.b.4. Enables aircraft to have stable controlled flight, other than during take-off or landing, at greater than 18 degrees angle of attack, 15 degrees side slip, 15 degrees/second pitch or yaw rate, or 90 degrees/second roll rate;

b.8. ''Technology'' ''required'' for deriving the functional requirements of ''fly-by-wire systems'' to achieve all of the following:

b.8.a. No loss of control of the aircraft in the event of a consecutive sequence of any two individual faults within the ''fly-by-wire system''; *and*

b.8.b. Probability of loss of control of the aircraft being less (better) than 1×10^{-9} failures per flight hour;

Note: 7E004.b does not apply to ''technology'' associated with common computer elements and utilities (e.g., input signal acquisition, output signal transmission, computer program and data loading, built-in test, task scheduling mechanisms) not providing a specific flight control system function.

* * * * *

■ 51. In Supplement No. 1 to part 774, ECCN 8A001 is amended by removing the semicolon at the end of paragraph e.2. and adding in its place a period and removing Items paragraph f through the Technical Note following i.2.

■ 52. In Supplement No. 1 to part 774, ECCN 8A002 is amended by removing and reserving Items paragraphs k through n and o.1.

■ 53. In Supplement No. 1 to part 774, ECCN 8A620 is amended by revising Items paragraph f to read as follows:

8A620 Submersible Vessels, Oceanographic and Associated Commodities (see List of Items Controlled)

* * * * *

List of Items Controlled

* * * * *

Items: ***

f. Closed and semi-closed circuit (rebreathing) apparatus ''specially designed'' or modified for military use and not enumerated elsewhere in the CCL or in the USML.

* * * * *

■ 54. In Supplement No. 1 to part 774, ECCN 8E002 is amended by:
■ a. Revising the TSR paragraph in the List Based License Exceptions section;
■ b. Adding a Note at the end of the List Based License Exceptions section; and
■ c. Adding Items paragraph c.

The revision and additions read as follows:

8E002 Other ''Technology'' as Follows (see List of Items Controlled)

* * * * *

List Based License Exceptions (See Part 740 for a description of all license exceptions)

* * * * *

TSR: N/A

License Exceptions Note: License Exception TSU is not applicable for the repair ''technology'' controlled by 8E002.a or .b, see Supplement No. 2 to this part.

* * * * *

List of Items Controlled

* * * * *

Items: * * *

c. ''Technology'' according to the General Technology Note for the ''development'' or ''production'' of any of the following:

c.1. Surface-effect vehicles (fully skirted variety) having all of the following:

c.1.a. Maximum design speed, fully loaded, exceeding 30 knots in a significant wave height of 1.25 m or more;

c.1.b. Cushion pressure exceeding 3,830 Pa; *and*

c.1.c. Light-ship-to-full-load displacement ratio of less than 0.70;

c.2. Surface-effect vehicles (rigid sidewalls) with a maximum design speed, fully loaded, exceeding 40 knots in a significant wave height of 3.25 m or more;

c.3. Hydrofoil vessels with active systems for automatically controlling foil systems, with a maximum design speed, fully loaded, of 40 knots or more in a significant wave height of 3.25 m or more; *or*

c.4. 'Small waterplane area vessels' having any of the following:

c.4.a. Full load displacement exceeding 500 tonnes with a maximum design speed, fully loaded, exceeding 35 knots in a significant wave height of 3.25 m or more; *or*

c.4.b. Full load displacement exceeding 1,500 tonnes with a maximum design speed, fully loaded, exceeding 25 knots in a significant wave height of 4 m or more.

Technical Note: A 'small waterplane area vessel' is defined by the following formula: waterplane area at an operational design draft less than 2x (displaced volume at the operational design draft). [2] / [3]

■ 54. In Supplement No. 1 to part 774, ECCN 9A001 is amended by revising Notes 1 and 2 to Items paragraph a to read as follows:

9A001 Aero Gas Turbine Engines Having Any of the Following (see List of Items Controlled)

* * * * *

List of Items Controlled

* * * * *

Items: a. ***

Note 1: 9A001.a does not control aero gas turbine engines which meet all of the following:

a. Certified by civil aviation authorities of one or more Wassenaar Arrangement Participating States listed in Supplement No. 1 to Part 743; and

b. Intended to power non-military manned aircraft for which any of the following has been issued by civil aviation authorities of one or more Wassenaar Arrangement Participating States listed in Supplement No. 1 to Part 743 for the aircraft with this specific engine type:

b.1. A civil type certificate; or

b.2. An equivalent document recognized by the International Civil Aviation Organization (ICAO).

Note 2: 9A001.a does not apply to aero gas turbine engines for Auxiliary Power Units (APUs) approved by the civil aviation authority of Wassenaar Arrangement Participating States (see Supplement No. 1 to part 743 of the EAR).

* * * * *

■ 55. In Supplement No. 1 to part 774, ECCN 9A003 is amended by:

■ a. Revising the heading; and

■ b. Revising Items paragraph b.

The revisions read as follows:

9A003 ''Specially Designed'' Assemblies or ''Components,'' Incorporating Any of the ''Technologies'' Controlled by 9E003.a, 9E003.h or 9E003.i, For Any of the Following Aero Gas Turbine Engines (see List of Items Controlled)

* * * * *

List of Items Controlled

* * * * *

Items: ***

b. Whose design or production origins are either not from a Wassenaar Participating State (see Supplement No. 1 to part 743 of the EAR) or unknown to the manufacturer.

■ 56. In Supplement No. 1 to part 774, ECCN 9A004 is amended by:

■ a. Revising the heading;

■ b. Revising the License Requirements section;

■ c. Redesignating Items paragraph a as paragraph w and adding new paragraph .a;

■ d. Adding paragraphs b. through f.

The revisions and addition read as follows:

9A004 Space Launch Vehicles and ''Spacecraft,'' ''Spacecraft Buses'', ''Spacecraft Payloads'', ''Spacecraft'' On-board Systems or Equipment, and Terrestrial Equipment, as Follows (see List of Items Controlled)

License Requirements

Reason for Control: NS and AT.

Control(s)	*Country chart (See Supp. No. 1 to part 738)*
NS applies to 9A004.w and .x.	NS Column 1
AT applies to 9A004.w, .x and .y.	AT Column 1

License Requirement Note: 9A004.a through .f are controlled under ECCN 9A515.

* * * * *

List of Items Controlled

* * * * *

Items:

a. Space launch vehicles;

b. ''Spacecraft'';

c. ''Spacecraft buses'';

d. ''Spacecraft payloads'' incorporating items specified by 3A001.b.1.a.4, 3A002.g, 5A001.a.1, 5A001.b.3, 5A002.a.5, 5A002.a.9, 6A002.a.1, 6A002.a.2, 6A002.b, 6A002.d, 6A003.b, 6A004.c, 6A004.e, 6A008.d, 6A008.e, 6A008.k, 6A008.l or 9A010.c;

e. On-board systems or equipment, specially designed for ''spacecraft'' and having any of the following functions:

e.1. 'Command and telemetry data handling';

Note: For the purpose of 9A004.e.1, 'command and telemetry data handling' includes bus data management, storage, and processing.

e.2. 'Payload data handling'; *or*

Note: For the purpose of 9A004.e.2, 'payload data handling' includes payload data management, storage, and processing.

e.3. 'Attitude and orbit control';

Note: For the purpose of 9A004.e.3, 'attitude and orbit control' includes sensing and actuation to determine and control the position and orientation of a ''spacecraft''.

N.B.: Equipment specially designed for military use is ''subject to the ITAR''. See 22 CFR parts 120 through 130.

f. Terrestrial equipment, specially designed for ''spacecraft'' as follows:

f.1. Telemetry and telecommand equipment;

f.2. Simulators.

* * * * *

■ 57. In Supplement No. 1 to part 774, ECCN 9A010 is revised to read as follows:

9A010 ''Specially Designed'' ''Parts,'' ''Components,'' Systems and Structures, for Launch Vehicles, Launch Vehicle Propulsion Systems or ''Spacecraft''. (These items are ''subject to the ITAR.'' See 22 CFR parts 120 through 130.)

List of Items Controlled

Items:

a. ''Parts'', ''components'' and structures, each exceeding 10 kg and ''specially designed'' for launch vehicles manufactured using any of the following:

a.1. ''Composite'' materials consisting of ''fibrous or filamentary materials'' specified by 1C010.e and resins specified by 1C008 or 1C009.b;

a.2. Metal ''matrix'' ''composites'' reinforced by any of the following:

a.2.a. Materials specified by 1C007;

a.2.b. ''Fibrous or filamentary materials'' specified by 1C010; *or*

a.2.c. Aluminides specified by 1C002.a; *or*

a.3. Ceramic ''matrix'' ''composite'' materials specified by 1C007;

Note: The weight cut-off is not relevant for nose cones.

b. ''Parts'', ''components'' and structures, ''specially designed'' for launch vehicle propulsion systems specified by 9A005 to 9A009, manufactured using any of the following:

b.1. ''Fibrous or filamentary materials'' specified by 1C010.e and resins specified by 1C008 or 1C009.b;

b.2. Metal ''Matrix ''composites'' reinforced by any of the following:

b.2.a. Materials specified by 1C007;

b.2.b. ''Fibrous or filamentary materials'' specified by 1C010; *or*

b.2.c. Aluminides specified by 1C002.a; *or*

b.3. Ceramic ''matrix'' ''composite'' materials specified by 1C007;

c. Structural components and isolation systems, specially designed to control actively the dynamic response or distortion of ''spacecraft'' structures;

d. Pulsed liquid rocket engines with thrust-to-weight ratios equal to or more than 1 kN/kg and a response time (the time required to achieve 90% of total rated thrust from start-up) of less than 30 ms.

■ 58. In Supplement No. 1 to part 774, ECCN 9A012 is amended by:

■ a. Revising the heading;

■ b. Revising the second entry in the table under the License Requirements section; and

■ c. Revising Items paragraphs a through b.2 and b.4.

The revisions read as follows:

9A012 Non-military ''Unmanned Aerial Vehicles,'' (''UAVs''), Unmanned ''Airships'', Related Equipment and ''Components'', as Follows (see List of Items Controlled)

License Requirements

* * * * *

Control(s)	*Country chart (See Supp. No. 1 to part 738)*
* * *	* *
MT applies to non-military Unmanned Air Vehicle (UAVs) and Remotely Piloted Vehicles (RPVs) that are capable of a maximum range of at least 300 kilometers (km), regardless of payload.	MT Column 1
* * *	* *

* * * * *

List of Items Controlled

* * * * *

Items: a. ''UAVs'' or unmanned ''airships'', designed to have controlled flight out of the direct 'natural vision' of the 'operator' and having any of the following:

a.1. Having all of the following:

a.1.a. A maximum 'endurance' greater than or equal to 30 minutes but less than 1 hour; and

a.1.b. Designed to take-off and have stable controlled flight in wind gusts equal to or exceeding 46.3 km/h (25 knots); *or*

a.2. A maximum 'endurance' of 1 hour or greater;

Technical Notes: 1. For the purposes of 9A012.a, 'operator' is a person who initiates or commands the ''UAV'' or unmanned ''airship'' flight.

2. For the purposes of 9A012.a, 'endurance' is to be calculated for ISA conditions (ISO 2533:1975) at sea level in zero wind.

3. For the purposes of 9A012.a, 'natural vision' means unaided human sight, with or without corrective lenses.

b. Related equipment and ''components'', as follows:

b.1 [Reserved]

b.2. [Reserved]

* * * * *

b.4. Air breathing reciprocating or rotary internal combustion type engines, ''specially designed'' or modified to propel ''UAVs'' or unmanned ''airships'', at altitudes above 15,240 meters (50,000 feet).

Note: 9A012 does not control model aircraft or model ''airships''.

■ 59. In Supplement No. 1 to part 774, ECCN 9B001 is amended by:
■ a. Revising the heading;
■ b. Revising the Special Conditions for STA section;
■ c. Revising Items paragraph b; and
■ d. Adding Items paragraph c.

The revisions and addition read as follows:

9B001 Equipment, Tooling or Fixtures, ''Specially Designed'' for Manufacturing Gas Turbine Engine Blades, Vanes or ''Tip Shrouds'', as Follows (See List of Items Controlled)

* * * * *

Special Conditions for STA

STA: License Exception STA may not be used to ship commodities in 9B001 to any of the destinations listed in Country Group A:6 (See Supplement No.1 to part 740 of the EAR).

List of Items Controlled

* * * * *

Items: * * *

b. Cores or shells (moulds), specially designed for casting, manufactured from refractory metals or ceramics;

c. Directional-solidification or single-crystal additive-manufacturing equipment.

■ 60. In Supplement No. 1 to part 774, ECCN 9B010 is amended by revising the heading to read as follows:

9B010 Equipment ''Specially Designed'' for the Production of Items Specified by 9A012

* * * * *

■ 61. In Supplement No. 1 to part 774, ECCN 9D003 is amended by revising the heading to read as follows:

9D003 ''Software'' Incorporating ''Technology'' Specified by ECCN 9E003.h and Used in ''FADEC Systems'' for Systems Controlled by ECCN 9A001 to 9A003, 9A101 (Except for Items in 9A101.b That Are ''Subject to the ITAR'', See 22 CFR Part 121), 9A106.d or .e, or 9B (Except for ECCNs 9B604, 9B610, 9B619, 9B990, and 9B991).

* * * * *

■ 62. In Supplement No. 1 to part 774, ECCN 9D004 is amended by revising Items paragraphs c and e to read as follows:

9D004 Other ''Software'' as Follows (See List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items: * * *

c. ''Software'' ''specially designed'' to control directional solidification or single crystal material growth in equipment specified by 9B001.a or 9B001.c;

* * * * *

e. ''Software'' ''specially designed'' or modified for the operation of items specified by 9A012;

* * * * *

■ 63. In Supplement No. 1 to part 774, ECCN 9D005 is added to the Commerce Control List after ECCN 9D004 to read as follows:

9D005 ''Software'' Specially Designed or Modified for the Operation of Items Specified by 9A004.e or 9A004.f. (This ''Software'' Is Controlled by ECCN 9D515)

■ 64. In Supplement No. 1 to part 774, ECCN 9E003 is amended by:
■ c. Revising the second entry in the table in the License Requirements section;
■ d. Revising Items paragraphs a.3 and a.4;
■ e. Revising the Note to 9E003.h after Items paragraph h.3;
■ f. Redesignating Items paragraph j as paragraph k; and
■ g. Adding new Items paragraph .j.

The revisions and addition read as follows:

9E003 Other ''Technology'' as Follows (See List of Items Controlled).

License Requirements

* * * * *

Control(s)	*Country chart (see supp. No. 1 to part 738)*
* * * * *	
SI applies to 9E003.a.1 through a.8,.h, .i, and .k. See § 742.14 of the EAR for additional information.	
* * * * *	

* * * * *

List of Items Controlled

* * * * *

Items: a. * * *

a.3. ''Parts'' or ''components,'' that are any of the following:

a.3.a. Manufactured from organic ''composite'' materials designed to operate above 588 K (315 °C);

a.3.b. Manufactured from any of the following:

a.3.b.1. Metal ''matrix'' ''composites'' reinforced by any of the following:

a.3.b.1.a. Materials controlled by 1C007;

a.3.b.1.b. ''Fibrous or filamentary materials'' specified by 1C010; *or*

a.3.b.1.c. Aluminides specified by 1C002.a; *or*

a.3.b.2. Ceramic ''matrix'' ''composites'' specified by 1C007; *or*

a.3.c. Stators, vanes, blades, tip seals (shrouds), rotating blings, rotating blisks or 'splitter ducts', that are all of the following:

a.3.c.1. Not specified in 9E003.a.3.a;

a.3.c.2. Designed for compressors or fans; *and*

a.3.c.3. Manufactured from material controlled by 1C010.e with resins controlled by 1C008;

Technical Note: A 'splitter duct' performs the initial separation of the air-mass flow between the bypass and core sections of the engine.

a.4. Uncooled turbine blades, vanes or ''tip shrouds'' designed to operate at a 'gas path temperature' of 1,373 K (1,100 °C) or more;

* * * * *

h. * * *

h.3. * * *

Note: 9E003.h does not apply to technical data related to engine-aircraft integration required by civil aviation authorities of one or more Wassenaar Arrangement Participating States (See Supplement No. 1 to part 743 of the EAR) to be published for general airline use (e.g., installation manuals, operating instructions, instructions for continued airworthiness) or interface functions (e.g., input/output processing, airframe thrust or shaft power demand).

* * * * *

j. ''Technology'' ''required'' for the ''development'' of wing-folding systems designed for fixed-wing aircraft powered by gas turbine engines.

N.B.: For ''technology'' ''required'' for the ''development'' of wing-folding systems designed for fixed-wing aircraft specified in USML Category VIII (a), see USML Category VIII (i).

* * * * *

Supplement No. 5 to Part 774 [AMENDED]

■ 65. Supplement No. 5 to part 774 is amended by:
■ a. Removing and reserving item No. 2 under the heading ''0D521. Software''; and
■ b. Removing item No. 6 under the heading ''0E521. Technology''.
■ 66. Supplement No. 6 to part 774 is amended by:
■ a. Revising paragraph (2);
■ b. Removing and reserving paragraph (5)(iv); and
■ c. Revising paragraph (9)(ii).

The revisions read as follows:

Supplement No. 6 to Part 774—Sensitive List

* * * * *

(2) Category 2

(i) 2D001—''Software'', other than that controlled by 2D002, specially designed for the ''development'' or ''production'' of equipment as follows:

(A) Machine tools for turning (ECCN 2B001.a) having all of the following:

(1) ''Unidirectional positioning repeatability'' equal to or less (better) than 1.1 μm along one or more linear axis; and

(2) Two or more axes which can be coordinated simultaneously for ''contouring control'';

(B) Machine tools for milling (ECCN 2B001.b) having any of the following:

(1) Having all of the following:

(a) ''Unidirectional positioning repeatability'' equal to or less (better) than 1.1 μm along one or more linear axis; and

(b) Three linear axes plus one rotary axis which can be coordinated simultaneously for ''contouring control'';

(2) Specified by 2B001.b.2.a, 2B001.b.2.b or 2B001.b.2.c and having a ''unidirectional positioning repeatability'' equal to or less (better) than 1.1 μm along one or more linear axis; or

(3) A ''unidirectional positioning repeatability'' for jig boring machines equal to or less (better) than 1.1 μm along one or more linear axis;

(C) Electrical discharge machines (EDM) controlled under 2B001.d;

(D) Deep-hole-drilling machines controlled under 2B001.f;

(E) ''Numerically controlled'' or manual machine tools controlled under 2B003.

(ii) 2E001—''Technology'' according to the General Technology Note for the ''development'' of ''software'' specified by 2D001 described in this Supplement or for the ''development'' of equipment as follows:

(A) Machine tools for turning (ECCN 2B001.a) having all of the following:

(1) ''Unidirectional positioning repeatability'' equal to or less (better) than 1.1 μm along one or more linear axis; and

(2) Two or more axes which can be coordinated simultaneously for ''contouring control'';

(B) Machine tools for milling (ECCN 2B001.b) having any of the following:

(1) Having all of the following:

(a) ''Unidirectional positioning repeatability'' equal to or less (better) than 1.1 μm along one or more linear axis; and

(b) Three linear axes plus one rotary axis which can be coordinated simultaneously for ''contouring control'';

(2) Specified by 2B001.b.2.a, 2B001.b.2.b or 2B001.b.2.c and having a ''unidirectional positioning repeatability'' equal to or less (better) than 1.1 μm along one or more linear axis; or

(3) A ''unidirectional positioning repeatability'' for jig boring machines equal to or less (better) than 1.1 μm along one or more linear axis;

(C) Electrical discharge machines (EDM) controlled under 2B001.d;

(D) Deep-hole-drilling machines controlled under 2B001.f;

(E) ''Numerically controlled'' or manual machine tools controlled under 2B003.

(iii) 2E002—''Technology'' according to the General Technology Note for the ''production'' of equipment as follows:

(A) Machine tools for turning (ECCN 2B001.a) having all of the following:

(1) ''Unidirectional positioning repeatability'' equal to or less (better) than 1.1 μm along one or more linear axis; and

(2) Two or more axes which can be coordinated simultaneously for ''contouring control'';

(B) Machine tools for milling (ECCN 2B001.b) having any of the following:

(1) Having all of the following:

(a) ''Unidirectional positioning repeatability'' equal to or less (better) than 1.1 μm along one or more linear axis; and

(b) Three linear axes plus one rotary axis which can be coordinated simultaneously for ''contouring control'';

(2) Specified by 2B001.b.2.a, 2B001.b.2.b or 2B001.b.2.c and having a ''unidirectional positioning repeatability'' equal to or less (better) than 1.1 μm along one or more linear axis; or

(3) A ''unidirectional positioning repeatability'' for jig boring machines equal to or less (better) than 1.1 μm along one or more linear axis;

(C) Electrical discharge machines (EDM) controlled under 2B001.d;

(D) Deep-hole-drilling machines controlled under 2B001.f;

(E) ''Numerically controlled'' or manual machine tools controlled under 2B003.

* * * * *

(9) Category 9

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(ii) 9B001

* * * * *

Dated: May 1, 2015.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2015–10579 Filed 5–20–15; 8:45 am]

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Part IV

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Motorcycle Helmets; Proposed Rule

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2015–0045]

RIN 2127–AL01

Federal Motor Vehicle Safety Standards; Motorcycle Helmets

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document sets forth an interpretation of the definition of ''motor vehicle equipment'' in the United States Code, as amended by the Moving Ahead for Progress in the 21st Century (MAP–21) Act, and requests comments on two proposed changes to the motorcycle helmet safety standard, Federal Motor Vehicle Safety Standard (FMVSS) No. 218. Continued high levels of motorcycle related fatalities, the ongoing use of novelty helmets by motorcyclists and the poor performance of these helmets in tests and crashes have prompted the agency to clarify the status of such helmets under federal law to ensure that all relevant legal requirements are readily enforceable. All helmets that are sold to, and worn on the highway by, motorcyclists and that, based on their design and/or other factors, have the apparent purpose of protecting highway users are motorcycle helmets subject to the jurisdiction and standard of the National Highway Traffic Safety Administration (''NHTSA'' or ''agency'').

NHTSA is simultaneously proposing to amend its helmet standard, FMVSS No. 218. First, NHTSA is proposing to add a definition of ''motorcycle helmet.'' Second, we are proposing to modify the existing performance requirements of the standard by adding a set of dimensional and compression requirements. These requirements and the associated test procedures would identify those helmets whose physical characteristics indicate that they likely cannot meet the existing performance requirements of the standard. Third, we are incorporating an optional alternative compliance process for manufacturers whose helmets do not comply with the proposed dimensional and compression requirements, but do comply with the performance requirements and all other aspects of FMVSS No. 218. NHTSA will publish a list of helmets that have complied with the alternative compliance process and can therefore be certified by their manufacturers. This document is the result of the agency's assessment of other actions that could be taken to increase further the percentage of motorcyclists who wear helmets that comply with the helmet standard.

DATES: You should submit your comments to ensure that Docket Management receives them not later than July 20, 2015. The incorporation by reference of certain publications listed in the proposed rule is approved by the Director of the Federal Register as of May 22, 2017.

ADDRESSES: You may submit comments to the docket number identified in the heading of this document by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the ''Privacy Act'' heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketInfo.dot.gov*.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. Follow the online instructions for accessing the dockets.

See the **SUPPLEMENTARY INFORMATION** portion of this document (Section VII.; Public Participation) for DOT's Privacy Act Statement regarding documents submitted to the agency's dockets.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may contact Ms. Claudia Covell, Office of Vehicle Safety Compliance (Telephone: 202–366–5293) (Fax: 202–366–7002). For legal issues, you may contact Mr. Otto Matheke, Office of the Chief Counsel (Telephone: 202–366–5253) (Fax: 202–366–3820). You may send mail to these officials at: National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590.

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I. Executive Summary

A. Purpose of the Regulatory Action

The purpose of this regulatory action is to reduce fatalities and injuries resulting from traffic accidents involving use of motorcycle helmets that fail to meet Federal Motor Vehicle Safety Standard (FMVSS) No. 218, Motorcycle helmets. Motorcycle crash-related fatalities are disproportionately high, compared as a measure of exposure, among all motor vehicle crash fatalities. In part, these fatalities can be attributed to the high number of motorcyclists wearing sub-standard motorcycle helmets. For example, NHTSA's National Occupant Protection

Use Survey (NOPUS) has consistently shown that a portion of the motorcycling community wears novelty helmets. Specifically, in states where use is required for all motorcyclists, between 8–27% of motorcyclists have been observed wearing helmets that likely do not comply with FMVSS No. 218.[1 2]

These helmets, frequently marketed as ''novelty'' helmets, are seldom certified by the manufacturer as meeting Standard No. 218, but are sold to, and used by, on-road motorcycle riders and passengers.[3] Data from a study of motorcycle operators injured in crashes and transported to a shock trauma center indicates that 56 percent of those wearing a novelty helmet received head injuries as compared to 19 percent of those wearing a certified helmet.[4]

These novelty helmets are frequently sold as ''motorcycle novelty helmets'' or otherwise marketed to on-road motorcycle riders. However, these novelty helmets are usually offered along with a disclaimer that the helmet does not meet Standard No. 218, is not a protective device or is not intended for highway use. In States where universal helmet use laws often require riders and passengers to wear helmets meeting Standard No. 218, helmet users wearing novelty helmets often affix labels to their helmets that mimic the certification labels applied by manufacturers of helmets that are certified as meeting the Standard. Consequently, officials attempting to enforce compulsory helmet use laws in those States requiring that riders use helmets meeting Standard No. 218 currently find it difficult to enforce these laws to prevent the use of these novelty helmets.

In 2011, NHTSA attempted to make it easier for riders and law enforcement officials to identify non-compliant helmets by amending FMVSS No. 218 to require that all compliant helmets manufactured after May 13, 2013 have a certification decal which includes the phrase ''FMVSS No. 218'', the helmet manufacturer's name or brand name of the helmet and the word ''certified.'' The new requirements were intended to make decals more difficult to counterfeit. However, this regulatory change has not been sufficient to solve the problem. Prior to May 13, 2013, the certification label requirements of FMVSS No. 218 stated simply that the certification label must consist of the letters ''DOT'' printed in a specified size range and located in a designated area on the rear of helmet. Facsimiles of that earlier label are widely available and are often added by ''novelty helmet'' users in mandatory helmet law states to their helmets to give them the appearance of a compliant helmet certified before the May 2013 change to the labeling requirements.

There are no regulatory limits on the age of motorcycle helmets that may be used to comply with a state motorcycle helmet use law. Therefore, a helmet user could assert that the wearing of a helmet manufactured prior to the May 2013 change to the certification label requirements meets the requirements of state helmet laws requiring use of an FMVSS No. 218 compliant helmet if the manufacturer properly certified the helmet with the three character ''DOT'' label. Until a sufficient period of time passes to establish that a helmet bearing the older certification label is likely to have not been certified as FMVSS No. 218 compliant by the manufacturer, a helmet with the older certification label would appear to be a compliant helmet. Novelty helmet users will be able to employ the counterfeit versions of the old certification label for many years into the future.

To enhance NHTSA's ability to restrict the sale and subsequent use of novelty helmets, as well as assisting State law enforcement officials in enforcing laws requiring use of compliant helmets, this document contains an interpretation of the definition of ''motor vehicle equipment'' as defined by the National Traffic and Motor Vehicle Safety Act of 1966 (Safety Act), proposes adding a definition of ''motorcycle helmet'' to FMVSS No. 218 consistent with 49 U.S.C. 30102(a)(7)(C) as amended by the MAP–21 Act, and also proposes modifying the existing requirements of Standard No. 218. It is the agency's view that adoption of these proposals will reduce fatalities and injuries attributable to the use of non-compliant helmets by increasing successful prosecutions in mandatory helmet law states, reducing the demand for novelty helmets and augmenting NHTSA's ability to prevent the importation and sale of non-compliant helmets.

B. Need for Regulation

Novelty helmets are sold to be worn by motorcycle riders for road use. However, these helmets provide little or no head protection in crashes. The proposed rule would assist local enforcement agencies in determining compliance with their State helmet laws and mitigate the fatalities, injuries, and societal costs that are caused by the use of improper helmets. The deterrent intent of the proposed rule is similar to other enforcement improving approaches such as the improvement of counterfeit currency detection.

NHTSA believes that at least some portion of novelty helmet use results from inadequate or asymmetric information, a major indication of market failure. Reasons for novelty helmet use may vary, but likely include some misjudgment regarding the risk associated with motorcycles and false expectations regarding the amount of protection that would be provided by some novelty helmet designs. In general, problems of inadequate information can be addressed by providing greater information to the public. NHTSA has attempted to do this through public education materials identifying the significant differences between novelty helmets and compliant helmets and expanded test programs identifying helmets that failed to meet the performance requirements of FMVSS No. 218. In the latter instance, NHTSA found that the difficulties and costs associated with attempting to test all the helmets in the marketplace could not be sustained. At the same time, critics of the expanded test program were quick to note that the results were incomplete. Efforts at increased public education regarding the risks and characteristics of novelty helmets also did not achieve desired results. Neither initiative resulted in any apparent reduction in the sale and use of novelty helmets.

In addition to riders' misperceptions, novelty helmets can be lower cost, and some consumers find them to be more comfortable or stylish. When consumers choose to wear novelty helmets, it unnecessarily reduces their safety and burdens society with an unnecessary diversion of economic resources. Roughly three quarters of all economic costs from motor vehicle crashes are borne by society at large through taxes that support welfare payment mechanisms, insurance premiums, charities, and unnecessary travel delay. These costs may be even higher for motorcycle riders, who often experience more serious injuries when colliding

[1] *Motorcycle Helmet Use in XXXX—Overall Results,* Traffic Safety Facts Research Notes, DOT HS 809 867, 809 937, 810 840, 811 254, 811 610, and 811 759 available at *http://www.nrd.nhtsa.dot.gov/cats/listpublications.aspx?Id=7&ShowBy=Category* (last accessed on 5/14/13).

[2] Data represent an aggregation of sampling units located in states where use is required for all motorcyclists.

[3] When NHTSA becomes aware that a manufacturer is fraudulently certifying non-compliant helmets, the agency can take legal action and impose fines on the manufacturer.

[4] *An Analysis of Hospitalized Motorcyclists in the State of Maryland Based on Helmet Use and Outcome,* available at *http://www.nhtsa.gov/Research/Crashworthiness* (last accessed on 04/08/13).

with larger vehicles and without protection from vehicle structures or seat belts. NHTSA also believes that this regulation is warranted by a compelling public need, specifically, the need for States to properly enforce the laws that they have passed in order to promote public safety. This proposed rulemaking is designed to enable both the identification of novelty helmets and enforcement of these laws. These requirements do not force individuals who do not currently wear complying helmets to wear complying helmets. Rather, by making it easier for law enforcement officials to enforce helmet laws, they make it more likely that riders will choose to purchase compliant helmets in order to avoid prosecution and fines.

NHTSA has worked with state law enforcement and safety officials for decades. The agency has repeatedly received reports from these sources regarding the difficulty of enforcing state helmet laws when the state law provides that a helmet must meet FMVSS No. 218. A series of court decisions from Washington State illustrate the difficulties that local law enforcement agencies face in enforcing mandatory helmet laws. These decisions implied that FMVSS No. 218 is a complex performance standard intended to apply to helmet manufacturers and not to helmet users and did not address the difficulties of proof for law enforcement agency to show that a helmet does not meet FMVSS No. 218. This proposed rule seeks to remedy this problem by the adoption of objective physical criteria which can be employed by helmet users and law enforcement officials to determine if a helmet complies with FMVSS No. 218.

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

1. Interpretation—Novelty Helmets Are Motor Vehicle Equipment

NHTSA is issuing an interpretation of the statutory definition of ''motor vehicle equipment'' as amended by the MAP–21 Act. This interpretation sets forth the agency's position on which helmets are subject to NHTSA's jurisdiction and, therefore, must meet Standard No. 218. The original definition of ''motor vehicle equipment'' in the Vehicle Safety Act of 1966 did not include protective equipment such as motorcycle helmets. In 1970, Congress amended the Safety Act to substantially expand the foregoing definition. The 1970 amendment changed the definition of ''motor vehicle equipment'' to include ''any device, article or apparel . . . manufactured, sold, delivered, offered or intended for use exclusively to safeguard motor vehicles, drivers, passengers, and other highway users from the risk of accident, injury or death.'' In 2012, the MAP–21 Act modified this definition of ''motor vehicle equipment'' in two ways. First, the definition was amended by specifically adding the term ''motorcycle helmet'' to the description of regulated items. Second, the MAP–21 Act amended the definition of ''motor vehicle equipment'' by replacing the phrase ''. . . manufactured, sold, delivered, offered or intended for use exclusively to safeguard motor vehicles, drivers, passengers, and other highway users . . .'' with ''. . . manufactured, sold, delivered, or offered to be sold for use on public streets, roads, and highways with the apparent purpose of safeguarding motor vehicles and highway users . . .''

The agency's interpretation of this definition, based on an examination of the text of the 2012 MAP–21 amendment and the evolution of the original 1970 definition before its enactment as well as its legislative history, concludes that Congress meant to grant NHTSA authority to regulate motorcycle helmets and that any determination of what constitutes motor vehicle equipment must be governed by an objective standard and not controlled by the subjective intent of a manufacturer or seller. This conclusion is supported by the explicitly pronounced Congressional goal of reducing fatalities and injuries resulting from the use of helmets that did not provide a minimum level of safety. The agency's interpretation further notes the absence of any suggestion in the legislative history that Congress meant to have the definition negated by subjective declarations of intended use that are contrary to an objective measure of actual sale, use and ''apparent purpose.''

By applying the objective criterion of an ''apparent purpose to safeguard'' highway users, NHTSA concludes that novelty helmets are items of motor vehicle equipment. If a helmet is marketed and sold to highway users and has outward characteristics consistent with providing some level of protection to the wearer, such a helmet is a ''motorcycle helmet'' with the ''apparent purpose'' of protecting highway users from harm. It is, therefore, ''motor vehicle equipment.'' Under the foregoing circumstances, the addition of a label stating the manufacturer's subjective intent that a helmet is ''not protective equipment,'' ''not DOT certified,'' or ''not for highway use'' would, in NHTSA's view, not be sufficient to conclude that a helmet is not ''motor vehicle equipment.''

2. Defining ''Motorcycle Helmet''

This document also proposes adding a definition of ''motorcycle helmet'' to Standard No. 218 to effectuate the interpretation of the statutory definition of motor vehicle equipment described above. The proposed definition seeks to more clearly establish those helmets that are required to comply with FMVSS No. 218 by establishing conditions dictating which helmets will be considered as being intended for highway use.

NHTSA's proposed definition of ''motorcycle helmet'' establishes that ''hard shell headgear'' meeting any of four conditions are motorcycle helmets. The criteria relate to the manufacture, importation, sale, and use of the headgear in question. First, a helmet is a motorcycle helmet if it is manufactured or offered for sale with the apparent purpose of safeguarding highway users against risk of accident, injury, or death. Under the second criterion, a helmet is a motorcycle helmet if it is manufactured or sold by entities also dealing in certified helmets or other motor vehicle equipment and apparel for motorcycles or motorcyclists. The third proposed criterion states that a helmet is a motorcycle helmet if it is described or depicted as a motorcycle helmet in packaging, promotional information or advertising. The fourth criterion states that helmets presented for importation as motorcycle helmets in the Harmonized Tariff Schedule would also be motorcycle helmets.

Because the second, third and fourth criteria may capture helmets sold legitimately for off-road use or non-motor vehicle applications, NHTSA's proposed definition exempts helmets labeled as meeting recognized safety standards for off-highway uses from the proposed definition.

3. Proposed Amendments to Performance Requirements

NHTSA is also proposing modifications to the criteria helmets must meet in order to comply with Standard No. 218. The proposal seeks to establish in S5.1 (as proposed), a set of threshold requirements to distinguish helmets that qualify for testing to the existing performance requirements of the Standard in S5.2 through and including S5.4. These threshold requirements are hereafter called preliminary screening requirements. The preliminary screening criteria proposed in S5.1 are dimensional and

compression requirements that all helmets intended for highway use must meet. These preliminary screening requirements identify helmets which, under the current state of known technologies, are incapable of meeting the minimum performance requirements for impact attenuation currently incorporated in FMVSS No. 218. NHTSA is also proposing an alternative compliance process by which manufacturers of helmets that do not meet the foregoing preliminary screening requirements may submit a petition including information and test data to the agency, to establish that a particular helmet design is capable of meeting all the requirements of Standard No. 218, excluding the preliminary screening requirements.

The agency proposes to add these preliminary screening requirements to alleviate the test burdens of NHTSA's current compliance test program. By reducing the complexity of compliance testing, the proposal would allow the agency to test more helmet brands and models without increased costs. The proposed requirements also address concerns by test laboratories that their equipment will be damaged while testing sub-standard helmets. Moreover, by establishing a set of physical criteria that may be employed to identify non-compliant helmets, these proposed requirements will assist in the enforcement of helmet laws specifying that motorcycle riders must wear helmets meeting Standard No. 218.

The proposed preliminary screening requirements specify that any helmet with an inner liner that is less than 0.75 inch (19 mm) thick would be considered incapable of complying with FMVSS No. 218. Similarly, any helmet with an inner liner and shell having a combined thickness less than 1 inch (25 mm) would also presumably not be able to comply with the standard. This document also proposes that any helmet, even those with an inner liner meeting the minimum thickness criteria or the liner and shell combination meeting the overall thickness, must also be sufficiently resistant to deformation to ensure that the liner is capable of some level of energy absorption.

The document also sets forth proposals for measuring compliance with the preliminary screening requirements. Inner liner thickness could be measured with a thin metal probe. Measuring the combined thickness of the outer shell and inner liner could be taken using a large caliper or measuring the distance derived by noting the difference between the topmost point of a stand supporting the helmet and the topmost point of the helmet on the stand. The document also proposes that liner deformation be measured after applying force using a weighted probe or a dial indicator force gauge. To reduce the possibility of error caused by variations in helmet designs, NHTSA is proposing that the measurements of inner liner thickness, combined helmet/inner liner thickness and inner liner compression characteristics be conducted at the crown or apex of the helmet.

To address concerns that the proposed preliminary screening requirements may adversely affect the adoption and development of new helmet technologies and materials, the proposed amendments also set forth an alternative compliance process, in a proposed Appendix. This alternative compliance process provides helmet manufacturers with a means to demonstrate that helmets that do not adhere to the preliminary screening requirements can otherwise be properly certified and are capable of meeting all of the other requirements of Standard No. 218.

D. Costs and Benefits

The benefits of the proposed rule are based on the use of the dimensional and compression requirements and the proposed Appendix as criteria to distinguish certified from non-certified motorcycle helmets. Behavioral change among motorcycle riders as a result of the rule is difficult to predict. However, the agency believes that 5 to 10 percent of the novelty helmet users in States that have a Universal Helmet Law would eventually make a switch to avoid being ticketed or fined, and that this is a modest and achievable projection. As a result, the proposal would save 12 to 48 lives annually. In addition, the analysis also estimates the maximum potential benefit of the rule which corresponds to a hypothetical scenario of all novelty helmet users in States that have universal helmet laws becoming 218-certified helmet users (the 100-percent scenario). Under this hypothetical 100-percent scenario, 235 to 481 lives would be saved. Note that this 100-percent scenario is theoretical since some novelty-helmeted motorcyclists would still be expected to circumvent the helmet laws by continuing taking the risk of wearing novelty helmets. Therefore, the estimated costs and benefits for the 100-percent scenario are not used (and not appropriate) for determining the effects of the proposed rule. However, they do indicate the potential savings in social costs that are offered by FMVSS No. 218-compliant helmets and the importance of educating the public to this potential. The discounted annualized costs and benefits are presented below. The numbers exclude benefits from nonfatal injuries prevented as well as private disbenefits to riders who prefer to wear novelty helmets, but switch to compliant helmets to avoid law enforcement. Since these benefits are obtained in violation of State law, their status is uncertain. A more detailed discussion of this issue is included in the Non-quantified impacts section of the PRIA. We are not assuming for this analysis that any novelty helmet users in States that do *not* have Universal Helmet Laws will switch to 218-certified helmets; however, we note that this may occur if users voluntarily make this switch.

ANNUALIZED COSTS AND BENEFITS

[In millions of 2012 dollars]

	Regulatory costs	Benefits	Net benefits *
3 Percent Discount			
5-percent scenario	$1.2	$109.7–$219.3	$108.5–$218.1
10-percent scenario	1.8	219.3–438.3	217.5–436.5
100-percent scenario	12.5	2,146.3–4,392.7	2,133.8–4,380.3
7 Percent Discount			
5-percent scenario	1.2	95.9–192.2	94.7–191.0
10-percent scenario	1.8	192.2–384.4	190.4–382.6

ANNUALIZED COSTS AND BENEFITS—Continued

[In millions of 2012 dollars]

	Regulatory costs	Benefits	Net benefits *
100-percent scenario	12.5	1,881.7–3,851.3	1,869.2–3,838.8

* Excludes benefits from non-fatal injuries prevented and any utility lost by novelty helmet riders who switch to FMVSS 218 compliant helmets. Since any such utility is obtained in violation of State law, its status is uncertain. See "Non-quantified Impacts" section of the PRIA for further discussion.

II. Background

A. Increased Motorcycle Related Fatalities and Injuries

There is a pressing need for improvements in motorcycle safety. As shown in NHTSA's research, motorcycle crash-related fatalities have been disproportionately high, compared as a measure of exposure, among all motor vehicle crash fatalities. According to the Fatality Analysis Reporting System (FARS), motorcyclist [5] fatalities increased from 3,270 fatalities in 2002 to 4,612 fatalities in 2011. During this time, motorcyclist fatalities as a percent of motor vehicle occupants and non-occupants killed in traffic crashes nearly doubled from 8% to 14%. Refer to Figure 1.

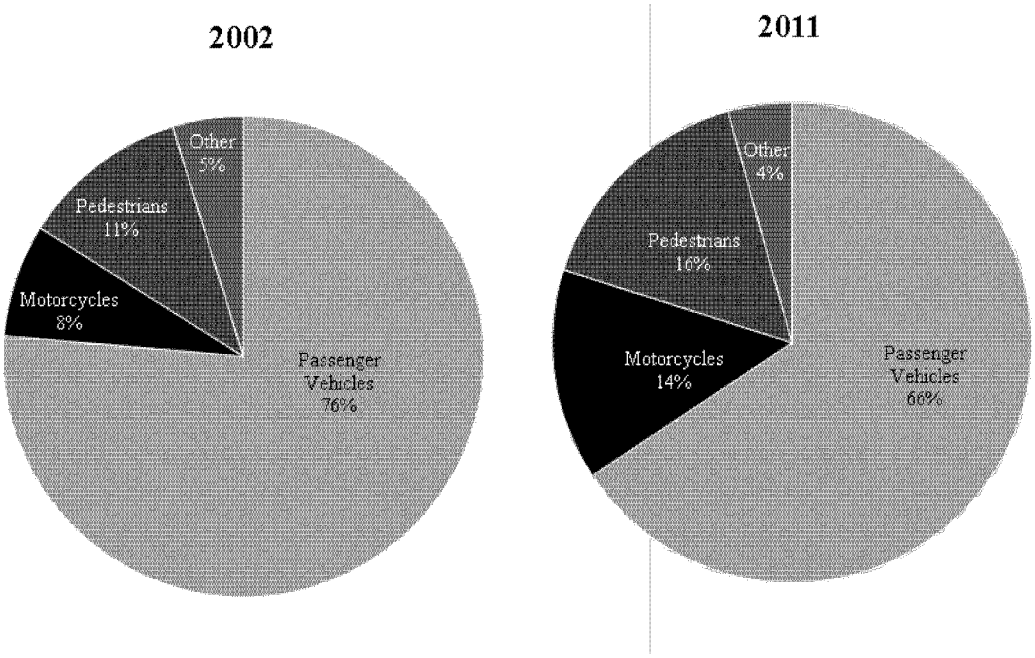

Figure 1. Motor Vehicle Related Fatalities Due to Traffic Crashes

In contrast to the total number of passenger vehicle and pedestrian fatalities, which have decreased over the past decade, motorcyclist fatalities increased significantly. Some claim this is due to increased exposure; however, registrations for both motorcycle and passenger vehicles have increased over this time period, yet it is only motorcyclist fatalities which have risen. In 2011, motorcycles accounted for only about 3 percent of all registered vehicles and 0.6 percent of all vehicle miles traveled (VMT) [6] yet present themselves as a much larger proportion of the overall motor vehicle related fatalities due to traffic crashes. Compared with a passenger vehicle occupant, a motorcyclist is over 30 times more likely to die in a crash, based on VMT.[7]

Over the same time period, the number of motorcyclists injured increased from 65,000 in 2002 to 81,000 in 2011 accounting for 4 percent of all occupant injuries.[8] Simultaneously, the number of passenger vehicle occupants injured decreased by 25 percent.[9]

[5] "Motorcyclist" refers to both motorcycle drivers and motorcycle passengers.

[6] In August 2011, starting with 2009 data, FHWA implemented an enhanced methodology for estimating registered vehicles and vehicle miles traveled by vehicle type. In addition, revisions were made to 2008 and 2007 data using the enhanced methodology. As a result, vehicle involvement rates may differ, and in some cases significantly, from previously published rates.

[7] *Motorcycles: 2011 Data, Traffic Safety Facts,* DOT HS 811 765, available at *http://www.nrd.nhtsa.dot.gov/Pubs/811765.pdf* (last accessed on 5/14/13).

[8] *Ibid.*

[9] *Traffic Safety Facts 2011,* Annual Report Overview, DOT HS 811 753, available at *http://*

Compared with a passenger vehicle occupant, a motorcyclist is 5 times more likely to be injured, based on VMT.[10]

The most common fatal injuries sustained by motorcyclists are injuries to the head.[11] Head injuries are common among non-fatal injuries as well. A study of data from the Crash Outcome Data Evaluation System (CODES) indicates that median charges for hospitalized motorcyclists who survived to discharge were 13 times higher for those incurring a traumatic brain injury (TBI) compared to those who did not sustain a TBI ($31,979 versus $2,461).[12]

The National Transportation Safety Board (NTSB) has also made a similar assessment of the motorcycle safety problem. They issued a November 2010 safety alert titled ''Motorcycle Deaths Remain High''.[13]

B. Recent Downturns in Motorcyclist Fatalities Do Not Appear To Be a Reversal of a Decade—Long Trend

Compared to 2010, overall traffic fatalities fell by 2 percent in 2011. Occupant fatalities fell by 4 percent in passenger cars and, 5 percent in light trucks. However, occupant fatalities increased by 20 percent in large trucks and 2 percent on motorcycles. In addition, pedestrian fatalities increased by 3 percent and pedalcyclist fatalities increased by 9 percent.[14]

The 2011 increase in motorcycle occupant fatalities followed a 3 year period of decline. The agency notes that the 2008, 2009 and 2010 reductions in fatalities and injuries coincided with a significant economic downturn. Past economic downturns have resulted in similar declines. The three most notable periods of across-the-board declines in overall traffic fatalities, including the current period, coincide with the three most significant economic downturns since the early 1970s. Following the first and second economic downturns, the overall number of fatalities nearly rebounded to the previous levels. The agency observes that motorcycle occupant fatalities increased slightly in 2011 and anticipates that they will likewise rebound as the economy improves. Even with the 2008–10 reductions in fatalities and injuries, motorcyclist fatalities remain far above 2002 levels.

C. NHTSA's Comprehensive Motorcycle Safety Program and Helmet Use

NHTSA's comprehensive motorcycle safety program[15] [16] seeks to: (1) Prevent motorcycle crashes; (2) mitigate rider injury when crashes do occur; and (3) provide rapid and appropriate emergency medical services response and better treatment for crash victims. As shown in Table 1 below, the elements of the problem of motorcyclist fatalities and injuries and the initiatives for addressing them can be organized using the Haddon Matrix, a paradigm used for systematically identifying opportunities for preventing, mitigating and treating particular sources of injury. As adapted for use in addressing motor vehicle injuries, the matrix is composed of the three time phases of a crash event (I-Crash Prevention—Pre-Crash, II-Injury Mitigation—During a Crash, and III-Emergency Response—Post-Crash), along with the three areas influencing each phase (A-Human Factors, B-Vehicle Role, and C-Environmental Conditions).

While a number of factors are believed to account for this increase in fatalities, including expanding motorcycle sales, increases in the percentage of older riders, and increases in engine size, motorcyclist head injuries are a leading cause of death. Effectively addressing motorcyclist head injuries or any other motor vehicle safety problem requires a multi-pronged, coordinated program in all of the areas of the Haddon Matrix, as shown in Table 1. Because no measure in any of the nine areas is a complete solution, the implementation of a measure in one area does not eliminate or reduce the need to implement measures in the other areas.

For example, while NHTSA encourages efforts in all areas of the motorcycle safety matrix below, including the offering of motorcyclist training, such training cannot substitute for wearing a helmet that complies with FMVSS No. 218. The results of studies examining the effectiveness of motorcyclist training in actually reducing crash involvement are mixed.[17] To argue that taking a motorcycle operating course eliminates the need for motorcycle helmets is akin to arguing that taking a driver's education course for driving a passenger vehicle eliminates the need for seat belts, air bags, padding, and other safety equipment in motor vehicles.

www.nrd.nhtsa.dot.gov/pubs/811753.pdf (last accessed on 5/14/13). Based on calculations using data provided in Table 1.

[10] *Motorcycles: 2011 Data, Traffic Safety Facts,* DOT HS 811 765, available at *http://www.nrd.nhtsa.dot.gov/Pubs/811765.pdf* (last accessed on 5/14/13).

[11] *Bodily Injury Locations in Fatally Injured Motorcycle Riders* Traffic Safety Facts, DOT HS 810 856, available at *http://www.nrd.nhtsa.dot.gov/Pubs/810856.pdf* (last accessed on 2/1/12).

[12] *Motorcycle Helmet Use and Head and Facial Injuries: Crash Outcomes in CODES-Linked Data,* DOT HS 811 208 available at *http://www.nrd.nhtsa.dot.gov/Pubs/811208.pdf* (last accessed on 1/31/12).

[13] *Motorcycle Deaths Remain High,* National Transportation Safety Board Safety Alert SA–012, November 2010, available at *http://www.ntsb.gov/doclib/safetyalerts/SA_012.pdf* (last accessed on 1/31/12).

[14] *Traffic Safety Facts 2011,* Annual Report Overview, DOT HS 811 753, available at *http://www.nrd.nhtsa.dot.gov/pubs/811753.pdf* (last accessed on 5/14/13). See Table 2.

[15] *US Department of Transportation Action Plan to Reduce Motorcycle Fatalities,* October 2007, available at *http://www.nhtsa.gov/DOT/NHTSA/Communication%20&%20Consumer%20Information/Articles/Associated%20Files/4640-report2.pdf* (last accessed on 1/31/12).

[16] *Countermeasures That Work: A Highway Safety Countermeasure Guide for State Highway Safety Offices,* Sixth Edition (2011), February 2011: pp. 5–1 through 5–24, DOT HS 811 258, available at *http://www.nhtsa.gov/staticfiles/nti/pdf/811444.pdf*(last accessed on 1/21/12).

[17] *Approaches to the Assessment of Entry-Level Motorcycle Training: An Expert Panel Discussion,* Traffic Safety Facts Research Note, February 2010, DOT HS 811 242, available at *http://www.nhtsa.gov/staticfiles/nti/motorcycles/pdf/811242.pdf* (last accessed on 1/31/12). The report concluded:

While basic rider courses teach important skills, the effectiveness of training as a safety countermeasure to reduce motorcycle crashes is unclear. Studies conducted in the United States and abroad to evaluate rider training have found mixed evidence for the effect of rider training on motorcycle crashes.

TABLE 1—NHTSA'S MOTORCYCLE SAFETY PROGRAM [18]

	A-Human factors	B-Vehicle role	C-Environmental conditions
I-Crash Prevention (Pre-Crash)	• Rider Education & Licensing. • Impaired Riding. • Motorist Awareness. • State Safety Program. • Use of Protective Gear.	• Brakes, Tires, & Controls. • Lighting & Visibility. • Compliance Testing & Investigations.	• *Roadway Design, Construction, Operations & Preservation.* • *Roadway Maintenance.* • *Training for Law Enforcement.*
II-Injury Mitigation (Crash)	• Use of Protective Gear.	• Occupant Protection (e.g., helmets, airbags).	• *Roadway Design, Construction, & Preservation.*
III-Emergency Response (Post-Crash).	• Education & Assistance to EMS. • Bystander Care.	• Automatic Crash Notification. • Data Collection & Analysis.	

Mitigating rider injury in crashes through the use of motorcycle helmets is a highly effective measure for improving motorcycle safety. The steady toll of motorcyclist fatalities would have been significantly lower had all motorcyclists been wearing motorcycle helmets that meet the performance requirements issued by this agency. Additional information about helmet effectiveness and the real world risk of not using helmets is discussed later in this document.

In November 2010, the NTSB issued a Safety Alert in which that agency expressed similar conclusions about the value of increased use of helmets that comply with FMVSS No. 218. The Safety Alert said:

• FMVSS No. 218-compliant helmets are extremely effective. They can prevent injury and death from motorcycle crashes.

• A motorcyclist without a helmet, who is involved in a crash, is three times more likely to sustain brain injuries.

• Wearing a helmet reduces the overall risk of dying in a crash by 37%.

• In addition to preventing fatalities, FMVSS No. 218-compliant helmets reduce the need for ambulance service, hospitalization, intensive care, rehabilitation, and long-term care.

• Wearing a helmet does *not* increase the risk of other types of injury.

The value of helmet use has been demonstrated in studies of injuries resulting from crashes, as discussed below in the section titled ''Real World Injury Risks and Novelty Helmets.''

D. Novelty Helmets

1. What is a novelty helmet?

Commonly sold with a disclaimer that they are not for highway use, certain helmets worn by motorcycle riders are marketed under a variety of helmet pseudonyms. Manufacturers and sellers' market them under names such as ''novelty motorcycle helmets,'' ''rain bonnets,'' ''lids,'' ''brain buckets,'' ''beanies,'' ''universal helmets,'' ''novelty helmets,'' or ''loophole lids,'' and others. Typically, novelty helmets cover a smaller area of the head than compliant helmets and, because they usually have very thin liners, sit closer to a user's head. These helmets lack the strength, size, and ability to absorb energy necessary to protect highway users during a crash. Yet, they are sold to highway users and used in great numbers by motorcyclists.

Novelty helmets often display labels stating that they are not intended for highway use and are not protective gear. Some examples of labels found on novelty helmets NHTSA has examined include:

• WARNING: This is a novelty item and not intended for use as safety equipment.[19]

• This helmet is a NOVELTY item only and was not made for, intended for, nor designated for use as protective headgear under any circumstances. The manufacturer disclaims all responsibility if used in any manner other than a novelty item.[20]

• Warning: This novelty helmet is not D.O.T. certified. It does not meet ANSI, SNELL or any other American or International Safety standards. Do not wear this helmet to operate motorized or non-motorized street legal or off-road vehicles. Doing so could result in death.[21]

Throughout this document, we will refer to these types of helmets as *novelty helmets.*

2. Novelty Helmet Use

Although use of a properly certified FMVSS No. 218-compliant motorcycle helmet can significantly reduce the possibility of death or injury in a crash, a significant percentage of motorcyclists either wear novelty helmets or do not wear any helmet at all. In fact, motorcyclists appear to be forsaking the use of compliant helmets in favor of novelty helmets in high numbers in States with universal helmet use laws. (See Table 2.)

In 2011, 20 States and the District of Columbia had helmet use laws requiring all motorcyclists to wear helmets. According to a NHTSA survey, in States where use is required for all motorcyclists, FMVSS No. 218-compliant helmets had an observed use rate of 84%; novelty helmets had an observed use rate of 12%; and no helmets were worn by an estimated 4 percent of motorcyclists. Comparatively, in the States with partial or no helmet use laws, the observed use rate of FMVSS No. 218-compliant helmets was 50%; 5 percent used novelty helmets; and 45 percent did not use a helmet at all.[22] Partial helmet use laws typically require helmet use only by persons 17 years of age or younger, even though 70 percent of the teenagers killed on motorcycles are 18 or 19 years of age and even though teenagers of all ages account for only about 4.5 percent of all motorcyclist fatalities.[23]

Motorcycle helmet use rates in 2011 are presented below in tabular form:

[18] Activities shown in italics are either implemented jointly with, or conducted by, the Federal Highway Administration.

[19] Hot Leathers model Hawk.

[20] Advanced Carbon Composites model Polo Novelty Helmet.

[21] Biltwell Inc. model Novelty Helmet.

[22] *Motorcycle Helmet Use in 2011—Overall Results,* Traffic Safety Facts Research Note, DOT HS 811 610, available at *http://www.nrd.nhtsa.dot.gov/Pubs/811610.pdf* (last accessed on 5/16/12).

[23] Insurance Institute for Highway Safety, *Teenagers: Fatality Facts 2008,* available at *http://www.iihs.org/research/fatality_facts_2008/teenagers.html* (last accessed on 1/19/12).

TABLE 2—MOTORCYCLE HELMET USE RATES IN 2011

Motorcyclists	States with a universal helmet use law	States with partial or no helmet use law
Percentage using FMVSS No. 218-compliant helmets	84	50
Percentage using novelty helmets	12	5
Percentage not using any helmet	4	45

These data show that a considerable number of motorcyclists in all States are wearing novelty helmets and that novelty helmet use appears to be remaining steady over time in States with helmet laws.

NHTSA believes that some portion of novelty helmet use results from inadequate or asymmetric information, a major indication of market failure. Reasons for novelty helmet use may vary, but likely include some misjudgment regarding the risk associated with motorcycles and false expectations regarding the protection that would be provided by some novelty helmet designs. In general, problems of inadequate information can be addressed by providing greater information to the public. As noted above, NHTSA has attempted to do this through the dissemination of rider education materials and by publishing the results of an intensive expanded compliance test program. The latter proved to be ineffective and unsustainable while the former has not produced any appreciable results.

In addition to riders' misperceptions, novelty helmets can be lower cost, and some consumers find them to be more comfortable or stylish. When consumers choose to wear novelty helmets, they unnecessarily reduce their safety and burden society with an unnecessary diversion of economic resources. Roughly three quarters of all economic costs from motor vehicle crashes are borne by society at large through taxes that support welfare payment mechanisms, insurance premiums, charities, and unnecessary travel delay. These costs may be even higher for motorcycle riders, who often experience more serious injuries when colliding with larger vehicles and without protection from vehicle structures or seat belts. NHTSA also believes that this regulation is warranted by a compelling public need, specifically, the need for States to properly enforce the laws that they have passed in order to promote public safety. This proposed rulemaking is designed to enable both the identification of novelty helmets and enforcement of these laws. These requirements do not force individuals who do not currently wear complying helmets to wear complying helmets. Rather, by making it easier for law enforcement officials to enforce helmet laws, they make it more likely that riders will choose to purchase compliant helmets in order to avoid prosecution and fines.

E. Safety Consequences of Novelty Helmet Use

1. Helmet Effectiveness

Motorcycle helmets are at least 37% effective in preventing fatalities in motorcycle crashes.[24] [25] Based on the data for 2009, the agency estimates that helmets saved at least 1,483 lives in that year. In order to employ a matched pair method of analysis, the estimates were derived by examining crashes in FARS involving motorcycles with two occupants, at least one of whom was killed.[26] NHTSA believes the estimate of 1,483 lives saved by helmet use in 2009 actually underreports the effectiveness of motorcycle helmets that comply with FMVSS No. 218. Because the foregoing estimate examined crashes where a helmet was used, whether it complied with FMVSS No. 218 or not, we believe the inclusion of motorcyclists wearing novelty helmets in the ''helmeted'' category of the database diluted the actual effectiveness of certified helmets. NHTSA estimates that if there had been 100 percent use of FMVSS No. 218-compliant helmets among motorcyclists, an additional 732 or more lives could have been saved that year.[27]

Data also suggest that unhelmeted motorcyclists suffer proportionately more fatal head injuries. A study of death certificate information about 8,539 motorcyclists who were fatally injured in 2000, 2001, and 2002 revealed a direct correlation between head injury and helmet use. While about 35 percent of the helmeted motorcyclists who died had a head injury, about 51 percent of the unhelmeted motorcyclists who died had a head injury. This data was based on the National Center for Health Statistics (NCHS) Multiple Cause of Death (MCoD) data set that is linked to NHTSA's FARS. The data set includes data on all recorded fatalities that occurred in the United States during the study period, excluding the 825 fatally injured motorcyclists whose death certification information was unavailable.[28] As stated previously, we believe that the benefit of helmets in reducing head injury is underreported because the study included motorcyclists wearing novelty helmets in the group of helmeted riders.

2. Novelty Helmet Performance

Novelty helmets do not provide protection comparable to that provided by an FMVSS No. 218-compliant helmet. When NHTSA tested novelty helmets using the protocols described in FMVSS No. 218, the agency found that they failed all or almost all of the safety performance requirements in the standard.[29] Based on these tests, the agency concluded that novelty helmets, despite outward appearances, do not protect motorcyclists from both impact or penetration threats, and their chin straps are incapable of keeping the

[24] *Motorcycle Helmet Effectiveness Revisited,* Technical Report, March 2004, DOT HS 809 715, available at *http://www.nrd.nhtsa.dot.gov/Pubs/809715.pdf* (last accessed on 1/31/12).

[25] Head injuries are not the only cause of crash fatalities. When we speak of ''effectiveness'' of helmets in reducing the risk of death in fatal motorcycle crashes, all types of injuries suffered by riders are included. While it would be useful to know the effectiveness of helmets in preventing potentially fatal head injuries alone, the purpose of effectiveness as calculated in this technical report was to provide a measure of the overall difference in survival value in a potentially fatal crash that was attributable to the proper use of a helmet.

[26] *Motorcycle Helmet Effectiveness Revisited,* Technical Report, March 2004, DOT HS 809 715, available at *http://www.nrd.nhtsa.dot.gov/Pubs/809715.pdf* (last accessed on 1/31/12).

[27] *Lives Saved in 2009 by Restraint Use and Minimum-Drinking-Age Laws,* Traffic Safety Fact, September 2010, DOT HS 811 383, available at *http://www.nrd.nhtsa.dot.gov/pubs/811383.pdf* (last accessed on 1/31/12).

[28] *Bodily Injury Locations in Fatally Injured Motorcycle Riders,* Traffic Safety Facts, October 2007, DOT HS 810 856, available at *http://www.nrd.nhtsa.dot.gov/Pubs/810856.pdf* (last accessed on 1/31/12).

[29] *Summary of Novelty Helmet Performance Testing,* Traffic Safety Facts Research Note, DOT HS 810 752, available at *http://www.nhtsa.gov/DOT/NHTSA/Traffic%20Injury%20Control/Studies%20&%20Reports/Associated%20Files/Novelty_Helmets_TSF.pdf* (last accessed on 1/31/12).

helmets on the heads of their users during crashes.

3. Real World Injury Risks and Novelty Helmets

Novelty helmets have been demonstrated to be unsafe in laboratory tests and in studies of real world motorcycle crashes. A study of motorcycle operators injured during a motor vehicle crash and subsequently transported to the R. Adams Cowley Shock Trauma Center (STC) in Baltimore, MD was conducted between January 2007 and May 2008.[30] During this study, 244 of the 517 patients admitted granted consent to have photographs taken of the helmets they were using during the crash and the helmets were categorized as either certified or novelty.

Data for these patients were obtained from the trauma registry, hospital discharge records, autopsy reports, and police crash reports, and were coded using the Abbreviated Injury Scale[31] (AIS). The AIS is a scoring system that ranks the severity of an injury on a scale between 1 and 6. The AIS score is used to determine the threat to life correlated to a specific injury, rather than comprehensively evaluating the severity of injuries. A score of 1 indicates a minor injury, while a score of 6 represents an injury that currently is untreatable and extremely difficult to survive. The Maximum Abbreviated Injury Scale (MAIS) is the maximum AIS score of injuries sustained.

A comparison of head injury and helmet type revealed that 56 percent (28/50) of those wearing a novelty helmet received a head injury (AIS 1–6) as compared to 19 percent (37/194) of those wearing a certified helmet. The breakdown of the severity as measured by the Head MAIS of motorcycle operators who sustained a head injury is summarized below in Table 3.

TABLE 3—HELMET USE AND HEAD MAIS AMONG MOTORCYCLE OPERATORS

Head MAIS	1 (percent)	2 (percent)	3 (percent)	4 (percent)	5 (percent)	6 (percent)	Total percent having head injury
Certified (n=194)	3	4	6	3	3	0	19
Novelty (n=50)	16	12	16	10	2	0	56

Table 3 shows the safety benefit of using FMVSS No. 218-certified helmets by the fewer number of head injuries at the levels MAIS 1 through 4 in crashes that were at least as severe, if not more severe, than crashes involving novelty helmets.[32] The number of patients admitted to the STC who sustained a head injury at the MAIS 5 and 6 levels during the study was low due to the fact that patients with MAIS 5 or greater injuries are likely to have suffered fatal injuries during a crash and are not likely to be admitted to the STC; therefore, this study did not measure significant differences in performance of certified and novelty helmets at MAIS 5 and 6 levels. Note that these injury rates cannot be interpreted as the true protective effects (*i.e.,* effectiveness) for these two types of helmets because the study did not take into account the respective helmet use rates (*i.e.,* the exposure data) and the limited sample size.

F. Novelty Helmets and the Enforcement of State Helmet Laws

Novelty helmets present particular challenges to State and local government authorities seeking to enforce helmet use laws. These laws often require that riders use helmets that meet the requirements of FMVSS No. 218.[33] However, because novelty helmets are similar in outward appearance to FMVSS No. 218-compliant helmets, successfully enforcing a State use law that requires the use of a FMVSS No. 218-compliant helmet necessitates that enforcement officials do more than simply affirm the absence or presence of a helmet when dealing with a motorcyclist using a novelty helmet. When a motorcyclist uses a novelty helmet in lieu of an FMVSS No. 218-compliant helmet, law enforcement officers and hearing officers or judges must have means of determining that the novelty helmet does not meet FMVSS No. 218.

The certification label required by FMVSS No. 218 is, of course, intended to serve as evidence that a helmet is certified by its manufacturer to FMVSS No. 218. Unfortunately, counterfeit certification labels are widely available. While we expect the recent final rule revising the certification label requirements[34] will make production of false certification labels more difficult in the future, nothing prevents the continued production and use of counterfeit certification labels by motorcyclists intent on using novelty helmets, including motorcycle helmets manufactured prior to the effective date of the final rule.

Given the availability of false certification labels, law enforcement officials attempting to establish that a novelty helmet user has violated a State helmet use law must present evidence in a hearing that establishes, in the face of a false certification label, that a particular helmet does not meet FMVSS No. 218. This can be a difficult burden. Over the years that novelty helmets have been in use, NHTSA has been contacted many times by police officers and other state enforcement officials that have lost enforcement cases or complained about the costs due to the difficulty with demonstrating that a helmet does not meet the requirements of FMVSS No. 218.

FMVSS No. 218 was intended to establish minimum performance criteria for helmets. Although compliance with some of the requirements of FMVSS No. 218 may be ascertained by visual examination of a helmet, establishing whether a particular helmet meets the performance requirements of the standard requires specific laboratory tests under tightly controlled conditions. It is impractical for State or local law enforcement officials to perform such testing in individual

[30] Kerns, Timothy and Catherine McCullough, An Analysis of Hospitalized Motorcyclists in the State of Maryland Based on Helmet Use and Outcome. Paper presented at the 2009 ESV conference, paper No. 09–0061, available at *http://www.nhtsa.gov/Research/Crashworthiness* (last accessed on 4/8/13).

[31] The Abbreviated Injury Scale (AIS) 1990 Revision (1998 Update), Association for the Advancement of Automotive Medicine, Des Plaines, IL.

[32] Injury Data collected during Kearns, et al., study available at *http://www.nhtsa.gov/Research/Crashworthiness* (last accessed on 04/08/13).

[33] Nineteen states, the District of Columbia, the Northern Mariana Islands, Puerto Rico and the U.S. Virgin Islands have a universal helmet law, requiring helmets for all riders. Of the 19 mandatory helmet law states, 17 have laws providing that motorcyclists must wear a helmet that complies with FMVSS No. 218.

[34] **Federal Register** Vol. 76, No. 93 page 28132, Friday, May 13, 2011.

cases. This discourages law enforcement personnel from issuing citations to novelty helmet users. In the event that the helmet user chooses to contest the citation, the issuing officer, as well as any prosecutors associated with the case, must expend time, energy and resources to pursuing a case that they are likely to lose if the trier of fact determines that compliance cannot be ascertained without testing. Furthermore, while NHTSA does compliance testing of some helmets, testing all helmets in the marketplace would be difficult and place a heavy burden on the agency's resources.

NHTSA believes that helmet laws save lives and reduce injuries. The use of novelty helmets frustrates full achievement of those goals. Effective enforcement of helmet laws therefore requires that State and local governments have the means to successfully prosecute violations, including cases in which riders are using novelty helmets to create the false impression that they are complying with laws that require FMVSS No. 218-compliant helmets.

In the past, NHTSA has been contacted by North Carolina, Nevada, New York, and other States seeking objective, measurable criteria that could be used to enforce State helmet laws. The best available information NHTSA could provide them was a brochure available online titled *How to Identify Unsafe Motorcycle Helmets.*[35] While conducting research to develop the proposals contained in this document of proposed rulemaking, the agency contacted Georgia, Washington, and California to discuss the criteria and test procedures. All three States were supportive of this initiative. As explained in the section of this document titled Proposed Amendments to Performance Requirements, NHTSA will be seeking official comment about this proposal from all States having universal helmet laws.

G. Federal Motor Vehicle Safety Standard No. 218

The purpose of FMVSS No. 218 is to reduce fatalities and injuries to motorcyclists resulting from head impacts. FMVSS No. 218 applies to all helmets designed for use by motorcyclists and other motor vehicle users. Helmets complying with this standard have been demonstrated to be a significant factor in the reduction of critical and fatal injuries involving motorcyclists in motorcycle crashes.[36] A further study based on impact attenuation test data supports the determination that helmets complying with FMVSS No. 218 significantly decrease the risk of a fatal head injury.[37] A manufacturer of a motorcycle helmet must certify that the helmet meets or exceeds all of the standard's requirements. Those requirements include three performance requirements as well as requirements dealing with peripheral vision, projections, and labeling.

FMVSS No. 218 is primarily a performance standard, not a design standard. It requires certain physical attributes such as: a minimum coverage area, the presence of a chin strap, the location and content of the certification and other labels, the specification of the maximum size of projections, a minimum range of peripheral vision and the requirement that a helmet shell have a continuous contour. However, FMVSS No. 218 does not direct that a helmet have a particular configuration or design.

The first of the three principal performance requirements in FMVSS No. 218 is that a motorcycle helmet must exhibit a minimum level of energy absorbency upon impact with a fixed, hard object. Compliance is determined by conducting a series of drop tests at four different sites onto two anvils. The impact attenuation requirement limits the acceleration levels of the headform and is quantified in units of *g,* gravitational acceleration. The acceleration level relates to the amount of force that is transferred through the helmet to the human head. FMVSS No. 218 limits the maximum acceleration to a level of 400g and limits accelerations exceeding 200g to a cumulative duration of 2.0 milliseconds and accelerations exceeding 150g to a cumulative duration of 4.0 milliseconds.

The second performance requirement is a penetration test, in which a metal striker is dropped 118.1 inches (3 meters) in a guided free fall onto a stationary helmet mounted on a headform. To meet the performance requirement, the striker may not contact the surface of the headform.

The third performance requirement of FMVSS No. 218 is the retention system test. It requires that the retention system, chin strap, or any component of the retention system be able to withstand a quasi-static load. To meet the performance requirement, the helmet's retention system may not break while the loads are being applied and the adjustable portion of the retention system may not move more than 1 inch (2.5 centimeters) during the test.

The test procedures in FMVSS No. 218 specify the manner in which testing will be conducted by any laboratory under contract with NHTSA to test helmets. Additional details on how the tests are to be conducted are contained in the NHTSA Laboratory Test Procedure for FMVSS No. 218 Motorcycle Helmets.[38]

H. Recent Amendments to FMVSS No. 218

NHTSA issued a final rule amending FMVSS No. 218 on May 13, 2011.[39] These amendments modified labeling requirements, made changes to certain test procedures, updated references, and corrected the identification of figures incorporated into the standard.

Among other things, the final rule requires the certification label to bear the manufacturer's name and helmet model, as well as the statement ''FMVSS No. 218 CERTIFIED.'' The final rule also clarified and simplified other labeling requirements, such as permitting the certification label to be located on the helmet exterior between 1 and 3 inches (2.5 to 7.6 cm) from the lower rear edge of the helmet and requiring the size to be labeled in a numerical format.

In addition to these labeling changes, the final rule clarified the test procedures for the retention system and impact attenuation tests, added tolerances to several parts of the standard, amended the time required to condition helmets, and updated a reference and figure numbers.

The final rule stated that the amendments made to FMVSS No. 218 were issued for two purposes. One was to modify tolerances, test procedures, and similar requirements impacting compliance testing. The second was to address the increased use of novelty helmets and the relative ease of applying false certification labels to novelty helmets.

The final rule[40] observed that the ability of novelty helmet users to attach inexpensive, easy-to-produce and easy-to-obtain labels mimicking legitimate

[35] How to Identify Unsafe Motorcycle Helmets, HS 807 880, September 2004, available at *http://www.nhtsa.gov/people/injury/pedbimot/motorcycle/unsafehelmetid/images/UnsafeHelmets.pdf* (last accessed on 2/29/12).

[36] Evans, Leonard, and Frick, Michael, ''Helmet Effectiveness in Preventing Motorcycle Driver and Passenger Fatalities: Accident Analysis and Prevention,'' U.S. Department of Transportation, National Highway Traffic Safety Administration, Volume 20, Number 6, 1988.

[37] Docket No.: NHTSA–2011–0050–0002.1 can be accessed at *http://www.regulations.gov.*

[38] *NHTSA Laboratory Test Procedure for FMVSS No. 218, Motorcycle Helmets,* May 13, 2011, TP–218–07, available at *http://www.nhtsa.gov/staticfiles/nvs/pdf/TP-218-07.pdf* (last accessed on 1/31/12).

[39] **Federal Register** Vol. 76, No. 93 page 28132, Friday, May 13, 2011.

[40] 76 FR 28132, 28138.

certification labels frustrated enforcement of helmet use laws. NHTSA further noted that widely available false certification labels made it difficult to prove that a motorcyclist is evading helmet use laws by wearing a novelty helmet that appears to be certified. More importantly, the agency noted that the use of novelty helmets puts motorcyclists at much greater risk of head injury or death in the event of a crash.

In order to make the production and use of fraudulent certification labels more difficult the final rule added a number of new requirements for certification labels. Instead of the simple three letter symbol ''DOT,'' the amended label requirements state that the symbol ''DOT'' be accompanied by the word ''CERTIFIED'' as well as the phrase ''FMVSS No. 218.'' To restrict the use of a ''one size fits all'' certification label, the final rule required that the helmet manufacturer's name and/or brand and the precise model designation of the helmet also appear on the certification label.[41]

While the final rule will make it easier for State and local law enforcement officials to enforce State laws requiring the use of FMVSS No. 218-compliant helmets, the agency anticipates that, based on the improved labeling alone, only 5 to 10 percent of motorcyclists using novelty helmets in States with universal helmet use laws will switch to using compliant helmets. Therefore, the agency acknowledged that more is needed to be done to further reduce novelty helmet use by motorcyclists. Citing comments by the Governors Highway Safety Association that novelty helmet use had become a means of expressing displeasure with helmet use laws and evading the operation of such laws, NHTSA indicated that it was assessing other actions that should be taken to address the marketing and selling of novelty helmets to motorcyclists for highway use.[42]

The agency noted the duplicity inherent in marketing or selling a novelty version of motor vehicle equipment. For example, the final rule observed that manufacturers of seat belts complying with FMVSS No. 209, ''Seat belt assemblies,'' do not also produce novelty versions of the same type of equipment used in motor vehicles, that they declare, explicitly or implicitly, are not intended to provide protection and therefore are not motor vehicle equipment subject to the FMVSSs. The final rule further stated that it was difficult to imagine any manufacturer, importer or seller of seat belts arguing that their seat belts are not motor vehicle equipment and stating, as novelty helmet manufacturers do, that their novelty products are not intended for highway use and not designed to provide protection in a crash. As explained in the final rule, the notion that an item of safety equipment can be transformed into something other than what it is by virtue of a disclaimer is absurd. This, in the agency's view, would be aptly demonstrated by the disclaimer that might accompany the sale of a novelty seat belt:

> ''Novelty seat belts are intended for display. They are not intended to be used in motor vehicles and are not designed to provide protection in a crash. Their use in a crash may result in serious injury. Use this seat belt at your own risk.''

NHTSA also observed then, as it does again now, that novelty helmets are sold by businesses that also sell motorcycles or motorcycle related products, are in widespread use on public highways, and are only minimally used for any purpose other than while riding a motorcycle. Nonetheless, sellers of novelty helmets attempt to maintain the fiction that they are not producing products for highway use by providing disclaimers that the helmets they make are for ''display or show,'' not intended to be used in motor vehicles and are not designed to provide protection in a crash. NHTSA then stated its view that novelty safety equipment (having no apparent purpose other than facilitating evasion of legal requirements) is an item of ''motor vehicle equipment'' within the meaning of the Vehicle Safety Act and is subject to a FMVSS. Since they do not comply, it is impermissible to manufacture, import or sell novelty helmets in the United States.[43]

Furthermore, the agency explained that ''In some cases, the use of these look-alike labels has enabled motorcyclists either to assert successfully in court that he or she believed in good faith that the helmet he or she was using had been certified to the federal standard and/or to put State authorities to the time and expense of conducting tests to prove that the helmet is noncompliant.'' Further, sellers and distributors of these labels, which bear the letters ''DOT,'' attempt to avoid any responsibility for their sale and use. They assert that the labels are not counterfeit or misleading look-alike ''certification'' labels, but merely labels that coincidentally resemble legitimate ''DOT'' certification labels and whose letters stand for ''Doing Our Thing,'' not ''Department of Transportation.'' The agency notes its understanding that these look-alike labels appeared only after the implementation of FMVSS No. 218. As a result, application of these labels to noncompliant helmets enables motorcyclists to avoid conviction and penalties in situations in which State and local helmet laws require the use of a certified FMVSS No. 218-compliant motorcycle helmet.

In NHTSA's judgment, the mere presence of a ''DOT'' label on a helmet that otherwise lacks the construction and appearance of a FMVSS No. 218-compliant helmet cannot reasonably be thought to be a reliable indication that the helmet is a compliant helmet. The plausibility of such a false indicator of compliance is negated by a lack of critical visible physical attributes such as an impact absorbing liner of adequate thickness and composition to protect a user in the event of a crash, as well as the presence of interior labeling required by FMVSS No. 218. The presence of a label on such a helmet is instead actually indicative that the label is a misleading look-alike label applied by a helmet seller or user, not by its manufacturer. This has led the agency to propose criteria to assist the public and law enforcement in identifying novelty helmets. This proposal is discussed further in the section of this document titled *Proposed Amendments to Performance Requirements.*

I. NHTSA's Compliance Test Program

To help ensure that helmets are properly certified by their manufacturers, NHTSA conducts a compliance test program that tests approximately 40 different makes and models of helmets each year. The helmets are purchased by NHTSA through normal retail channels. Because FMVSS No. 218 requires that helmets be tested under four different environmental conditions, NHTSA purchases four samples of each helmet model. The helmets are then tested by test laboratories under contract with the agency. Currently, testing of a particular model of helmet costs approximately $2,000.00.

The appearance of novelty helmets in the marketplace and their increasing use creates a number of challenges for NHTSA that are relevant to the agency's test program. First, although novelty helmets are typically not manufactured or sold with certification labels attesting that they comply with Standard No. 218, novelty helmets with certification labels have appeared in the marketplace. Second, as stated elsewhere in this document, the agency is proposing to add a new definition of

[41] 76 FR 28132, 28140–41.

[42] 76 FR 28132, 28157.

[43] 76 FR 28132, 28158.

''motorcycle helmet'' to FMVSS No. 218 that is intended to focus on the sale and use of helmets as determinants of their intended use. If adopted, this new definition will expand the universe of helmets subject to NHTSA testing to include novelty helmets. Because production of novelty helmets is, when compared to FMVSS No. 218 compliant helmets, relatively simple and inexpensive, there appear to be many manufacturers and importers of novelty helmets.

Responding to consumer concerns and inquiries from law enforcement about the difficulties in distinguishing compliant helmets from non-compliant helmets, NHTSA embarked on an expanded test program in 1994 with the goal of providing more comprehensive coverage of the existing helmet market. This expanded test program illustrated the difficulties inherent in attempting to perform full FMVSS No. 218 testing on a wide range of helmets. Resource constraints prevented the agency from testing all of the helmets in the program under the four environmental conditions specified in the standard. The agency also found it difficult to procure all helmets in the marketplace and was criticized for failing to do so. Finally, the poor performance of novelty helmets in impact testing proved not just to be an ample demonstration of the threat they pose to users, but also had serious consequences for the test equipment used to assess performance. Due to concerns about damaging expensive test equipment in novelty helmet impact testing, laboratories contracting with NHTSA became reluctant to test novelty helmets or refused to do so.

III. Interpretation—Novelty Helmets Are Motor Vehicle Equipment

Congress passed the National Traffic and Motor Vehicle Safety Act of 1966 (Safety Act) with the express purpose of reducing motor vehicle accidents and injuries.[44] To promote this end, the Safety Act provided for the establishment of motor vehicle safety standards for motor vehicles and equipment in interstate commerce. 15 U.S.C. 1381 (1988 ed.). The Safety Act empowered the Secretary of the Department of Transportation to establish motor vehicle safety standards for motor vehicles and motor vehicle equipment. 15 U.S.C. 1392(a) and 1407 (1988 ed.) (codified without substantive change as 49 U.S.C. 30107 and 49 U.S.C. 30111 (2006 ed. and Supp. III)).

''Motor vehicle equipment'' was defined in the Safety Act as ''any system, part, or component of a motor vehicle as originally manufactured or any similar part or component manufactured or sold for replacement or improvement of such system part, or component or as any accessory or addition to the motor vehicle.'' 15 U.S.C. 1391(4) (1988 ed.) Given that satisfaction of that definition was predicated on the existence of a motor vehicle which would be improved or enhanced by the equipment at issue, items that were not incorporated into vehicles or were accessories for a vehicle were not motor vehicle equipment. Therefore, when enacted in 1966, the Safety Act's definition of ''motor vehicle equipment'' did not include protective equipment such as motorcycle helmets.

In 1970, Congress amended the Safety Act of 1966 to substantially expand the definition of ''motor vehicle equipment'' to include motorcycle helmets and other protective equipment that did not meet the originally enacted definition of the term. The existing definition of ''motor vehicle equipment,'' was expanded beyond motor vehicle components to include ''any device, article or apparel not a system, part, or component of a motor vehicle (other than medicines, or eyeglasses prescribed by a physician or other duly licensed practitioner) which is manufactured, sold, delivered, offered or intended for use exclusively to safeguard motor vehicles, drivers, passengers, and other highway users from the risk of accident, injury or death.''[45]

In 1994, the National Traffic and Motor Vehicle Safety Act, 15 U.S.C. 1381 *et seq.,* was codified without substantive change as 49 U.S.C. Chapter 301—Motor Vehicle Safety. Section 1391(4) was redesignated as section 30102(a)(7)(C). In the codified form, the section defines Motor vehicle equipment to include devices, articles and apparel ''manufactured, sold, delivered, offered, or intended to be used only to safeguard motor vehicles and highway users against risk of accident, injury, or death.''

This definition of ''motor vehicle equipment'' was again amended by Congress in 2012. Specifically, MAP–21 amended this phrase to specifically state that motorcycle helmets are motor vehicle equipment. The definition now directs that motor vehicle equipment includes ''. . . any device or an article or apparel, including a motorcycle helmet and excluding medicine or eyeglasses prescribed by a licensed practitioner.'' The MAP–21 amendment further refined the definition by replacing the term ''intended for use only'' with the term ''apparent purpose.'' As enacted, this definition defines ''motor vehicle equipment'' as ''any device or an article or apparel, including a motorcycle helmet and excluding medicine or eyeglasses prescribed by a licensed practitioner, that . . . is not a system, part, or component of a motor vehicle; and . . . is manufactured, sold, delivered, or offered to be sold for use on public streets, roads, and highways with the apparent purpose of safeguarding motor vehicles and highway users against risk of accident, injury, or death.''

The 1970 expansion of the definition of ''motor vehicle equipment'' and the MAP–21 amendments confirm that Congress provided NHTSA with jurisdiction over motorcycle helmets used on public highways. By specifically including ''motorcycle helmets'' and replacing the phrase ''intended to be used only to safeguard'' highways users with the phrase ''apparent purpose of safeguarding'' highway users, the 2012 amendment further clarifies the scope of what constitutes ''motor vehicle equipment'' under the Safety Act. This modification indicates that Congress did not want the definition of motor vehicle equipment to turn on the question of ''intent'' to safeguard users, which could be either the subjective intent of a manufacturer or an objective assessment of intent based on the circumstances of marketing and sale. By choosing to employ the words ''apparent purpose to safeguard'' highway users, Congress indicated that decisions about what constitutes motor vehicle safety equipment are to be governed by an objective examination of the facts and circumstances of the marketing, sale, use and physical characteristics of the item at hand. More importantly, the specific inclusion of ''motorcycle helmet'' as the only example of motor vehicle equipment indicates that Congress intended to include every helmet that can reasonably be considered such a helmet. Nor did Congress want the word ''only'' to insulate from the Act's reach any type of equipment that arguably has more than one possible use. The specific inclusion of ''motorcycle helmet'' in the Act's definition clearly signals, along with these other changes, that Congress intended to include all items with that apparent purpose.

The ''apparent purpose'' test employed by Congress indicates that

[44] S. Rep. No. 1301, 89th Cong., 2d Sess. 6 (1966), U.S. Code Cong. & Admin. News 1966, p. 1; Conf. Rep. No. 1919, 89th Cong., 2d Sess. 1 (1966).

[45] Public Law 91–265, 84 Stat. 262 (May 22, 1970).

motorcycle helmets, including ''novelty'' helmets, are items of motor vehicle equipment. Focusing on objective evidence, if a helmet is, based on its design, such that it would be used by a person while riding on a motorcycle to provide some level of protection, its apparent purpose is to safeguard that rider. It would therefore properly be an item of motor vehicle equipment. If it is offered for sale as a motorcycle helmet but the manufacturer or seller disclaims that it provides any protection, its apparent purpose remains the same. In other words, the apparent purpose of the helmet as a protective device outweighs a manufacturer's stated purpose to the contrary when defining a motorcycle helmet as motor vehicle equipment. If it is worn by ordinary motorcycle riders while riding a motorcycle on the highway or in the immediate vicinity of a motorcycle before or after riding one,[46] it is a ''motorcycle helmet'' whose apparent purpose is to provide protection in a crash. Such a helmet is therefore an item of motor vehicle equipment.[47]

Furthermore, a manufacturer's addition of a label stating that a helmet is ''not for highway use'' would not be sufficient to overcome objective evidence regarding its apparent purpose (use while on the highway) and take a novelty helmet out of the ambit of ''motor vehicle equipment.'' By amending the definition of motor vehicle equipment to delete the words ''intended'' and ''only'' and to focus on the ''apparent purpose'' of safeguarding users, Congress indicated that the definition of motor vehicle equipment should not be controlled by subjective statements in which a manufacturer denies any intention of protecting wearers of the product from injury. NHTSA sees no reason to conclude that Congress would give any greater weight to similar subjective expressions of intent regarding highway use. Instead, we believe that Congress meant for the question of whether a product is manufactured or sold for highway use to be resolved by an objective examination of the facts.

If a helmet is manufactured by a company that produces safety equipment for drag racers, the helmet is promoted for racing use and is sold by entities that serve racers, the objective facts and circumstances indicate that such a helmet is not manufactured, sold, delivered, or offered to be sold for highway use and not subject to NHTSA's jurisdiction. However, if a helmet is promoted and advertised for purchase by highway users, is sold in outlets catering to highway users and is worn by highway users, an objective examination of these facts compels the conclusion that the helmet was sold for highway use regardless of any manufacturer disclaimers to the contrary. This is a sensible position and one that the agency concludes is wholly consistent with Congressional intent and the text of the Safety Act as modified by MAP–21.

IV. Proposed Amendments to FMVSS No. 218

A. Adding a Definition for Motorcycle Helmet

The agency is proposing to add a definition of ''motorcycle helmet'' to section S4 of FMVSS No. 218 to effectuate the interpretation of the statutory definition of motor vehicle equipment described in Section III of this document and help ensure that helmets being used by motorcyclists on highways meet the minimum performance standards set forth in FMVSS No. 218.

Neither the Safety Act nor NHTSA's regulations currently provide a precise definition of what constitutes a motorcycle helmet. FMVSS No. 218 currently states that regulated helmets are those helmets designed for highway use. Section S1 of FMVSS No. 218 states that the standard establishes minimum performance requirements for helmets designed for use by motorcyclists and other motor vehicle users. Section S3, stating what the standard applies to, sets forth that the standard applies to all helmets designed for use by motorcyclists and other motor vehicle users.

The term ''motorcyclist'' is not defined by the Safety Act. Under the term's ordinary meaning, a ''motorcyclist'' is an operator or passenger of a motorcycle.[48] As employed in FMVSS No. 218, a ''motorcyclist'' is a user of a ''motor vehicle.'' As the term ''motor vehicle'' is restricted under the Safety Act to those vehicles ''manufactured primarily for use on public streets, roads, and highways,'' the existing statutory and regulatory text defines motorcycle helmets as helmets designed for use by motorcyclists and other motor vehicle users. Accordingly, helmets designed for use by motorcyclists and other motor vehicle users are helmets manufactured primarily for use on public highways. Manufacturers, sellers and, to a degree, buyers of novelty helmets are well aware of the implications of these terms. There is little question that novelty helmets are marketed and sold to ''motorcyclists''—operators and passengers of motorcycles. However, by designating these helmets as ''not for highway use,'' notwithstanding their well-known highway use, manufacturers and sellers of novelty helmets are attempting to circumvent their legal responsibilities.

Although NHTSA believes, as explained more fully in the section of this document titled *Interpretation—Novelty Helmets are Motor Vehicle Equipment,* that novelty helmets are presently within the scope of FMVSS No. 218 because they are intended for use by motorcyclists and are in fact used by them on the highway, we are proposing to add a new definition of motorcycle helmet to FMVSS No. 218 section S4 to make clear that the stated intent of a manufacturer in designing a helmet is not the determinant of whether a helmet is intended for highway use. A broader examination of relevant factors is necessary where, as here, the stated intent regarding the use of the product is inconsistent with the actual use of the product, as well as the manner in which it is marketed and sold. Further, we are proposing to adopt this definition contemporaneously with other proposed amendments discussed below, to provide law enforcement officers, end users of motorcycle helmets, and hearing officers or judges with objective characteristics allowing them to distinguish helmets that are certified to FMVSS No. 218 from novelty helmets. The agency also believes that adding a definition and other provisions proposed in this document will assist States with helmet use laws, to more effectively enforce those laws.

Although the agency remains concerned that manufacturers may tailor their efforts to avoid NHTSA's enforcement efforts, we believe that focusing on the marketing, promotion and sale of helmets provides an important and legitimate means of distinguishing motorcycle helmets from other protective helmets. Marketing, promotion and sales materials are important objective indicia of the intended use of a product and this definition employs an eminently practical set of tests by examining who is selling the product and the use it is being sold for. If a helmet is sold by

[46] Such use is incidental to the wearing of the helmets by persons riding on motorcycles.

[47] We note that a novelty helmet meets all three of those tests.

[48] A motorcycle is a vehicle with motive power having a seat or saddle for the use of the operator and designed to travel on not more than three wheels in contact with the ground. 49 CFR 571.3. Any vehicle with three or fewer wheels manufactured for use on public streets, roads, and highways including motor scooters, mopeds, and 3-wheeled trikes, are therefore motorcycles.

entities selling other products for motorcyclists, then it follows that the helmet is intended for use by those same motorcyclists. If, when viewed by a reasonable observer, the helmet is promoted or displayed as suitable for uses including use as a motorcycle helmet, then it similarly follows that the helmet is actually made and sold as a motorcycle helmet. Of course, the agency recognizes that helmets of all kinds may be sold by entities that sell motorcycle equipment and accessories as well as a variety of other products. Marketing and promotion materials may also be broad or enigmatic. To clarify the definition and prevent the operation of the presumption when inappropriate, the definition also states that helmets within the scope of subsections (1)(B) and (1)(C) would not presumptively be a motorcycle helmet when it is certified by a recognized body for use as protective gear for purposes other than as a motorcycle helmet or is permanently labeled as not intended for highway use.

NHTSA believes that including helmets worn by motorcyclists using public highways is supported by the expanded definition of motor vehicle equipment adopted by Congress in 1970 and the recent MAP–21 amendments. As we interpret that definition, the manner of actual use is compelling objective evidence of the intended use of a product regardless of any disclaimers issued by a manufacturer or seller. Nonetheless, the agency has tentatively decided not to propose incorporating this criterion in the definition of motorcycle helmet. This tentative determination is based on the current lack of data regarding which helmets are actually being used on public highways. As stated elsewhere in this document, if NHTSA were to adopt an actual use component in the definition of motorcycle helmet, the agency would not consider incidental use as evidence that a particular type of helmet is a motorcycle helmet. Instead, only those helmets being used on-road by a sufficient number of motorcyclists would be considered as evidence that the helmet being worn is intended for highway use.

Although NHTSA has tentatively decided not to include a use-based criterion in the definition of ''motorcycle helmet'' the agency may include such a provision in the definition contained in the final rule. The agency therefore requests comments on including a provision in the final rule that helmets used on the highways are motorcycle helmets and motor vehicle equipment under the Safety Act.

NHTSA's proposed definition of ''motorcycle helmet'' establishes that ''hard shell headgear'' meeting certain conditions are motorcycle helmets. As employed in the definition, hard shell headgear refers to headgear that retains its shape when removed from the user's head, whether or not covered by a decorative surface such as leather. ''Hard shell'' distinguishes motorcycle helmets from other non-hard shelled headgear such as soft caps and bandannas that are also used by motorcyclists on road. If an item of headgear meets this threshold requirement, additional criteria are employed to determine if the item is a motorcycle helmet.

The criteria relate to the manufacture, importation, sale, and use of the headgear in question. First, a helmet is a motorcycle helmet under subsection (1)(A) if it is manufactured for sale, sold, offered for sale, introduced or delivered for introduction in interstate commerce, or imported into the United States, for use on public streets, roads, and highways with the apparent purpose of safeguarding highway users against risk of accident, injury, or death. The apparent purpose of a product stems from its essential physical characteristics such as the size, shape, design and general appearance of the helmet. For example, a small bicycle with small diameter wheels and a correspondingly small frame would have the apparent purpose of being used by a child for short distances on sidewalks and driveways. Conversely, a bicycle with large wheels and a large frame would have the apparent purpose of being used by an adult on roads and highways. In the case of helmets, an unperforated hard shell helmet with a chin strap or retention system would have the apparent purpose of being a protective motorcycle helmet. If that helmet also has snaps for attaching a visor or face shield, the apparent purpose becomes even clearer. Further, if such a helmet is similar to helmets certified by their manufacturers as meeting the requirements of FMVSS No. 218, the helmet would have the apparent purpose of being a protective helmet.

Under subsection (1)(B) a helmet is a motorcycle helmet if it is manufactured, sold, introduced into interstate commerce, or imported by entities also manufacturing, offering, selling or importing certified helmets or other motor vehicle equipment and apparel for motorcycles or motorcyclists. Under this standard, if a helmet is manufactured, imported, sold, offered for sale or introduced into interstate commerce, or imported into the United States, by entities that undertake the same activities for other products, services or goods used by on-road motorcyclists, the apparent purpose of the helmet is on-road use and the helmet is a motorcycle helmet. Proposed subsection (1)(C) states that a helmet is a motorcycle helmet if it is described or depicted as a motorcycle helmet in packaging, display, promotional information or advertising. This criterion is met if the helmet is described or depicted as a motorcycle helmet in packaging, display, promotional materials or advertising. Such materials may include obvious characteristics such as the word ''motorcycle'' in a description of the helmet or more subtle factors such as a depiction of a user who is also wearing goggles, sunglasses, or other protective clothing or gear normally worn by motorcyclists.

Subsection (1)(D) states that helmets presented for importation under applicable designation(s) for motorcycle helmets in the Harmonized Tariff Schedule of the United States would also be deemed to be on-road motorcycle helmets. This fourth criterion relates to the manner in which imported goods enter the United States and would specify that any helmet imported into the United States under the designations reserved for motorcycle helmets in the Harmonized Tariff Schedule of the United States (HTS) is intended for highway use. The HTS, which replaced former US Tariff Schedules, was enacted by Congress and made effective on January 1, 1989. The HTS establishes a hierarchical structure for describing all imported goods for duty, quota, and statistical purposes. The United States International Trade Commission (USITC) maintains and publishes the HTS, which is enforced and interpreted by the Bureau of Customs and Border Protection of the Department of Homeland Security.[49]

NHTSA recognizes that some helmet manufacturers, importers and sellers produce, sell or import a variety of helmets for various purposes and uses. Therefore, that retailer might sell motorcycle helmets, ski helmets, bicycle helmets, mountaineering helmets and other protective headgear for off-highway uses. A manufacturer or importer may produce helmets certified as meeting Standard No. 218 but may also produce helmets for racing or other motorsports that are not certified to that standard. Unlike ''novelty helmets,''

[49] Depending on the materials used in their construction, motorcycle helmets are currently found in 6506.10.3030, HTSUS, or subheading 6506.10.6000, HTSUS.

such racing helmets may provide significantly more impact protection than required by Standard No. 218, but for a variety of reasons related to their specialized use, are not certified as meeting Standard No. 218. We also note that the current version of the Harmonized Tariff Schedule contains two classifications for motorcycle helmets but neither of these classifications distinguishes between helmets intended for highway use and those imported for legitimate off-road uses. NHTSA is therefore proposing additional language that would address the legitimate concerns of manufacturers, importers and sellers of helmets that are imported for legitimate off-road uses.

Our proposed definition would exclude helmets designed and manufactured to, and labeled in accordance with other recognized helmet standards. For example, football helmets marked as complying with the National Operating Committee on Standards for Athletic Equipment (NOCSAE) or ASTM International ASTM F717–10 football helmet standards meet the exception clause included in the definition. Similarly, hockey helmets marked as complying with ASTM International ASTM F1045–07 or Hockey Equipment Certification Council (HECC) hockey helmet standards would not be motorcycle helmets.

Subsection (1)(A) couches the acts of manufacturing, selling, offering or introducing into interstate commerce, or importing into the United States, as being gauged by the ''apparent purpose'' of safeguarding highway users from death or injury. Deriving the apparent purpose involves looking to the essential physical characteristics of the item involved. Moreover, even though a manufacturer or seller of a novelty helmet may declare that the helmet is not ''DOT Certified'' or is ''Not a Safety Device,'' these products are sufficiently similar to helmets that actually do provide protection that both users and reasonable observers might conclude that they provide some degree of protection against impact. Subsections B and C also follow the language used by Congress in the MAP–21 and 1970 amendments. In this instance the actions of manufacturing, offering and selling are framed by the manner in which products are sold. The surrounding circumstances used to assess the apparent purpose of the product are found in the acts of making or selling other goods and services intended for use by motorcyclists or in promoting the helmet. If one sells a helmet in venues offering other products that motorcyclists use on public highways, it is objectively reasonable to conclude that the helmet at issue is also intended for this use. It is also objectively reasonable to conclude that a product depicted as a motorcycle helmet in promotional materials or packaging is also meant by its maker to be used by ordinary motorcyclists. Subsection D follows the logical premise that a helmet declared to be a motorcycle helmet by an importer is intended by that importer to be used by motorcyclists.

The proposed definition therefore characterizes motorcycle helmets as hard shell headgear meeting any one of four conditions. The first condition is that it is manufactured for sale, sold, offered for sale, introduced or delivered for introduction in interstate commerce, or imported into the United States, for use on public streets, roads, and highways with the apparent purpose of safeguarding highway users against risk of accident, injury, or death. The second condition is that it is manufactured for sale, sold, offered for sale, introduced or delivered for introduction in interstate commerce, or imported into the United States by entities that also manufacture for sale, sell, offer for sale, introduce or deliver for introduction in interstate commerce, or import into the United States either motorcycles, helmets certified to FMVSS No. 218, or other motor vehicle equipment and apparel for motorcycles or motorcyclists. The third condition is that it is described or depicted as a motorcycle helmet in packaging, display, promotional information or advertising. The fourth and final condition is that it is imported into the United States under the applicable designation(s) for motorcycle helmets in the Harmonized Tariff Schedule of the United States. However, if a helmet that meets any of conditions two, three, or four is labeled and marked in accordance with a non-motorcycle helmet standard issued or adopted by any one of the organizations identified as manufacturing other types of safety helmets and listed in the proposed definition, it would not be considered to be a motorcycle helmet.

For consistency, NHTSA also proposes to revise the language in the scope and application sections of FMVSS No. 218 to refer to motorcycle helmets.

The agency requests comments on the proposed definition as well as the alternative definitions discussed previously. Depending on the public comments, elements of the different definitions could be combined into the definition adopted in the final rule. In addition, the agency request comment on additional government entities or industry standards that should be included in Paragraph (2) of the definition.

B. Proposed Amendments to Performance Requirements

As NHTSA has observed elsewhere in this document, the existing performance requirements of FMVSS No. 218 establish test procedures specifying that compliance with the standard be evaluated through the use of laboratory tests requiring that four samples of each helmet model be tested under different specific environmental conditions. Although compliance with some of the requirements of the standard may be determined by simple visual examination—*i.e.* a compliant helmet must have the required interior labels, the shell must be free of rigid projections taller than 0.20 inch (5 mm) and have a continuous contour, and it must cover a minimum area of the head—current compliance tests require sensitive specialized equipment and can only be performed by trained personnel employed by specialized laboratories. Testing four samples of one helmet model currently costs NHTSA approximately $2000.00 and the agency's budget allows approximately forty tests in one fiscal year.

The interpretation issued in this document, as well the proposed amended definition of motorcycle helmet, would both require significant expansion of NHTSA's compliance test program.

Such an expansion would, of course, require significant additional agency expenditures if the agency continues to rely on the existing performance requirements of FMVSS No. 218. In addition, novelty helmets perform very poorly in compliance testing. This performance is substandard to the point that performing impact attenuation testing on novelty helmets poses a threat to accelerometers and other devices incorporated into test devices. The risk of damage to this equipment has caused NHTSA-contracted test laboratories to be reluctant to perform impact attenuation testing on novelty helmets or to refuse to test them altogether. The agency also notes that because manufacturing and/or importing novelty helmets requires less financial resources than manufacturing conventional FMVSS No. 218 compliant helmets, there appear to be many entities manufacturing, importing and selling novelty helmets. Taken together, the foregoing factors indicate that a full test program aimed at examining large numbers of both novelty and

conventional helmets would be difficult and expensive.

The agency is therefore proposing modifications to FMVSS No. 218 to lessen NHTSA's test burden and allow a more comprehensive examination of helmets being sold and marketed to highway users. The proposed amendments would incorporate certain physical criteria into FMVSS No. 218 in order to facilitate simplified test procedures. The physical characteristics being proposed are, in NHTSA's view, excellent indicators that a helmet will be unable to comply with the impact attenuation and penetration tests already incorporated in the standard.

With the issuance of the NPRM, the agency will simultaneously be contacting States with universal helmet laws for feedback on the proposals contained herein. Specifically, the agency requests the following feedback:

- Does your State's helmet law require use of a DOT-certified helmet?
- Has your State had difficulty with prosecuting cases against users of novelty helmets in the past and, if so, why?
- Has your State had difficulty with prosecuting cases against manufacturers of novelty helmets in the past and, if so, why?
- Have law enforcement officers in your state had difficulty distinguishing novelty helmets from certified helmets?
- Will these criteria help your state to distinguish novelty helmets from certified helmets?
- Will the tools described in the regulatory text be useful to you?
- Will you use the tools in the field or during court hearings?
- Do you believe this rule will encourage greater use of DOT-certified helmets in your state?
- Are there other actions that NHTSA can take to assist the States in this area?

To the extent that advances in technology and materials may permit the development of helmets meeting all the requirements of Standard No. 218 excluding the proposed preliminary screening requirements, we are also proposing to establish an alternative compliance process encompassing a petition procedure allowing helmet manufacturers an opportunity to establish that a specific helmet design qualifies for further testing. In so doing, NHTSA acknowledges that such a petition process appears to present an increased burden to both manufacturers and the agency. The agency believes, however, that the likelihood that the proposed petition process will be frequently employed is small. The proposed preliminary screening requirements are quite conservative. We believe that it is extremely unlikely that any helmet constructed using presently known techniques and materials can meet the performance requirements of Standard No. 218 without also complying with the proposed preliminary screening requirements.

The alternative compliance process being proposed allows manufacturers to petition the agency and demonstrate that new technologies allow their helmets to comply with the requirements of S5.2–S5.7 (as renumbered) of the Standard even if they do not meet the proposed preliminary screening requirements in S5.1. They do this by providing information specified in the proposed Appendix including the evidence on which they base their belief that the helmet complies with all requirements of S5.2–S5.7. The Agency reviews their petition and has an option to conduct validation testing. Manufacturers who have all required information on file and whose helmets are determined by the agency to be capable of meeting Standard No. 218 S5.2–S5.7 and yet do not meet the preliminary screening criteria of S5.1, will be identified in an Appendix to the Standard and this information will be made available on the NHTSA Web site.

Adoption of these proposed requirements will also have ancillary benefits for State officials charged with enforcing helmet laws requiring the use of FMVSS No. 218 compliant helmets. Many States with helmet use laws have adopted a requirement that riders subject to the law must use a helmet that complies with FMVSS No. 218. Although such a requirement advances the laudable goal of ensuring that motorcyclists use helmets meeting minimum performance requirements, it creates an additional burden for State and local authorities who must enforce these helmet laws. In many jurisdictions, establishing a violation requires the State to prove either that a rider was not wearing any helmet or that the helmet worn by the rider did not meet the performance requirements incorporated in the State helmet law. Given the popularity of novelty helmets and the widespread availability of ''DOT'' stickers and other facsimiles of actual manufacturer certifications, successful enforcement of such a State helmet law requires proof that a particular helmet, even when marked with the symbol ''DOT,'' does not meet FMVSS No. 218.

These helmets are typically not certified by the manufacturer as meeting FMVSS No. 218 and are not designed or manufactured to comply with FMVSS No. 218. Nonetheless, the availability of misleading look-alike or ''counterfeit'' certification labels provides users with the opportunity to give the helmet the appearance of having been properly certified. In jurisdictions where motorcycle helmet laws require the use of an FMVSS No. 218-compliant helmet, riders using novelty helmets are violating the law. However, proving the violation requires establishing that a helmet does not comply with FMVSS No. 218. This can be especially difficult when a helmet has a fraudulent certification label. Under the current regulations, the only recourse enforcement officials may have is to establish that a helmet does not meet the performance requirements of FMVSS No. 218. If NHTSA has not tested the helmet at issue, State and local officials attempting to establish that a helmet does not comply with FMVSS No. 218 are often asked to present their own data. Although manufacturers of properly certified helmets routinely perform compliance testing before releasing a product for sale, such testing is obviously not performed by novelty helmet manufacturers claiming their products are not for highway use. If agency or manufacturer test data are not available, it is impractical to expect State and local enforcement officials to commission or perform such tests to prosecute individual cases.

To reduce NHTSA's test burdens, prevent or reduce the entry of novelty helmets into the United States, and assist State and local governments with the means to effectively enforce their helmet laws, NHTSA undertook an examination of the physical characteristics of helmets certified to FMVSS No. 218 and novelty helmets to determine if a set of simple criteria could be developed to differentiate between the two groups of helmets. In doing so, the agency's goal was to develop a test, or set of tests, that would employ commonly available tools or measurement devices in a manner that would not impair or compromise the performance of the helmet being examined.

In an effort to reduce the agency's test burden and provide a means for State officials and consumers to differentiate compliant and non-compliant helmets, NHTSA examined the possibility of comparing the weight and/or dimensions of the two classes of helmets and positing a test based on weight or size. However, because novelty helmets are produced in a wide variety of sizes and are not necessarily labeled as being a particular size, comparing the weight or exterior dimensions of large novelty helmets to

those of small compliant helmets does not produce meaningful results.

Next, NHTSA examined the possibility of comparing liners of the two classes of helmets. The importance of an energy absorbing liner in preventing and reducing brain injuries was first established in the United States shortly after World War II by research directed toward developing effective protective helmets for military pilots.[50] Since that time, expanded polystyrene (EPS) foam has become the predominant helmet liner material in FMVSS No. 218 compliant helmets because it combines light weight, manufacturing advantages, affordability, and an ability to ''crush'' and absorb energy in an impact. Because some amount of ''crush'' in a motorcycle helmet's liner is needed to absorb a sufficient amount of energy during a crash, EPS foam liners (or their equivalents) must have a certain minimum thickness to prevent or reduce injury. Therefore, the configuration and composition of a semi-rigid liner is a critical factor in a protective helmet's ability to reduce or prevent injury and was considered a potentially useful criterion for differentiating novelty helmets from certified helmets.

NHTSA therefore examined the thickness of the liners, liners and shells, and compression characteristics of a sample of motorcycle helmets commercially available in 2009 and 2010. Two critical physical differences between novelty and FMVSS No. 218 certified helmets were revealed: The thickness and compression characteristics of the padding and/or energy absorbing material inside the shell of the helmet. Novelty helmets are typically manufactured with a relatively thin comfort liner between the wearer's head and the exterior shell. These comfort liners consist of a layer of cloth immediately next to the wearer's head and possibly a thin layer of foam between the cloth and the inside of the helmet shell.

NHTSA attempted to quantify the differences in the thickness and response of helmet liner materials to compression in order to determine if threshold values for thickness and compression could be identified to distinguish certified from novelty helmets. Measurements were taken near the apex of 30 helmets obtained from the market place. The apex of the helmet is the highest point when a helmet is oriented so the brow opening is parallel to the ground. Inner liner thickness was measured by inserting a push pin into the liner, marking its depth along the shaft of the pin, withdrawing the pin, and measuring the depth of penetration to the shell. The combined thickness of the shell and liner was measured using digital calipers. The combined thickness of the shell and liners were measured before and after being compressed with a specified force. In order to measure the thickness when the comfort liner was compressed, a 5 pound-force (lbf) (22 Newton (N)) was applied using a dial force gauge. This force was selected because it is sufficient to distinguish EPS foam from foam that does not have sufficient compressive resistance to attenuate energy during an impact, not damage the EPS foam, and can readily be achieved using a thumb-fingertip grip should a gauge not be available.[51] The purpose of this test is to distinguish relatively dense impact attenuating liners, typically made of expanded polystyrene (EPS) or urethane, from comfort liners made of foams that are easily indented and unable to adequately attenuate energy of a head hitting a surface during a crash. The EPS and urethane foams do not crush under this very minor force whereas the comfort liners typically do.

The tools used to measure helmet characteristics are described in Table 4. These tools were selected because they are commercially available, relatively inexpensive, and are easy to use. While these tools will not measure the criteria with high precision, we believe they are minimally sufficient to perform the preliminary screening tests proposed in the standard. Other tools may be useful as well. Based on useful life, the tool kit in 2012 dollars is estimated to be $81.43 per kit per year.

TABLE 4—TOOLS USED TO EXAMINE THE PHYSICAL CHARACTERISTICS OF MOTORCYCLE HELMETS

Purpose	Description	Manufacturer	Part No.	Approximate cost
Measure inner liner thickness	Size 28—1¾ inch Nickel Plated Steel T-Pin.	Dritz	6828	$3.50 for a 40-count pack.
Measure combined thickness of shell & inner liner.	0–8 inch Outside Diameter Caliper	iGAGING	35–OD8	$28.00.
Apply compressive force to the non impact-attenuating liner.	Push style force gauge 1–10 lbf range 6.3 mm diameter flat probe.	Wagner Instruments	FDK 10	$225.

NHTSA examined each helmet and took multiple measurements in the vicinity of the apex. Two measurements are being reported: Thickness at the low end of the range (*i.e.,* a thin location) and thickness at the upper end of the range (*i.e.,* a thick location). See Table 5. The methodology used was not designed to identify the absolute minimum or maximum thickness values, but rather to obtain a general characterization of the inner liner, shell, and non-impact attenuating liner thicknesses. Summaries are reported in Tables 6 and 7. The certified helmets in this group had impact attenuating liners that were at least 1 inch (25 mm) thick and an overall thickness from the inside of the impact attenuating liner to the outside of the shell measured at least 1.1 inch (28 mm). On the other hand, the novelty helmets examined had no impact attenuating liners or liners that were less than 0.59 inch (15 mm) thick and a combined thicknesses of liner and shell that measured less than or equal to 0.75 inch (19 mm). The certified helmets examined had an inner liner that would not deform when subject to a load of 5 lbf (22 N); whereas the liners (inner and comfort) on novelty helmets that we examined deformed readily. It is possible to foresee that a user of a novelty helmet might mistake the comfort liner of non-energy attenuating foam for an inner liner; therefore NHTSA measured the amount that the liners would deform under such a small load. The measurements made on these

[50] N. Yoganandan et al. (Eds.), *FRONTIERS IN HEAD AND NECK TRAUMA Clinical and Biomechanical,* IOS Press, OHMSHA, 1998, retrieved from *http://www.smf.org/docs/articles/helmet_development.html,* July 18, 2011 (last accessed on 1/19/12).

[51] Per MIL–STD–1472F Department of Defense's Design Criteria Standard for Human Engineering revised 23 August 1999, data contained in Figures 23.

helmets are reported in Table 5. In one case, the comfort liner on the novelty helmet deformed 0.6 inch (15.1 mm).

Table 5. Thickness Data

Helmet		Size	Type	Inner liner thickness (mm)		Overall thickness from inside of the inner liner to the outside of shell (mm)		Shell, inner liner, and comfort liner no commpression (mm)		Shell, inner liner, comfort liner under compression w/22N force (mm)		Average deformation of non-impact attenuating liner with compression (mm)
Brand	Model		Certified/ Novelty	Thin Location	Thick Location	Thin Location	Thick Location	Thin Location	Thick Location	Thin Location	Thick Location	
AGV	Dragon	XL	Certified	27.0	27.5	33.0	33.5	46.9	51.1	43.7	49.7	2.3
Bell	Custom 500	XL	Certified	31.0	33.0	36.8	37.2	46.3	53.9	39.8	44.6	7.9
Bell	Drifter	XL	Certified	33.0	34.0	37.2	39.5	43.9	52.6	43.9	50.3	1.2
Biltwell	Hustler	XL	Certified	34.0	35.0	39.0	40.0	53.7	55.8	50.0	50.9	4.3
GMAX	GM35S	XL	Certified	31.0	32.0	36.5	37.5	47.9	48.3	47.2	47.4	0.8
HJC	IS-2	XL	Certified	33.0	37.0	37.4	41.4	48.3	57.4	47.2	46.9	5.8
Nolan	Super Cruise	XL	Certified	34.0	35.0	37.1	43.1	37.5	48.3	37.5	37.5	5.4
Scorpion	EXO-900	M	Certified	39.0	43.0+	43.7	56.5	43.7	63.6	43.7	57.7	3.0
Scorpion	EXO-100	XL	Certified	34.0	40.0	38.1	45.4	39.6	49.8	39.6	46.9	1.5
Seer	S1602	XL	Certified	Not Measured		Not Measured		36.3	45.4	35.5	44.3	0.9
Shoei	St. Cruz	XL	Certified	37.0	38.0	41.0	42.0	46.4	47.4	41.4	42.4	5.0
THH	T-70	XL	Certified	28.0	32.0	34.0	36.0	49.8	55.2	44.1	51.7	4.6
VCAN	V528	XL	Certified	35.0	37.5	41.0	43.5	51.1	58.2	50.2	52.7	3.2
VCAN Sports	531BKXL	XL	Certified	34.5	38.0	40.4	47.6	40.4	49.2	40.4	48.3	0.5
Zox	Old School	XL	Certified	28.5	30.0	31.6	34.1	35.1	41.4	35.1	38.0	1.7
AFX	FX-200	XL	Certified	29.0	30.5	33.1	34.1	36.9	39.0	36.3	38.4	0.6
Daytona Helmets	Cruiser	XL	Certified	25.0	26.0	28.0	29.0	37.2	37.3	35.1	35.2	2.1
Daytona Helmets	Skull Cap	XL	Certified	28.5	29.5	34.4	36.8	35.4	45.4	35.4	37.8	3.8
Fuel	Half Helmet	XL	Certified	26.0	30.0	32.5	36.5	41.9	51.9	37.4	50.0	3.2
Fulmer	AF-81 Half Helmet	XL	Certified	28.0	31.0	32.7	36.6	39.4	43.4	36.7	40.7	2.7
HCI	50	XL	Certified	36.5	37.0	40.5	41.0	45.5	46.0	40.7	41.2	4.8
Vega	XTS	XL	Certified	29.0	31.0	34.4	35.3	40.1	48.7	38.6	45.7	2.3
Davida	Classic	L	Novelty	5.5	8.0	11.9	17.3	13.1	18.5	12.1	17.5	1.0
	Eagle	XL	Novelty	0.0	0.0	5.7	6.9	5.8	11.3	5.8	8.0	1.7
	EZ Rider	XL	Novelty	9.0	11.4	16.1	18.3	16.5	18.7	4.7	5.8	12.4
	Big German	XL	Novelty	0.0	0.0	4.5	6.6	5.8	8.6	5.8	8.1	0.3
	Hawk	XL	Novelty	3.9	4.4	9.1	11.0	11.6	13.5	5.8	8.6	5.4
	Iron Braid	M/L	Novelty	12.0	15.0	16.0	19.0	22.8	26.2	13.4	17.4	9.1
	Turtle	XL	Novelty	1.2	1.4	4.9	6.3	6.2	9.8	6.2	8.2	0.8
Biltwell	Novelty Helmet	e Size	Novelty	0.0	0.0	4.3	5.1	26.7	27.5	11.6	12.4	15.1

Certified # of helmets: 22	Impact attenuating inner liner thickness (mm)	Overall thickness from inside of the inner liner to the outside of shell (mm)	Shell, inner liner, and comfort liner, uncommpressed (mm)	Shell, inner liner, comfort liner under compression w/22N force	Average deformation of comfort liner with compression (mm)
Minimum	25.0	28.0	35.1	35.1	0.5
Maximum	40.0	56.5	63.6	57.7	7.9
Average	32.3	37.8	46.2	43.1	3.1
Std Dev	3.9	5.2	6.8	5.8	2.0

Table 6. Summary of Thickness Results for Certified Helmets

Novelty # of helmets: 8	Non impact attenuating inner liner thickness (mm)	Overall thickness from inside of the inner liner to the outside of shell (mm)	Shell, inner liner, and comfort liner, uncommpressed (mm)	Shell, inner liner, comfort liner under compression w/22N force (mm)	Average deformation of non-impact attenuating liner with compression (mm)
Minimum	0.0	4.3	5.8	4.7	0.3
Maximum	15.0	19.0	27.5	17.5	15.1
Average	4.5	10.2	15.2	9.5	5.7
Std Dev	5.1	5.5	7.5	4.1	5.8

Table 7. Summary of Thickness Results for Novelty Helmets

In comparison, the liners of helmets certified by manufacturers as complying with FMVSS No. 218 are thicker and are composed of materials with different physical properties. Certified helmets employ an energy absorbing non-resilient material in the helmet liner. Typically, this non-resilient liner, which fits between the cloth comfort liner and the inside of the helmet shell, is made from a semi-rigid material such as EPS or polyurethane foam [52] that deforms when subjected to certain pressure and does not spring back to shape. This semi-rigid foam liners in the examined helmets were all greater than 1.0 inch (25 mm) thick near the apex of the helmet and did not deform when subjected to a force up to 5 lbf (22 N) distributed over a circular area approximately ¼ inch (6 mm) in diameter. However, at some force greater than 5 lbf (22 N) over the same area, the certified helmet liners will begin to crush or deform.

NHTSA is not alone in its efforts to characterize helmet liners. A study of helmet design and effectiveness published in the 1990s concluded that a helmet must have a combined shell and liner minimum thickness of 1.5 inch (40 mm) in order to meet the impact attenuation requirements of the then-current Snell M90 standard.[53] The Snell M90 standard differs from FMVSS No. 218 in several respects, but the general concept that a certain thickness of energy absorbing material must be present still prevails. By conducting FMVSS No. 218 compliance tests over several decades and recently examining the thickness of commercially available motorcycle helmets, NHTSA concludes that those helmets meeting the NHTSA standard must have an energy absorbing liner that is greater than 0.75 inch (19 mm) thick. Such a liner dissipates energy during a crash and allows the wearer's head to come to a stop more slowly in order to reduce head injuries. By contrast, novelty helmets have very soft liners of foam that cannot absorb energy or provide an adequate amount of cushion to a wearer's head during a crash.

Based on the examination of these certified and novelty helmets, the threshold thickness value of 0.75 inch (19 mm), measured within 4-inches of the apex, would allow for variability in helmet design, test equipment usage, and materials, while serving as an objective thickness criterion to distinguish certified from novelty helmets. Accordingly, NHTSA proposes to amend FMVSS No. 218 to incorporate a series of simple tests that would evaluate the physical characteristics required to meet current standards of helmet performance. These tests would serve to establish whether further testing is needed to fully and fairly determine if a helmet meets the existing performance requirements of FMVSS No. 218. Helmets not meeting the proposed requirements would be deemed to be non-compliant.[54] Helmets

[52] Newman, James A. ''Chapter 14: Biomechanics of Head Trauma: Head Protection'' from Nahum, Alan M. and Melvin, John W., ed. Accidental Injury: Biomechanics and Prevention. 2nd ed. New York: Springer Science+Business Media, Inc., 2002.

[53] Hurt, H.H., Jr. and Thorn, D.R., ''Accident Performance of Contemporary Safety Helmets,'' Head and Neck Injuries in Sports, p. 15. ASTM STP 1229, American Society for Testing and Materials, Philadelphia, 1993.

[54] Excluding helmets that have been listed in Appendix B of FMVSS No. 218 as discussed elsewhere in this document.

meeting the proposed requirements would be subject to further evaluation through laboratory tests to determine if they provide the required minimum levels of performance needed to adequately protect users. Any helmet with an inner liner that is less than 0.75 inch (19 mm) thick would be considered incapable of complying with FMVSS No. 218. Moreover, NHTSA proposes that any helmet with a liner meeting the minimum thickness criteria must also be sufficiently resistant to deformation to ensure that the liner is capable of some level of energy absorption. Finally, because the combined thickness of the liner and the shell together is also an excellent predictor that a helmet will be unable to comply with the performance requirements of FMVSS No. 218, NHTSA also proposes that any helmet whose combined shell and inner liner thickness is less than 1 inch (25 mm) and whose liner meets the same resistance to deformation would also presumably not be able to comply with the standard. NHTSA seeks comments and data from helmet manufacturers of compliant helmets pertaining to the thickness of impact attenuating liners and of shell and liner combinations.

The aforementioned criteria are of little use to NHTSA or to State and local law enforcement officials if tools and techniques for ascertaining helmet inner liner thickness and composition are not readily available or are only available at significant cost. Similarly, the procedures employed in examining helmets should not be complex. Accordingly, this preamble discusses tests that could be performed on easily accessible areas of a helmet using simple tools and provides a guideline that could be adapted to reference cards carried by law enforcement personnel conducting traffic stops.

Inner liner thickness could be measured in a number of ways. One method could be to penetrate the helmet liner with a pin, needle, or similarly small diameter wire probe until the inside of the helmet shell is reached and measuring the depth of the penetration. NHTSA is confident that measurements of inner liner thickness taken in this fashion will not impair helmet performance and that a single penetration, or a limited number of similar penetrations, of the energy attenuating foam liners employed in compliant motorcycle helmets by a pin, needle or other small diameter probe would not degrade a helmet's ability to protect a user in a crash. Because we recognize that some organizations may be reluctant to conduct such a test, we request comment on this method of measuring inner liner thickness, its potential impact on helmet performance and any alternative means that may be employed using simple tools to readily and accurately find liner depth.

NHTSA is also proposing a measure of the combined thickness of the outer shell and inner liner as another means of identifying helmets that do not comply with FMVSS No. 218. As discussed above, the combined shell and inner liner thickness are good predictors of how well a helmet will perform in compliance testing. Because the combination of the outer shell and the impact absorbing inner liner are critical determinants of a helmets' ability to meet the performance requirements of FMVSS No. 218, NHTSA proposes that any helmet whose outer shell and liner are less than 25 mm (1 inch) thick would not comply with FMVSS No. 218. This measurement could be taken using a large caliper. Another method would be to place a helmet on a headform or stand so that the inner liner is seated against that stand, measure the combined height of the helmet and the stand, and then remove the helmet and measure the height of the stand alone. The difference between the two measurements would yield the thickness of the combined shell and liner.

Measuring inner liner thickness, or combined shell and inner liner thickness, represents only one component of a test for identifying helmets that do not comply with FMVSS No. 218. NHTSA proposes a second component of this test that involves examining the resistance of helmet liners to crush when low forces are applied. This technique is useful because, as previously explained, novelty helmets have thin, non-substantial inner liners that are too soft to absorb energy if they have any liner at all. NHTSA is proposing guidance stating that an inner liner that meets the appropriate thickness requirements but which may be deformed 1/12 inch (2 mm) by the application of a force between 1 lbf (4.4 N) and 5 lbf (22 N) distributed over a circle approximately 0.20–0.30 inch (5–7 mm) in diameter is incapable of complying with FMVSS No. 218. The area over which the proposed force would be applied is the diameter of most common pencils. The specified force range of 1 lbf (4.4 N) to 5 lbf (22 N) is sufficient to deform soft liners and may be applied using a weighted probe or a dial indicator force gauge.[55] The amount of deformation of the inner liner could be ascertained either by observation or by measurement using a small ruler or use of the force gauge and calipers in combination. By examining and testing novelty and certified helmets, NHTSA has observed the force proposed produces little to no deformation on the impact absorbing liners made of EPS or urethane in helmets meeting FMVSS No. 218, while novelty helmets with thick soft ''comfort'' liners experience a noticeable degree of deformation. Again, NHTSA requests comments on the means employed to make this measurement.

To reduce the possibility of error caused by variations in helmet designs, NHTSA is proposing that the measurements of inner liner thickness, combined helmet/inner liner thickness and inner liner compression characteristics be conducted in a limited area near the crown or apex of the helmet. Helmets providing the minimum level of impact and penetration resistance required to meet FMVSS No. 218 must have a robust shell and liner in this area. In addition, the test area proposed in this document is intended to be located, measured and marked using simple tools that are readily available at low cost. This is best achieved by focusing at the topmost area of the helmet. Finally, it is not NHTSA's intention to discourage manufacturers from designing helmets with ventilation channels. NHTSA requests feedback about the following issues as they relate to this proposal:

- How will the proposed measurements be affected by the presence of ventilation channels?
- How will the proposed measurements stand up to the effects of wear and aging on certified motorcycle helmets?
- Will compliant motorcycle helmets that are currently manufactured meet the newly proposed performance requirements?
- What emerging motorcycle helmet technologies will be affected if this proposal moves forward?

The proposal specifies that the measurements of inner liner thickness, combined shell and inner liner thickness and inner liner resilience be made within a circular zone having a 4 inch (104 mm) radius centered at the apex of the helmet. We are proposing the term ''inner liner'' to mean an energy absorbing material that is molded to conform to the inner shape of the helmet's shell and serves to protect

[55] Mechanical dial force gauges suitable for this measurement may be acquired for approximately $225. An example of one such gauge is found at *http://www.wagnerinstruments.com/force_gauges/fdk_mechanical_dial_force_gauge.php* (last accessed on 1/19/12).

the user's head from impact forces during a crash. We are also proposing the term ''apex'' to mean the upper most point on the shell of the helmet when the helmet is oriented such that that brow opening is parallel to the ground. The agency does not intend that measurements must be made with such precision that they could only be taken at a single point. Instead, we are proposing that measurements be taken within a circle centered on the apex. The center point of this circle need not be precisely located at the single point constituting the ''apex'' of a helmet. To that end, we solicit comments on using an alternative definition for the topmost area of a helmet, including the use of the term ''crown'' to designate the measurement area. Alternatively, we also solicit comments on locating the center of the measurement circle within a specified tolerance range—*i.e.* a 4 inch (104 mm) radius of the actual apex. Once the approximate location of the apex is determined, a flexible cloth tape may be used to measure the outer bounds of the circular measurement area. Alternatively, a circle having a 4 inch (104 mm) radius cut out of a flexible material capable of conforming to the contours of the liner could be employed for the same purpose. Helmet measurements would be made within this circle.

NHTSA's intention is that thickness measurements are made along the shortest line that passes through the helmet to measure the thinnest cross section and avoid artificially inflating the thickness. Therefore, we propose that this measurement be made along a line that is at or near perpendicular to a plane tangent to a point on the outer shell near the apex of the helmet. We are proposing to add to FMVSS No. 218, a figure of an exemplar helmet to demonstrate the general location and meaning of these terms, so the public will know where and how the measurement should be made and a new Table 3 to specify which certification label is required based on the helmet's manufacture date.

NHTSA is also proposing the establishment of an alternative compliance process for manufacturers whose helmets do not meet the aforementioned preliminary screening criteria, to prove that their products are capable of meeting the remaining requirements of Standard No. 218. As noted above, we are proposing this process to ensure that the preliminary screening criteria do not stifle advances in helmet technology and materials. To accomplish this end, the Agency proposes that manufacturers of advanced technology helmets that do not meet the preliminary screening criteria be allowed to petition the agency for a determination that a particular helmet is capable of meeting S5.2–S5.7 (as renumbered) of the Standard.

The proposed requirements for such a petition are straightforward and stated in the proposed regulatory section (Appendix B) of this document. Manufacturers of helmets, including importers of helmets, would be eligible to file a petition provided that such manufacturer or importer has identified itself to NHTSA in compliance with 49 CFR part 566 and, in the case of helmets manufactured outside of the United States, the manufacturer of the helmet has designated a U.S. agent for service of process as required by subpart D of 49 CFR part 551 (49 CFR 551.45 *et seq.*). Petitions must be in writing, be written in English, properly identify the manufacturer of the helmet, provide contact information for the petitioner and identify the precise model and name brand of the helmet at issue. Petitioners would be required to submit test data, photographs, videos, and other evidence establishing that the helmet at issue is capable of meeting the requirements of Standard No. 218 with the exception of the proposed preliminary screening criteria of S5.1. Petitions that are incomplete or fail to comply with any of the foregoing requirements would be rejected. Otherwise, the Agency will seek to inform the manufacturer not later than 60 days after receipt of the written submission, if the information is complete.

If the petition is complete, NHTSA's review of the petition may, at the agency's discretion, result in subsequent testing of sample helmets. If NHTSA is unable to obtain sample helmets that are the subject of the petition, it will reject the request. If the Agency determines that a particular model helmet that does not comply with the preliminary screening requirements of S5.1 is otherwise capable of meeting Standard No. 218, it will publish this determination in the **Federal Register** and make a copy of the determination available on the agency's Web site. The brand name, model and size of any helmet not meeting the preliminary screening requirements of S5.1 that is determined by NHTSA to be capable of meeting Standard No. 218 will be published in an appendix to Standard No. 218 and be made available on the Agency's Web site.

The proposed petition process would also allow for termination or modification of a determination if doing so is in the public interest, if additional information indicates that the determination was erroneous or if the petition was granted on the basis of false, fraudulent or misleading information.

If adopted, the petition process proposed here would exist alongside existing provisions that offer similar relief. Manufacturers of motor vehicles and motor vehicle equipment, along with other interested parties, currently have the ability to petition NHTSA to initiate rulemaking to amend a safety standard under 49 CFR part 552. Therefore, a helmet manufacturer that has developed new materials or technologies allowing the use of thinner helmet liners than those currently needed to meet Standard No. 218 could address their inability to meet the proposed preliminary screening requirements through a petition for rulemaking rather than the special petition procedures being proposed in this document. We therefore note that NHTSA may decide that the proposed petition process described above may not be needed and may be deleted from a final rule.

NHTSA solicits comments on the proposed petition process in general and the following specific issues related to this portion of our proposal:

- Are the existing provisions of part 552 adequate to minimize or alleviate the risk that the proposed preliminary screening requirements for helmets would stifle innovation?
- What is the likelihood that new cost effective technologies or materials would allow for helmet liners to meet the performance requirements of Standard No. 218 while not meeting the preliminary screening requirements proposed in this document?
- What means should the Agency employ to ensure that helmet users and state and local law enforcement agencies are adequately informed about determinations made under the proposed petition process?

V. Effective Date

NHTSA is proposing a lead time of two years from the publication of the final rule for manufacturers to comply with the new requirements. Based on NHTSA's survey of helmets, NHTSA believes that helmets currently sold in the market place will comply with the new screening criteria; however, responsible manufacturers may wish to submit their products to independent laboratories to generate data on which they base their certification. The agency believes that a lead time of two years to be a sufficient and reasonable time to allow the manufacturers the opportunity

to recertify their products to the updated regulations.

VI. Benefits/Costs

To calculate the benefits and costs of this proposed rulemaking, the agency has prepared a Preliminary Regulatory Impact Analysis (PRIA). The results of the PRIA indicate that the proposed rule is cost-effective. The goal of this rule is have motorcyclists wearing novelty helmets switch to FMVSS No. 218-certified helmets (certified helmets). Depending on the degree of effectiveness of the rule, the costs and benefits can vary substantially. The benefits and costs of the proposal depend on how many additional motorcycle riders change from wearing novelty helmets to wearing certified helmets in States that have a Universal Helmet Laws beyond the benefits estimated for the final rule that becomes effective on May 13, 2013.[56] This NPRM proposes two amendments to FMVSS No. 218 that affect the benefits calculation: Inclusion of a definition of ''motorcycle helmet'' and the addition of dimensional and compression requirements to identify helmets that, under the current state of the art of helmet design and construction, would not be capable of complying with FMVSS No. 218 because they lack characteristics needed to absorb and dissipate impact energy.

The benefit of the proposed definition is seen to the extent that it clarifies and supports the other actions in this proposed rule, and the benefits and costs of such will not be estimated independently in this analysis. The preliminary screening requirements will be beneficial to enforcement. The costs and benefits of the proposal are described in detail in the accompanying PRIA.

Behavioral change among motorcycle riders as a result of the rule is difficult to predict. However, the agency believes that this proposal would further improve the ability to enforce helmet laws and that an additional 5 to 10 percent of the novelty helmet users in States that have a Universal Helmet Law would eventually make a switch to avoid being ticketed or fined, and that this is a modest and achievable projection. In addition, the analysis also estimates the maximum potential benefit of the rule which corresponds to a hypothetical scenario of all novelty helmet users in States that have universal helmet laws becoming 218-certified helmet users (the 100-percent scenario). Note that this 100-percent scenario is considered theoretical since some novelty-helmeted motorcyclists would still be expected to circumvent the helmet laws by continuing taking the risk of wearing novelty helmets. Therefore, the estimated costs and benefits for the 100-percent scenario are not used (and not appropriate) for determining the effects of the proposed rule. However, they do indicate the potential savings in social costs that are offered by FMVSS No. 218-compliant helmets and the importance of educating the public to this potential.

The following table lists the discounted injury benefits from lives saved and monetized savings. It excludes benefits from non-fatal injuries prevented and any utility lost by novelty helmet riders who switch to FMVSS 218 compliant helmets. Since any such utility is obtained in violation of State law, its status is uncertain. See ''Non-quantified Impacts'' section of the PRIA for further discussion. The lower bounds represent the savings for the 7 percent discount rate and the higher bounds represent savings for the 3 percent discount rate. In addition to discount rates, the estimated benefit ranges also reflect two different approaches that were used to derive the benefit target population and the injury risk reduction rates as described in the accompanying PRIA. Furthermore, due to great uncertainty in deriving the estimated portion of non-fatal injuries attributed to the head, the benefits attributed to non-fatal head injuries are not quantified in this analysis.[57]

TABLE 8—DISCOUNTED BENEFITS OF THE PROPOSED RULE

[Millions of 2012 dollars]

	Number of lives saved	Societal economic benefits	VSL benefits	Total benefits from fatalities prevented
5-percent scenario	9–22	$3.0–$7.4	$92.9–$211.9	$95.9–$219.3
10-percent scenario	19–43	6.4–14.4	185.8–423.9	192.2–438.3
100-percent scenario	186–433	62.5–145.4	1,819.3–4,247.4	1,881.7–4,392.7

VSL: Value of statistical life.

Note: The lower bounds represent the estimated benefits at a 7 discount rate and the higher bounds represent the estimated benefits at a 3 percent discount rate. Additionally, the wide range of benefits also reflects the two approaches that were used for deriving the benefit target population and risk reduction rates.

The regulatory costs of the proposed rule are derived from the incremental cost increase due to purchasing a 218-certified helmet versus a novelty helmet, and the cost of State and local law enforcement acquiring preliminary screening tools.

The incremental cost per replaced novelty helmet is estimated to be $48.92. The estimated costs of the proposed rule are based on 5 percent and 10 percent of consumers in Law States replacing novelty helmets with compliant helmets. The estimated consumer cost ranged from $0.6 million to $1.2 million, where 12,150 to 24,300 novelty helmets would be replaced by compliant helmets. Under the maximum benefit scenario in which 100 percent of novelty helmet users would switch to compliant helmets, the incremental cost to consumers is $11.9 million, where 243,000 novelty helmets would be replaced by compliant helmets.

The cost of the preliminary screening tool kit is estimated to be $81.43 per kit per year,[58] for a total cost of $0.6 million

[56] Office of Regulatory Analysis and Evaluation, National Center for Statistics and Analysis, ''Final Regulatory Evaluation: FMVSS No. 218 Motorcycle Helmet Labeling,'' May 2011, Docket NHTSA–2011–0050.

[57] *See* Chapter IV, *Benefits* of the Preliminary Regulatory Evaluation, FMVSS No. 218 Motorcycle Helmet Labeling (Docket No. NHTSA–2011–0050–0001). Based on 2003–2005 Crash Outcome Data Evaluation System (CODES) data from Maryland, Utah and Wisconsin, and 2005–2007 NASS–GES.

[58] A complete kit includes three tools. We estimated the cost is $264.67 per complete kit. The total first year investment in screening tools for the 7,214 State and local law enforcement agencies would be $1.9 million. Because one of the tools would need to be replaced only every five years, one-fifth cost for that specific component was used for estimating for the annual costs of the screening tools. In other words, the difference between the first year cost and the annual cost is the allocation of the tool costs over their useful life.

(assuming each of the 7,214 State and local law enforcement agencies in only the States that require motorcycle helmet use will purchase one screening tool kit).

The total regulatory cost of the proposed rule including the cost of novelty helmet replacement and screening tool kits ranged from $1.2 million to $1.8 million. For achieving the maximum benefit (*i.e.,* 100-percent scenario), the estimated total regulatory cost is $12.5 million.

TABLE 9—REGULATORY COSTS OF THE PROPOSED RULE

[Millions of 2012 dollars]

	Number of novelty helmets assumed to be replaced	Total cost of replacing novelty helmets *	Annual cost of screening tools **	Total regulatory cost
5-percent scenario	12,150	$0.6	$0.6	$1.2
10-percent scenario	24,300	1.2	0.6	1.8
100-percent scenario	243,000	11.9	0.6	12.5

* $48.92 per minimally-compliant helmet which replace novelty helmets.
** $81.43 per screening tool kit per year.

The net benefit of the proposed rule is the regulatory cost minus the societal economic savings. The societal economic savings is greater than the regulatory cost for all three scenarios.

VII. Public Participation

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are filed correctly in the docket, please include the docket identification number of this document in your comments. Your comments must not be more than 15 pages long. (49 CFR 553.21) NHTSA established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments. Please note that pursuant to the Data Quality Act, in order for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at *http://www.whitehouse.gov/omb/fedreg/reproducible.html.*

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit a copy, from which you have deleted the claimed confidential business information, to the docket at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in NHTSA's confidential business information regulation (49 CFR part 512).

Will the Agency consider late comments?

NHTSA will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, the agency will also consider comments that the docket receives after that date. If the docket receives a comment too late for the agency to consider it in developing a final rule (assuming that one is issued), the agency will consider that comment as an informal suggestion for future rulemaking action.

How can I read the comments submitted by other people?

You may read the comments received by the docket at the address given above under **ADDRESSES**. The hours of the docket are indicated above in the same location. You may also read the comments on the internet. Please note that even after the comment closing date, NHTSA will continue to file relevant information in the docket as it becomes available. Further, some people may submit late comments. Accordingly, the agency recommends that you periodically check the docket for new material. You can arrange with the docket to be notified when others file comments in the docket. *See http://www.regulations.gov* for more information. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

VIII. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

The agency has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking is economically significant and was reviewed by the Office of Management and Budget under E.O. 12866, ''Regulatory Planning and Review.'' The rulemaking action has also been determined to be significant under the Department's regulatory policies and procedures. NHTSA has placed in the docket a Preliminary Regulatory Impact Analysis describing the costs and benefits of this rulemaking action and summarized those findings in Section V titled Benefits/Costs.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of proposed rulemaking or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business

entity ''which operates primarily within the United States.'' (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this proposed rule under the Regulatory Flexibility Act. Manufacturers not currently producing compliant helmets that switch to manufacturing compliant helmets will recapture the increased costs associated with manufacturing such compliant helmets as reflected in this analysis. Small entities selling motorcycle equipment and accessories would be precluded from selling non-compliant novelty helmets but would still have the ability to obtain and sell compliant helmets from numerous suppliers and wholesalers. Similarly, to the extent that there are any small entities whose business is based solely on the sale of non-compliant novelty helmets, these entities would be able to obtain, market and sell compliant helmets. I certify that this proposed rule would not have a significant economic impact on a substantial number of small entities.

C. Executive Order 13132 (Federalism)

NHTSA has examined this proposed rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The proposed rule does not directly require a state or local government entity to take any action or refrain from acting. This proposed rule would not alter the relationship between the national government and the States or the distribution of power and responsibilities among the various levels of government. To the extent that any state is impacted by this proposed rule, the principal effect of today's proposed rule will be to assist mandatory helmet law states in enforcing helmet laws requiring motorcyclists to wear helmets complying with FMVSS No. 218. As noted above, NHTSA consulted with certain state officials regarding enforcement of such laws prior to issuing this proposed rule. The agency has concluded that the rulemaking would not have sufficient federalism implications to warrant further consultation with State and local officials or the preparation of a federalism summary impact statement.

NHTSA rules can preempt in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision: When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter. 49 U.S.C. 30103(b)(1). It is this statutory command by Congress that preempts any non-identical State legislative and administrative law addressing the same aspect of performance.

The express preemption provision described above is subject to a savings clause under which ''[c]ompliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law.'' 49 U.S.C. 30103(e). Pursuant to this provision, State common law tort causes of action against motor vehicle manufacturers that might otherwise be preempted by the express preemption provision are generally preserved. However, the Supreme Court has recognized the possibility, in some instances, of implied preemption of such State common law tort causes of action by virtue of NHTSA's rules, even if not expressly preempted. This second way that NHTSA rules can preempt is dependent upon there being an actual conflict between an FMVSS and the higher standard that would effectively be imposed on motor vehicle manufacturers if someone obtained a State common law tort judgment against the manufacturer, notwithstanding the manufacturer's compliance with the NHTSA standard. Because most NHTSA standards established by an FMVSS are minimum standards, a State common law tort cause of action that seeks to impose a higher standard on motor vehicle manufacturers will generally not be preempted. However, if and when such a conflict does exist—for example, when the standard at issue is both a minimum and a maximum standard—the State common law tort cause of action is impliedly preempted. *See Geier* v. *American Honda Motor Co.,* 529 U.S. 861 (2000).

Pursuant to Executive Order 13132 and 12988, NHTSA has considered whether this proposed rule could or should preempt State common law causes of action. The agency's ability to announce its conclusion regarding the preemptive effect of one of its rules reduces the likelihood that preemption will be an issue in any subsequent tort litigation.

To this end, the agency has examined the nature (*e.g.,* the language and structure of the regulatory text) and objectives of today's proposed rule and finds that this proposed rule, like many NHTSA rules, prescribes only a minimum safety standard. As such, NHTSA does not intend that this proposed rule preempt State tort law that would effectively impose a higher standard on motor vehicle equipment manufacturers than that established by today's proposed rule. Establishment of a higher standard by means of State tort law would not conflict with the minimum standard announced here. Without any conflict, there could not be any implied preemption of a State common law tort cause of action.

D. Executive Order 12988 (Civil Justice Reform)

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, February 7, 1996) requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies the effect on existing federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

Pursuant to this Order, NHTSA notes as follows. The preemptive effect of this proposed rule is discussed above. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

E. National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104–113), ''all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments.''

Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

FMVSS No. 218 is largely based on ANSI Z90.1–1971, ''Specifications for Protective Headgear for Vehicular Users,'' and incorporates the SAE Recommended Practice J211 MAR 95, ''Instrumentation for Impact Test—Part 1—Electronic Instrumentation,'' both of which are voluntary consensus standards. While the Snell Memorial Foundation also produces helmet specifications (*e.g.,* the 2005 and 2010 Helmet Standards for use in Motorcycling), the agency continues to base its standard on the ANSI specification, as the purpose of this rulemaking action is to make minor changes and clarifications to the standard for labeling and enforcement purposes, and we have not analyzed the effectiveness of the Snell standard.

Paragraph 2 of the definition of ''motorcycle helmet'' proposed in this document employs compliance with voluntary standards for protective helmets (other than motorcycle helmets) as a means of delineating those helmets that are not motorcycle helmets subject to NHTSA's jurisdiction.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995).

Adjusting this amount by the implicit gross domestic product price deflator for the year 2012 results in $141 million (115.366/81.602 = 1.414). The assessment may be included in conjunction with other assessments, as it is here.

This proposed rule would not result in expenditures by State, local or tribal governments of more than $141 million annually as the Federal government (1) is not requiring States to purchase all of the preliminary screening tools described in the cost section and (2) provides grants to States for other motorcycle safety related programs and would likely aid in offsetting the costs estimated in this analysis.

G. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

H. Paperwork Reduction Act

Under the procedures established by the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. The proposed rule would require manufacturers of motorcycle helmets to submit a petition and provide data on motorcycle helmets to NHTSA if they wish to utilize the alternative compliance path proposed in this NPRM.

In compliance with the PRA, we announce that NHTSA is seeking comment on a new information collection.

Agency: National Highway Traffic Safety Administration (NHTSA).

Title: 49 CFR 571.218 Motorcycle helmets.

OMB Control Number: Not assigned.

Form Number: The collection of this information uses no standard form.

Requested Expiration Date of Approval: Three years from the date of approval.

Summary of the Collection of Information

NHTSA is proposing a new requirement in section 571.218 which would permit manufacturers of motorcycle helmets to petition the agency regarding their belief that their helmet meets the requirements of FMVSS No. 218, excluding the proposed S5.1 which contains preliminary screening requirements. This collection of information would be used by the agency to evaluate the manufacturers' claims and determine if confirmation testing of their product is warranted. If the information submitted to the agency by the manufacturer together with confirmation testing, shows the helmet that is the subject of the petition can meet the requirement of FMVSS No. 218, the brand, model, and size of the helmet will be added to an appendix in the standard and the information will be published in the docket for public reference.

The information would be provided by manufacturers to NHTSA under a reporting requirement that allows them an alternate process in lieu of complying with S5.1(a) through S5.1(c). NHTSA would make the manufacturer's submission available to the public via the Internet if it can be supported by NHTSA testing.

Estimated Annual Burden

The total estimated annual burden to manufacturers is based on the cost to manufacturers to review the regulatory text, conduct testing of their products, complete and review the collection of information, and transmitting that information to NHTSA.

The cost to review the collection requirement is small. The collection requirement is documented in FMVSS No. 218, Appendix B which will be publicly available through the Internet once the rule is finalized. It is estimated that a management level employee will spend less than one hour reviewing the regulatory text pertaining to the optional reporting requirement. The labor rate for this type of manager is $62.19 per hour [59] to which we have applied a fringe-benefit factor of 0.41 [60] and an overhead factor of 0.17 to obtain a fully loaded staff cost per hour of $102.59 for engineering managers.

Second, we considered the cost burden imposed by the proposed petition process for motorcycle helmets which requires testing of products. However, testing of products is usual and customary for manufacturers of motorcycle helmets wishing to introduce their products into interstate commerce in the United States. Responsible manufacturers conduct tests during the development phase of their product and again prior to the introduction of their product to market as well as throughout production. Per 49 U.S.C. 30115, manufacturers shall exercise reasonable care in certifying that their equipment complies with applicable FMVSS. This testing often serves, in part, as the basis for exercising reasonable care that their products comply with FMVSS 218. However, the proposed process requests that photographic and video documentation of the testing be provided, which is typically more documentation than is obtained during a standard helmet test. A motorcycle helmet test of four samples is estimated to cost $1,500 and this additional requirement is estimated to cost approximately 7% more than a standard

[59] Occupational Employment and Wages, May 2011 for Standard Occupational Classification Code 11–9041 Architectural and Engineering Managers, *http://www.bls.gov/oes/current/oes119041.htm,* last accessed on May 31, 2012.

[60] BLS, Employer Costs for Employee Compensation, May 2010.

test, which can be attributed to initial purchase of video recording equipment, and recurring costs associated with recording media, labor to execute the recording, and profit. Since the base cost ($1,500) is considered usual and customary, it will not be factored into the estimated annual burden; yet, the additional burden ($100 for each unique shell/liner combination and model) will be included into the burden for the collection requirement.

Next, the cost to complete and review the collection of information is expected to require 15 hours of technical labor which costs $40.17 [61]/hour to which we have applied a fringe-benefit factor of 0.41 and an overhead factor of 0.17 to obtain a fully loaded staff cost per hour of $66.27 for engineering managers and one hour of fully loaded managerial labor ($102.59/hour) for a total cost of $1,096.64.

Finally, the cost to transmit the data to the agency using a contract carrier is expected to be $10.

Therefore, the total estimated cost burden to each manufacturer who chooses to pursue this alternative compliance process is $1,206.64 and the total number of burden hours is 16 per company. Given an annual estimate of three respondents, the total cost burden to manufacturers is $3,619.92 and 48 hours.

Estimated Annual Cost to the Government

The estimated annual cost to the Federal Government is $9,500. This cost includes approximately $4,500 for enforcement testing and approximately $5,000 annually to process, respond to, and publish determinations for the anticipated respondents.

Estimated Number of Respondents

Because this option is being included in the NPRM as a means facilitating the introduction of innovative helmet technologies and materials, it is anticipated that approximately three companies will attempt to pursue this option on an annual basis.

Comments Are Invited On

Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; 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, including the use of automated collection techniques or other forms of information technology. Please submit any comments to the NHTSA Docket Number referenced in the heading of this document, and to Claudia Covell as referenced in the **FOR FURTHER INFORMATION CONTACT** section of this document.

I. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Tires.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 571 as set forth below.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 of title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.95.

■ 2. Amend § 571.218 by:
■ a. Revising S1;
■ b. Revising S3;
■ c. Adding definitions of ''Apex'', ''Inner Liner'', and ''Motorcycle Helmet'' in alphabetical order in S4;
■ d. Revising S5;
■ e. Redesignating S5.1 through S5.7 as follows:

Old section	New section
S5.1	S5.2
S5.2	S5.3
S5.3	S5.4
S5.3.1	S5.4.1
S5.3.2	S5.4.2
S5.4	S5.5
S5.5	S5.6
S5.6	S5.7
S5.6.1	S5.7.1
S5.7	S5.8

■ f. Adding S5.1;
■ g. Revising S6;
■ h. Revising S6.3.2;
■ i. Revising the introductory text of S6.4.1;
■ j. Revising S6.4.2;
■ k. Redesignating S7.1 through S7.3.4 as follows:

Old section	New section
S7.1	S7.2
S7.1.1	S7.2.1
S7.1.2	S7.2.2
S7.1.3	S7.2.3
S7.1.4	S7.2.4
S7.1.5	S7.2.5
S7.1.6	S7.2.6
S7.1.7	S7.2.7
S7.1.8	S7.2.8
S7.1.9	S7.2.9
S7.1.10	S7.2.10
S7.1.11	S7.2.11
S7.2	S7.3
S7.2.1	S7.3.1
S7.2.2	S7.3.2
S7.2.3	S7.3.3
S7.2.4	S7.3.4
S7.2.5	S7.3.5
S7.2.6	S7.3.6
S7.2.7	S7.3.7
S7.2.8	S7.3.8
S7.3	S7.4
S7.3.1	S7.4.1
S7.3.2	S7.4.2
S7.3.3	S7.4.3
S7.3.4	S7.4.4

■ l. Adding S7.1, S7.1.1, S7.1.2, S7.1.3, and S7.1.4;
■ m. Revising the heading of the Appendix to § 571.218;
■ n. Adding Figure 9 and Table 3 at the end of Appendix A; and
■ o. Adding appendices B and C.

The revisions and additions read as follows:

§ 571.218 Standard No. 218; Motorcycle helmets.

S1. *Scope.* This standard establishes minimum performance requirements for motorcycle helmets.

* * * * *

S3. *Application.* This standard applies to all motorcycle helmets.

S4. * * *

Apex means the upper most point on the shell of the helmet when the helmet is oriented such that that brow opening is parallel to the ground.

* * * * *

Inner liner means an energy absorbing material that is molded to conform to the inner shape of the helmet's shell and serves to protect the user's head from impact forces during a crash.

* * * * *

Motorcycle helmet (1) Except as provided in paragraph (2) of this definition, any hard shell headgear is a motorcycle helmet and an item of motor vehicle equipment if it is either—

(A) Manufactured for sale, sold, offered for sale, introduced or delivered for introduction in interstate commerce,

[61] Occupational Employment and Wages, May 2011 for Standard Occupational Classification Code 17–2141 Mechanical Engineers, *http://www.bls.gov/oes/current/oes172141.htm,* last accessed on May 31, 2012.

or imported into the United States, for use on public streets, roads, and highways with the apparent purpose of safeguarding highway users against risk of accident, injury, or death, or

(B) manufactured for sale, sold, offered for sale, introduced or delivered for introduction in interstate commerce, or imported into the United States by entities that also manufacture for sale, sell, offer for sale, introduce or deliver for introduction in interstate commerce, or import into the United States either motorcycles, helmets certified to FMVSS No. 218, or other motor vehicle equipment and apparel for motorcycles or motorcyclists, or

(C) described or depicted as a motorcycle helmet in packaging, display, promotional information or advertising, or

(D) imported into the United States under the applicable designation(s) for motorcycle helmets in the Harmonized Tariff Schedule of the United States.

(2) Paragraphs (1)(B), (1)(C), and (1)(D) of this definition do not apply to a helmet that is properly labeled and marked by its manufacturer as meeting a standard (other than a standard for motorcycle helmets) issued or adopted by the U.S. Consumer Product Safety Commission, ASTM International, National Operating Committee on Standards for Athletic Equipment, Snell Memorial Foundation, American National Standards Institute, The Hockey Equipment Certification Council, International Mountaineering and Climbing Federation, SFI Foundation, European Commission CE Marking (CE), or the Fédération Internationale de l'Automobile and such labeling and marking and the manner in which it is done are in accordance with that standard.

* * * * *

S5. *Requirements.* Except as provided in this paragraph, each helmet shall meet the requirements of S5.1, when tested in accordance with S7.1. Helmets meeting the requirements of S5.1 when tested in accordance with S7.1 shall also meet the requirements of S5.2, S5.3 and S5.4 when subjected to any conditioning procedure specified in S6.4, and tested in accordance with S7.2, S7.3, and S7.4. Helmets shall also meet requirements of S5.5 through and including S5.7. A manufacturer may submit to NHTSA evidence that a helmet model complies with the requirements of FMVSS 218 S5.2 through and including S5.7, despite not meeting the requirements of S5.1 and thereby request to be included in appendix C of this standard. The provisions for submitting such a request can be found in appendix B of this standard.

S5.1 *Preliminary screening.* Each helmet shall have the following characteristics (refer to Figure 9 of appendix A of this standard) when tested in accordance with S7.1:

(a) The inner liner, excluding any cloth or fabric liner, is at least ¾ inch (19 mm) thick; and

(b) The combined thickness of the inner liner, excluding any cloth or fabric liner, and outer shell is at least 1 inch (25 mm) thick; and

(c) The inner liner shall not deform more than 1/12 inch (2 mm) when measured in accordance with S7.1.4.

* * * * *

S6. *Preliminary test procedures.* Before subjecting a helmet to the testing sequence specified in S7.2, S7.3 and S7.4, prepare it according to the procedures in S6.1, S6.2, and S6.3.

* * * * *

S6.3.2 In testing as specified in S7.2 and S7.3, place the retention system in a position such that it does not interfere with free fall, impact or penetration.

* * * * *

S6.4.1 Immediately before conducting the testing sequence specified in S7.2 through S7.4, condition each test helmet in accordance with any one of the following procedures:

* * * * *

S6.4.2 If during testing, as specified in S7.2.3 and S7.3.3, a helmet is returned to the conditioning environment before the time out of that environment exceeds 4 minutes, the helmet is kept in the environment for a minimum of 3 minutes before resumption of testing with that helmet. If the time out of the environment exceeds 4 minutes, the helmet is returned to the environment for a minimum of 3 minutes for each minute or portion of a minute that the helmet remained out of the environment in excess of 4 minutes or for a maximum of 12 hours, whichever is less, before the resumption of testing with that helmet.

* * * * *

S7.1 *Thickness and inner liner compression test.*

S7.1.1 The thickness is measured anywhere within a 4-inch (104 mm) radius of the apex of the helmet.

S7.1.2 The inner liner is measured by penetrating the helmet liner using a stiff metal probe having a gauge of 26–30 (nominal outer diameter 0.01825 inch (0.4636 mm)). The probe is inserted until it contacts the inner surface of the shell in a direction that measures the shortest distance along a line that connects a point on the outer shell and the closest point on the inner surface of the inner liner. The depth of penetration of the probe equates to the thickness of the helmet liner.

S7.1.3 The combined thickness of the inner liner, excluding any cloth or fabric liner, and the outer shell is measured using an outside dimension caliper that can reach the measurement area without interference with the helmet. One tip of the caliper is placed on a point on the outer shell of the helmet and the other tip of the caliper is placed on the closest point on the inner surface of the inner liner.

S7.1.4 The uncompressed thickness of the inner liner is measured in accordance with the procedure in S7.1.2 or the uncompressed thickness of the inner liner and outer shell is measured in accordance with the procedure in S7.1.3. A force gauge having a flat tip of 0.20–0.30 inch (5–7 mm) in diameter is used to apply a compression force of not less than 1 lbf (4.4 N) and not more than 5 lbf (22.2N) to the inner liner adjacent to the area measured for thickness. The compression force is held for 10 seconds and the thickness measurement is repeated at the original location. The thickness measured during compression is subtracted from the initial thickness measured at the original location.

* * * * *

APPENDIX A TO §571.218

* * * * *

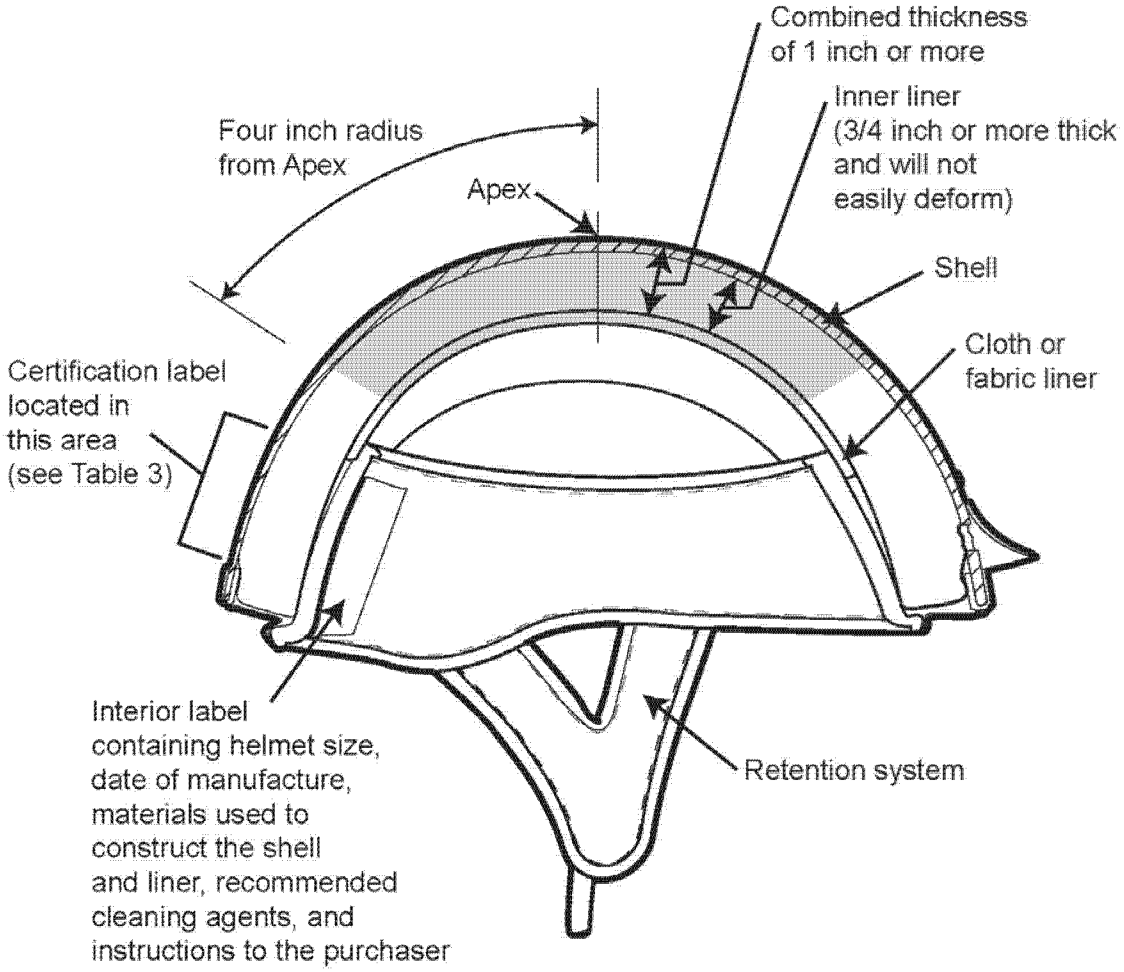

Figure 9. Preliminary screening guide.
(Exemplar certified motorcycle helmet)

TABLE 3—REQUIRED CERTIFICATION LABEL BASED ON HELMET MANUFACTURE DATE

Motorcycle helmet date of manufacture	Certification label shall contain the following information
Prior to May 13, 2013	DOT
On or after May 13, 2013	Mfr. Name and/or Brand Model Designation DOT FMVSS No. 218 CERTIFIED

Appendix B—Petition in Accordance With the Alternative Compliance Process for Motorcycle Helmets, Section 5 of FMVSS No. 218

S1. *Application.* This section establishes procedures for the submission and disposition of petitions filed by manufacturers of motorcycle helmets whose products do not meet the requirements of S5.1 and do meet the requirements of S5.2 through and including S5.7, who wish to certify their products in accordance with the alternative compliance process established in S5 of FMVSS No. 218.

S2. *Form of Petition.*

(a) Information shall be furnished to: Associate Administrator for Enforcement, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., West Building, Washington, DC 20590, Attention: Filing for 218 Motorcycle helmet S5 Alternative compliance Process.

(b) Be written entirely in the English language.

(c) Each submission shall consist of one set of information, all written information shall be on 8½ by 11-inch paper, visual information shall be provided in printed color photographs, and color videos.

(d) Petitions may be submitted by motorcycle helmet manufacturers.

(e) Set forth in full the data, photographs, videos, and other documentation supporting the petitioner's statements and claims required in S4 of this appendix.

(f) Test data shall be labeled with the appropriate units cited in the standard.

(g) Not request confidential treatment for the contents of the petition.

S3. *Contents of petition.*

The petitioner shall provide the following information—

(a) State the full name and address of the original equipment manufacturer (petitioner), the name and contact information for a point of contact to which the Agency can direct correspondence, the nature of the petitioning organization (individual, partnership, corporation, etc.) and the name of the State or country under the laws of which it is organized.

(b) Identify the motorcycle helmet for which the petition is being submitted. The motorcycle helmet must be identified by manufacturer's name in accordance with S5.6.1(a), precise model designation per S5.6.2(a)(4), and manufacturer's name and/or brand per S5.6.2(a)(5) of FMVSS No. 218. The helmet identification provided in the petition must correspond to the information found on the helmet and in the supporting documentation submitted with the petition.

(c) The petitioner shall provide evidence of current information on file to facilitate correspondence with NHTSA and procurement of test samples by NHTSA, as applicable, including, but not limited to, part 551 of this chapter, part 566 of this chapter, and compliance with other applicable legal requirements. Valid contact information must be made available. Submission of a petition in accordance with this appendix does not constitute submission of information with respect to any other regulation.

(d) Submissions shall be unique and specific to the motorcycle helmet for which a petition is being submitted in accordance with this appendix. The brand and precise model designation must refer to a unique design and fabrication process for a specific motorcycle helmet. The submission shall address every size that will be made available for sale. Information about the differences in each size that will be sold shall be completely described.

(e) The basis on which the manufacturer certifies the helmet must be explained and address all aspects of FMVSS No. 218 including data evaluating the helmet to all aspects of FMVSS No. 218. Test protocol(s), calibration records, test dates, information about the testing organization(s), photographs of test locations and test results, videos of the actual testing of the helmet, and any other relevant information must be fully documented.

(f) The manufacturer shall provide contact information for the independent testing organization(s) used to collect supporting data and a statement granting the Agency permission to discuss the testing contained in the petition with that testing organization.

(g) Photographs and other descriptive characteristics to adequately describe and identify the samples must be provided. Distinguishing features must be identified. Such photographic and descriptive material shall not be copyrighted, shall be of sufficient quality for reproduction, and may be reproduced by the Agency for purposes of disseminating information about the helmets listed in appendix C of this standard.

S4. *Processing of Petition.*

(a) NHTSA will process any petition that contains the information and supporting documentation specified by this section. If a petition fails to provide any of the information, NHTSA will not process the petition.

(b) The Associate Administrator seeks to review each submission and inform the manufacturer not later than 60 days after its receipt of the written submission, if the information is complete or acceptable. The Associate Administrator does not accept any submission that does not contain all of the information specified in this appendix, or that contains information suggesting that the design or manufacture of the motorcycle helmet which is the subject of the petition does not conform to all aspects of FMVSS 571.218, Motorcycle Helmets, excluding S5.1.

(c) At any time during the agency's consideration of a petition submitted under this part, the Associate Administrator for Enforcement may request the petitioner to submit additional supporting information and data. If such a request is not honored to the satisfaction of the agency, the petition will not receive further consideration until the information is submitted.

(d) If the submission is complete, valid, and provides adequate indication that the helmet can comply with S5.2–S5.7 of FMVSS No. 218, NHTSA will contact the manufacturer to obtain samples for testing. NTHSA will procure up to ten identical samples of each size motorcycle helmet for which the manufacturer is submitting a petition. The manufacturer must furnish the helmet positioning index for each size helmet at the time of procurement.

(e) NTHSA will conduct testing of the helmet, at its discretion, to some or all of the requirements, in accordance with the test procedures established in FMVSS No. 218. If any apparent non-compliances with FMVSS No. 218 are identified, the Associate Administrator shall reject the submission.

(f) The Associate Administrator seeks to test samples within six months of receipt. Samples that cannot be procured for any reason will not be tested and the petition will not be granted. Samples will not be returned to the manufacturer.

(g) If the submission is accepted, if NTHSA finds no discrepancy with administrative or performance information included in the submission, and if testing performed on behalf of NHTSA is acceptable, the complete submission and NHTSA's determination will be placed in the docket. Such motorcycle helmets identified by manufacturer, brand (if applicable), precise model designation, and size will be listed in appendix C of this standard.

(h) Products manufactured, sold, offered for sale, introduced in interstate commerce, or imported into the United States under the brand and precise model name for which a submission was made must be identical in design, manufacturing processes, materials, and sizes, to those submitted to NHTSA for review.

(i) The granting of the petition is valid only:

(1) As long as the design and manufacture of the helmet does not vary from the make, model, and size helmet for which the petition was submitted; and

(2) While the make, model, and size of helmet are listed in appendix C of this standard.

(j) The Associate Administrator terminates or modifies its determination if—

(1) Granting the petition is no longer consistent with the public interest and the objectives of the Act; or

(2) Subsequent to granting the petition, additional information or testing becomes available to indicate the helmet fails to comply with any requirement of the standard; or

(3) Subsequent to granting the petition, additional information or testing becomes available to indicate the helmet may fail to comply with any requirement of the standard and the responsible manufacturer is non-responsive or fails to comply with his obligations under the law; or

(4) Subsequent to granting the petition, additional information or testing becomes available to indicate the helmet poses an unreasonable risk to safety; or

(5) The petition was granted on the basis of false, fictitious, fraudulent, or misleading representations or information.

(k) The knowing and willful submission of false, fictitious or fraudulent information will subject the petitioner to the civil and criminal penalties of 18 U.S.C. 1001.

Appendix C—Motorcycle Helmets That Have Complied With the Alternative Compliance Process for Motorcycle Helmets, Section 5 of FMVSS No. 218 and Must Be Further Certified by the Manufacturer Before Being Manufactured, Sold, Offered for Sale, Introduced Into Interstate Commerce or Imported Into the United States

At the time of this notification, there are no motorcycle helmets that meet the alternative compliance process for S5.

Issued on May 12, 2015 in Washington, DC, under authority delegated in 49 CFR 1.95.

Daniel C. Smith,

Senior Associate Administrator for Vehicle Safety.

[FR Doc. 2015–11756 Filed 5–20–15; 8:45 am]

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Part V

Commodity Futures Trading Commission

Notice of Proposed Order and Request for Comment on an Application for an Exemptive Order From Southwest Power Pool, Inc. From Certain Provisions of the Commodity Exchange Act Pursuant to the Authority Provided in Section 4(c)(6) of the Act; Notice

COMMODITY FUTURES TRADING COMMISSION

Notice of Proposed Order and Request for Comment on an Application for an Exemptive Order From Southwest Power Pool, Inc. From Certain Provisions of the Commodity Exchange Act Pursuant to the Authority Provided in Section 4(c)(6) of the Act

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed order and request for comment.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'' or ''Commission'') is requesting comment on a proposed exemption issued in response to an application from Southwest Power Pool, Inc. to exempt certain Transmission Congestion Rights, Energy Transactions, and Operating Reserve Transactions from the provisions of the Commodity Exchange Act and Commission regulations.

DATES: Comments must be received on or before June 22, 2015.

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

- *CFTC Web site: http://comments.cftc.gov.* Follow the instructions for submitting comments through the Comments Online process on the Web site.
- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail, above.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Please submit your comments using only one of these methods.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the established procedures in 145.9 of the Commission's regulations, 17 CFR 145.9.

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of this action will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Robert Wasserman, Chief Counsel, 202–418–5092, *rwasserman@cftc.gov,* or Alicia Lewis, Special Counsel, 202–418–5862, *alewis@cftc.gov,* Division of Clearing and Risk; David P. Van Wagner, Chief Counsel, 202–418–5481, *dvanwagner@cftc.gov,* or Riva Spear Adriance, Senior Special Counsel, 201–418–5494, *radriance@cftc.gov,* Division of Market Oversight, in each case at the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

Overview

The Commission is requesting comment on a proposed exemption (the ''Proposed Exemption'') issued in response to an application (''Exemption Application'') [1] from Southwest Power Pool, Inc. (''SPP'' or ''Applicant'') to exempt certain Transmission Congestion Rights, Energy Transactions, and Operating Reserve Transactions (collectively, the ''Covered Transactions'') from the provisions of the Commodity Exchange Act (''CEA'' or ''Act'') [2] and Commission regulations. The Proposed Exemption would exempt contracts, agreements and transactions for the purchase or sale of the limited electric energy-related products that are specifically described within the Proposed Exemption from the provisions of the CEA and Commission regulations, with the exception of the Commission's general anti-fraud and anti-manipulation authority, and scienter-based prohibitions, under sections 2(a)(1)(B), 4(d), 4b, 4c(b), 4*o,* 4s(h)(1)(A), 4s(h)(4)(A), 6(c), 6(d), 6(e), 6c, 6d, 8, 9, and 13 of the Act, and any implementing regulations promulgated under these sections including, but not limited to, Commission regulations 23.410(a) and (b), 32.4 and part 180. To be eligible for the Proposed Exemption, the contract, agreement or transaction would be required to be offered or entered into in a market administered by SPP, pursuant to SPP's tariff (''Tariff''), for the purposes of allocating SPP's physical resources, and the Tariff would be required to have been approved or permitted to have taken effect by the Federal Energy Regulatory Commission (''FERC''). The exemption as proposed would extend to any person or class of persons entering into the Covered Transactions or rendering services with respect to the Covered Transactions, including offering the Covered Transactions or rendering advice with respect to the Covered Transactions. The contract, agreement or transaction would be required to be offered or entered into by persons who are ''appropriate persons,'' as defined in sections 4(c)(3)(A) through (J) of the Act,[3] ''eligible contract participants,'' as defined in section 1a(18) of the Act and Commission regulation 1.3(m),[4] or persons who are in the business of: (i) Generating, transmitting, or distributing electric energy, or (ii) providing electric energy services that are necessary to support the reliable operation of the transmission system. Finally, the exemption would be subject to other conditions set forth therein. Authority for issuing the exemption is found in section 4(c)(6) of the Act.[5]

The Commission seeks comment on the Exemption Application, the Proposed Exemption and related questions. A copy of the Exemption Application is available on the Commission's Web site at: *http://sirt.cftc.gov/sirt/sirt.aspx?Topic=CommissionOrdersandOtherActionsAD&Key=29485.*

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[1] In the Matter of the Application for an Exemptive Order Under Section 4(c) of the Commodity Exchange Act by Southwest Power Pool, Inc., Oct. 17, 2013, as amended Aug. 1, 2014.

[2] 7 U.S.C. 1 *et seq.*

[3] 7 U.S.C. 6(c)(3)(A)–(J).

[4] 7 U.S.C. 1a(18); 17 CFR 1.3(m). *See also,* ''Further Definition of 'Swap Dealer,' 'Security-Based Swap Dealer,' 'Major Swap Participant,' 'Major Security-Based Swap Participant,' and 'Eligible Contract Participant,'" 77 FR 30596, May 23, 2012.

[5] 7 U.S.C. 6(c)(6).

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I. The Exemption Application

On October 17, 2013, SPP filed an Exemption Application [6] with the Commission requesting that the Commission exercise its authority under section 4(c)(6) of the CEA [7] and section 712(f) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'') [8] to exempt certain contracts, agreements and transactions for the purchase or sale of specified electric energy products, that are offered pursuant to a FERC-approved Tariff, from most provisions of the Act.[9] SPP is a Regional Transmission Organization (''RTO'') subject to regulation by FERC. As described in greater detail below, FERC encouraged the formation of RTOs to administer the electric energy transmission grid on a regional basis.[10]

SPP specifically requests that the Commission exempt from most provisions of the CEA certain ''transmission congestion rights,'' ''energy transactions,'' and ''operating reserve transactions,'' as those terms are defined in the Exemption Application, if such transactions are offered or entered into pursuant to a Tariff under which SPP operates that has been approved by FERC, as well as any persons (including SPP, its members and its market participants) offering, entering into, rendering advice, or rendering other services with respect to such transactions.[11] SPP asserts that each of the transactions for which an exemption is requested is: (a) Subject to a long-standing, comprehensive regulatory framework for the offer and sale of such transactions established by FERC, and (b) part of, and inextricably linked to, SPP's delivery of electric energy and the organized wholesale electric energy markets that are subject to regulation and oversight by FERC.[12] SPP expressly excludes from the Exemption Application any request for relief from the Commission's general anti-fraud and anti-manipulation authority, and scienter-based prohibitions, under sections 2(a)(1)(B), 4(d), 4b, 4c(b), 4*o,* 4s(h)(1)(A), 4s(h)(4)(A), 6(c), 6(d), 6(e), 6c, 6d, 8, 9, and 13 of the Act, and any implementing regulations promulgated under these sections including, but not limited to, Commission regulations 23.410(a) and (b), 32.4 and part 180,[13] and such provisions explicitly have been carved out of the Proposed Exemption. SPP asserts that it is seeking the requested exemption in order to provide greater legal certainty with respect to the regulatory requirements that apply to the transactions that are the subject of the Exemption Application.[14]

As discussed further below, the relief that SPP is requesting is substantially similar to the relief the Commission granted other RTOs and Independent System Operators (''ISOs'') in April of 2013.[15]

II. Statutory Background [16]

On July 21, 2010, President Obama signed the Dodd-Frank Act. Title VII of the Dodd-Frank Act amended the CEA [17] and altered the scope of the Commission's exclusive jurisdiction.[18] In particular, it expanded the Commission's exclusive jurisdiction, which had included futures traded, executed, and cleared on CFTC-regulated exchanges and clearinghouses, to also cover swaps traded, executed, or cleared on CFTC-regulated exchanges or clearinghouses.[19] As a result, the Commission's exclusive jurisdiction now includes swaps as well as futures.[20]

The Dodd-Frank Act also added a savings clause that addresses the roles of the Commission, FERC, and state regulatory authorities as they relate to certain agreements, contracts, or transactions traded pursuant to the tariff or rate schedule of an RTO that has been approved by FERC or the state regulatory authority.[21] Toward that end, paragraph (I) of CEA section 2(a)(1) repeats the Commission's exclusive jurisdiction, clarifies that the Commission retains its authorities over agreements, contracts or transactions traded pursuant to FERC- or state-approved tariff or rate schedules,[22] and explains that the FERC and state agencies preserve their existing authorities over agreements, contracts, or transactions ''entered into pursuant to a tariff or rate schedule approved by [FERC] or a State regulatory agency,'' that are ''(I) not 'executed, traded, or cleared on' an entity or trading facility subject to registration'' or ''(II) executed, traded, or cleared on a registered entity or trading facility owned or operated by'' an RTO.[23]

The Dodd-Frank Act granted the Commission specific powers to exempt certain contracts, agreements, or transactions from duties otherwise required by statute or Commission regulation by adding, as relevant here, new section 4(c)(6)(A) to the CEA, providing for exemptions for certain transactions entered into pursuant to a tariff or rate schedule approved or permitted to take effect by FERC.

The Commission must act ''in accordance with'' sections 4(c)(1) and (2) of the CEA, when issuing an exemption under section 4(c)(6). Section 4(c)(1) grants the Commission the authority to exempt any agreement, contract, or transaction or class of transactions, including swaps, from certain provisions of the CEA, in order to ''promote responsible economic or financial innovation and fair competition.'' [24] Section 4(c)(2) [25] of the Act further provides that the Commission may not grant exemptive relief unless it determines that: (1) The exemption would be consistent with the public interest and the purposes of the CEA; (2) the transaction will be entered into solely between ''appropriate persons,'' as that term is defined in section 4(c); [26] and (3) the exemption

[6] SPP filed an amended Exemption Application on August 1, 2014. Citations herein to ''Exemption Application'' are to the amended Exemption Application.

[7] 7 U.S.C. 6(c)(6).

[8] *See* Dodd-Frank Act, Public Law 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at *http://www.cftc.gov./LawRegulation/OTCDERIVATIVES/index.htm.*

[9] *See* Exemption Application at 1.

[10] *See id.* at 2 n. 7.

[11] *See id.* at 11–15.

[12] *See id.* at 17.

[13] *See id.* at 1.

[14] *See id.* at 11.

[15] Final Order in Response to a Petition from Certain Independent System Operators and Regional Transmission Organizations to Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission or the Public Utility Commission of Texas From Certain Provisions of the Commodity Exchange Act Pursuant to the Authority Provided in the Act, 78 FR 19880, April 2, 2013 (''RTO–ISO Order''); *see also infra* section III.C.

[16] For a fuller discussion, *see* Proposed Order and Request for Comment on a Petition from Certain Independent System Operators and Regional Transmission Organizations to Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission or the Public Utility Commission of Texas From Certain Provisions of the Commodity Exchange Act, 77 FR 52138, 52139–52140, Aug. 28, 2012.

[17] 7 U.S.C. 1 *et seq.*

[18] Section 722(e) of the Dodd Frank Act.

[19] *See* 7 U.S.C. 2(a)(1)(A). The Dodd-Frank Act also added section 2(h)(1)(A), which requires swaps to be cleared if required to be cleared and not subject to a clearing exception or exemption. *See* 7 U.S.C. 2(h)(1)(A).

[20] *See id.*

[21] *See* 7 U.S.C. 2(a)(1)(I).

[22] *See* 7 U.S.C. 2(a)(1)(I)(i) and (ii).

[23] 7 U.S.C. 2(a)(1)(I)(i)(II).

[24] 7 U.S.C. 6(c)(1).

[25] 7 U.S.C. 6(c)(2).

[26] Section 4(c)(3) of the CEA further outlines who may constitute an appropriate person for the purpose of a particular 4(c) exemption and

Continued

will not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory responsibilities under the CEA.[27] In enacting section 4(c), Congress noted that the purpose of the provision is to give the Commission a means of providing certainty and stability to existing and emerging markets so that financial innovation and market development can proceed in an effective and competitive manner.[28]

III. Background

A. Introduction

SPP is subject to regulation by FERC.[29] SPP asserts that the regulatory framework administered by FERC, as applicable to its RTO market, would apply to the transactions for which an exemption has been requested.[30]

B. FERC

In 1920, Congress established the Federal Power Commission (''FPC'').[31] The FPC was reorganized into FERC in 1977.[32] FERC is an independent agency that regulates the interstate transmission of electric energy, natural gas and oil.[33] FERC's mission is to ''assist consumers in obtaining reliable, efficient and sustainable energy services at a reasonable cost through appropriate regulatory and market means.'' [34] This mission is accomplished by pursuing two primary goals. First, FERC seeks to ensure that rates, terms and conditions for wholesale transactions and transmission of electric energy and natural gas are just, reasonable and not unduly discriminatory or preferential.[35] Second, FERC seeks to promote the development of safe, reliable and efficient energy infrastructure that serves the public interest.[36] Both Congress and FERC, through a series of legislative acts and FERC orders, have sought to establish a system whereby wholesale electric energy generation and transmission in the United States is governed by two guiding principles: Regulation with respect to wholesale electric energy transmission,[37] and competition when dealing with wholesale generation.[38]

In 1996, FERC issued FERC Order 888, which promoted competition in the generation market by ensuring fair access and market treatment by transmission customers.[39] Specifically, FERC Order 888 sought to ''remedy both existing and future undue discrimination in the industry and realize the significant customer benefits that will come with open access.'' [40] FERC Order 888 encouraged the formation of ISOs as a potentially effective means for accomplishing non-discriminatory open access to the transmission of electric energy.[41]

In addition, FERC has issued orders that address areas such as increased RTO participation by transmission utilities, increased use of long-term firm transmission rights, increased investment in transmission infrastructure, reduced transmission congestion, and the use of demand-response.[42] According to SPP, the roles, responsibilities, and services of ISOs and RTOs under FERC's Order 888, Order 2000, and other applicable FERC orders and requirements, are substantially similar.[43] The end result of this series of FERC orders is that a regulatory system has been established that requires RTOs and ISOs to comply with numerous FERC rules designed to improve both the reliability of the physical operations of electric transmission systems as well as the competitiveness of electric energy markets. The requirements imposed by the various FERC orders seek to ensure that FERC is able to accomplish its two main goals; ensuring that rates, terms and conditions are just, reasonable and not unduly discriminatory or preferential, while promoting the development of safe, reliable and efficient energy infrastructure that serves the public interest.

C. Prior Commission Order

On April 2, 2013, the Commission issued the RTO–ISO Order which exempts specified transactions of particular RTOs and ISOs from certain provisions of the CEA and Commission regulations.[44] Under the RTO–ISO Order, a transaction may be covered by the scope of the RTO–ISO Order so long as the transaction falls within the definitions of ''Financial Transmission Rights,'' ''Energy Transactions,'' ''Forward Capacity Transactions,'' or ''Reserve or Regulation Transactions,'' [45] is offered or sold in a market administered by one of the petitioning RTOs or ISOs [46] pursuant to a tariff, rate schedule, or protocol that has been approved or permitted to take effect by FERC or the Public Utility Commission of Texas, and complies with all other

includes, as relevant to this Proposed Exemption: (a) any person that qualifies for one of ten defined categories of appropriate persons; or (b) such other persons that the Commission determines to be appropriate in light of their financial or other qualifications, or the applicability of appropriate regulatory protections. 7 U.S.C. 6(c)(3).

[27] 7 U.S.C. 6(c)(2).

[28] H.R. Rep. No. 102–978, 102d Cong. 2d Sess. at 82–83 (1992).

[29] *See* Exemption Application at 2–3.

[30] *See id.* at 17.

[31] Federal Power Act, 16 U.S.C. 791a *et se.*

[32] The Department of Energy Organization Act, Public Law 95–91, section 401, 91 Stat. 565, 582 (1977) (codified as amended at 42 U.S.C. 7171 (1988)).

[33] *See* 42 U.S.C. 7172.

[34] *See* FERC Strategic Plan for Fiscal Years 2009–2014, 3 (Feb. 2012), *available at http://www.ferc.gov/about/strat-docs/FY-09-14-strat-plan-print.pdf.*

[35] *Id.*

[36] *Id.*

[37] *See* 16 U.S.C. 796(24) (stating that '' 'wholesale transmission services' means the transmission of electric energy sold, or to be sold, at wholesale in interstate commerce.'').

[38] *See generally,* Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, 61 FR 21540, Apr. 24, 1996 (''FERC Order 888''). *See also* FERC's discussion of electric competition, *available at http://www.ferc.gov/industries/electric/indus-act/competition.asp* (stating that ''[FERC]'s core responsibility is to 'guard the consumer from exploitation by non-competitive electric power companies.' '').

[39] *See* FERC Order 888.

[40] FERC Order 888 at 21541.

[41] FERC Order 888 at 21594. Under the old system, one party could own both generation and transmission resources, giving preferential treatment to its own and affiliated entities. *See generally,* FERC Order 888.

[42] *See, e.g.,* FERC Order No. 2000, 65 FR 809 (2000) (''FERC Order 2000'') (encouraging transmission utilities to join RTOs); FERC Order No. 681, 71 FR 43294 (2006), FERC Stats. & Regs. ¶ 31,222 (2006), *order on reh'g,* Order No. 679–A, 72 FR 1152, Jan. 10, 2007, FERC Stats. & Regs. ¶ 31,236, *order on reh'g,* 119 FERC ¶ 61,062 (2007) (finalizing guidelines for ISOs to follow in developing proposals to provide long-term firm transmission rights in organized electric energy markets); FERC Order No. 679, 71 FR 43294 (2006) (finalizing rules to increase investment in the nation's aging transmission infrastructure, and to promote electric energy reliability and lower costs for consumers, by reducing transmission congestion); FERC Order No. 890, 72 FR 12266 (2007) (modifying existing rules to promote the nondiscriminatory and just operation of transmission systems); FERC Order No. 719–A, 74 FR 37776 (2009) (''FERC Order 719'') (implementing the use of demand-response (the process of requiring electric energy consumers to reduce their electric energy use during times of heightened demand), and encouraging the use of long-term electric energy contracts and strengthening the role of market monitors).

[43] *See* Exemption Application at 2–3 n. 7.

[44] *See* RTO–ISO Order. The RTO–ISO Order does not, however, provide an exemption from sections 2(a)(1)(B), 4(d), 4b, 4c(b), 4o, 4s(h)(1)(A), 4s(h)(4)(A), 6(c), 6(d), 6(e), 6c, 6d, 8, 9, and 13 of the Act, and any implementing regulations promulgated under these sections including, but not limited to, Commission regulations 23.410(a) and (b), 32.4 and part 180.

[45] While the RTO–ISO Order included ''Forward Capacity Transactions'' in the scope of transactions for which the exemption was granted, the Commission notes that SPP's markets do not include such transactions. *See* Exemption Application at 11 n. 50.

[46] SPP was not one of the RTOs or ISOs that petitioned for the RTO–ISO Order.

enumerated terms and conditions in the RTO–ISO Order.[47]

In the RTO–ISO Order, the Commission excepted certain CEA provisions pertaining to fraud and manipulation, and scienter-based prohibitions, from the exemption.[48] Neither the proposed nor the final RTO–ISO Order discussed, referred to, or mentioned CEA section 22,[49] which provides for private rights of action for damages against persons who violate the CEA, or persons who willfully aid, abet, counsel, induce, or procure the commission of a violation of the Act.

By enacting CEA section 22, Congress provided private rights of action as a means for addressing violations of the Act alternative to Commission enforcement action. It would be highly unusual for the Commission to reserve to itself the power to pursue claims for fraud and manipulation—a power that includes the option of seeking restitution for persons who have sustained losses from such violations or a disgorgement of gains received in connection with such violations[50]—while at the same time denying private rights of action and damages remedies for the same violations. Moreover, if the Commission intended to take such a differentiated approach (*i.e.,* to limit the rights of private persons to bring such claims while reserving to itself the right to bring the same claims), the RTO–ISO Order would have included a discussion or analysis of the reasons therefore. Thus, the Commission did not intend to create such a limitation, and believes that the RTO–ISO Order does not prevent private claims for fraud or manipulation under the Act. For the avoidance of doubt, the Commission notes that this view equally applies to SPP's Proposed Exemption. Therefore, the Proposed Exemption also would not preclude such private claims.

IV. Scope of the Exemption

A. Transactions Subject to the Exemption

After due consideration, the Commission proposes to exempt certain Transmission Congestion Rights (''TCRs''), Energy Transactions, and Operating Reserve Transactions, each as defined below, pursuant to section 4(c)(6) of the Act.[51]

A TCR[52] is a transaction, however named, that entitles one party to receive, and obligates another party to pay, an amount based solely on the difference between the price for electric energy, established on an electric energy market administered by SPP, at a specified source (*i.e.,* where electric energy is deemed injected into SPP's grid) and a specified sink (*i.e.,* where electric energy is deemed withdrawn from SPP's grid).[53] As more fully described below, the Proposed Exemption applies only to TCRs where each TCR is linked to, and the aggregate volume of TCRs for any period of time is limited by, the physical capability (after accounting for counterflow) of SPP's electric energy transmission system for such period; SPP serves as the market administrator for the market on which the TCRs are transacted; each party to the transaction is a market participant of SPP (or is SPP itself) and the transaction is executed on a market administered by SPP; and the transaction does not require any party to make or take physical delivery of electric energy.[54]

''Energy Transactions'' are transactions in the SPP ''Day-Ahead Market'' or ''Real-Time Balancing Market,'' as those terms are defined in the Proposed Exemption, for the purchase or sale of a specified quantity of electric energy at a specified location (including virtual bids and offers) where the price of electric energy is established at the time the transaction is executed.[55] Performance occurs in the Real-Time Balancing Market by either the physical delivery or receipt of the specified electric energy or a cash payment or receipt at the price established in the Day-Ahead Market or Real-Time Balancing Market; and the aggregate cleared volume of both physical and cash-settled energy transactions for any period of time is limited by the physical capability of the electric energy transmission system operated by SPP for that period of time.[56]

''Operating Reserve Transactions'' allow SPP to purchase through auction or otherwise as permitted in its Tariff, for the benefit of load serving entities (''LSEs'') and resources, the right, during a period of time specified in SPP's Tariff, to require the seller to operate electric facilities in a physical state such that the facilities can increase or decrease the rate of injection or withdrawal of a specified quantity of electric energy into or from the electric energy transmission system operated by SPP with a Reserve Transaction (meaning physical performance by the seller's facilities within a response interval specified in SPP's Tariff) or an Area Control Error Regulation Transaction (meaning prompt physical performance by the seller's facilities as specified in SPP's Tariff).[57] In

[47] Such terms and conditions include a requirement that, to be eligible for the exemption, the transactions must be entered into by persons who are: (1) ''appropriate persons,'' as defined in section 4(c)(3)(A) through (J) of the CEA; (2) ''eligible contract participants,'' as defined in section 1a(18) of the CEA and in Commission regulation 1.3(m); or (3) in the business of (i) generating, transmitting, or distributing electric energy, or (ii) providing electric energy services that are necessary to support the reliable operation of the transmission system (collectively, ''Appropriate Persons Requirement''). RTO–ISO Order at 19913.

[48] *See supra* note 44.

[49] *See* 7 U.S.C. 25.

[50] *See* 7 U.S.C. 13a–1(d)(3).

[51] SPP represents that the terms ''Transmission Congestion Right,'' ''Energy Transactions,'' and ''Operating Reserve Transactions'' are SPP's equivalent of the following terms set forth in the RTO–ISO Order: ''Financial Transmission Right,'' ''Energy Transactions,'' and ''Reserve or Regulation Transactions,'' respectively. SPP also avers that its transactions are defined in a manner consistent with the terms set forth in the RTO–ISO Order. Exemption Application at 12–15. In addition, SPP states that these classes of contracts, agreements, and transactions for the purchase and sale of a product or service that is directly related to, and a logical outgrowth of, any of SPP's core functions as an RTO and all services related thereto comprise the Covered Transactions. *Id.* at 15.

[52] SPP's markets will also include Auction Revenue Rights (''ARRs''). ARRs are allocated to transmission customers based on historical network load or transmission service reservations (or equivalent service taken under a grandfathered agreement between a SPP transmission owner and a customer). ARRs are granted exclusively to transmission service customers (*i.e.,* not to other market participants or speculators) based on their transmission service (or grandfathered service) and are subject to SPP's simultaneous feasibility analysis of the capability of the SPP Transmission System. ARRs are not traded in SPP's market; instead, ARRs entitle the holder to a share of revenues from SPP-administered transmission congestion right auctions or may be ''self-converted'' at the customer's election into a transmission congestion right. Exemption Application at 12 n. 54.

[53] Exemption Application at 12. SPP represents that the definition of TCR is similar to the definition of financial transmission right (''FTR'') in the RTO–ISO Order. However, the Commission notes that the definition of TCR does not include TCR options whereas the RTO–ISO Order's definition of FTR includes such rights in the form of options. *Id.; cf.* RTO–ISO Order at 19913 (defining the term FTR to include FTRs and FTRs in the form of options).

[54] *See* Exemption Application at 12–13. As noted above, the definition of TCR is similar to the FTR definition used by the Commission in the RTO–ISO Order. *See* RTO–ISO Order at 19912.

[55] *See* Exemption Application at 13. The definition of Energy Transactions is similar to the definition used by the Commission in the RTO–ISO Order. *See* RTO–ISO Order at 19913; *see also infra* section VI.

[56] *See* Exemption Application at 13–14; *see also infra* section VI.

[57] *See* Exemption Application at 14–15. The RTO–ISO Order refers to ''Reserve or Regulation Transactions.'' SPP's markets refer to such

Continued

consideration for such delivery, or withholding of delivery, the seller receives compensation of the type specified in section VI below.[58] In all cases, the value, quantity and specifications of such Transactions for SPP for any period of time are limited to the physical capability of the electric transmission system operated by SPP for that period of time.[59] These Transactions are typically used to address unforeseen fluctuations in the level of electric energy demand experienced on the electric transmission system.

B. Conditions

The Proposed Exemption would be subject to certain conditions that are consistent with the RTO–ISO Order. First, all parties to the agreements, contracts or transactions that are covered by the Proposed Exemption must be ''appropriate persons,'' as such term is defined in sections 4(c)(3)(A) through (J) of the Act, ''eligible contract participants,'' as such term is defined in section 1a(18)(A) of the Act and in Commission regulation 1.3(m),[60] or persons who are in the business of: (i) Generating, transmitting, or distributing electric energy, or (ii) providing electric energy services that are necessary to support the reliable operation of the transmission system.[61]

Second, the agreements, contracts or transactions that are covered by the Proposed Exemption must be offered or sold pursuant to SPP's Tariff, which has been approved or permitted to take effect by FERC.

Third, neither SPP's Tariff nor other governing documents may include any requirement that SPP notify a member prior to providing information to the Commission in response to a subpoena or other request for information or documentation.

Finally, information-sharing arrangements that are satisfactory to the Commission between the Commission and FERC must remain in full force and effect.[62] This condition also requires that SPP comply with the Commission's requests on an as-needed basis for related transactional and positional market data.

C. Additional Limitations

As discussed above, the Commission proposes to exempt the Transactions pursuant to section 4(c)(6) of the Act based upon representations made in the Exemption Application and in the supporting materials provided by SPP and its counsel, and any material change or omission in the facts and circumstances that alter the grounds for the Proposed Exemption might require the Commission to reconsider its finding that the exemption is appropriate and/or in the public interest and consistent with the purposes of the CEA (these limitations are, again, consistent with the RTO–ISO Order).[63] As represented in the Exemption Application, the exemption requested by SPP relates to Covered Transactions that are primarily entered into by commercial participants that are in the business of generating, transmitting and distributing electric energy.[64] In addition, the Commission notes that it appears that SPP was established for the purpose of providing affordable, reliable electric energy to consumers within its geographic region.[65] Critically, these Covered Transactions are an essential means, designed by FERC as an integral part of its statutory responsibilities, to enable the reliable delivery of affordable electric energy.[66] The Commission also notes that each of the Covered Transactions taking place on SPP's markets is monitored by both a market administrator (SPP) and an independent market monitor (''SPP Market Monitor'') responsible to FERC.[67] Finally, as discussed above, each Covered Transaction is directly tied to the physical capabilities of SPP's electric energy grid.[68] As more fully described below,[69] and on the basis of the aforementioned representations, the Commission proposes to find that the Proposed Exemption for the Covered Transactions would be in the public interest. To be clear, however, financial transactions that are not tied to the allocation of the physical capabilities of an electric transmission grid would not be suitable for exemption because such activity would not be inextricably linked to the physical delivery of electric energy.

V. Section 4(c) Analysis

A. Overview of CEA Section 4(c)

1. Sections 4(c)(6)(A) and (B)

The Dodd-Frank Act amended CEA section 4(c) to add sections 4(c)(6)(A) and (B), which provide for exemptions for certain transactions entered into: (a) Pursuant to a tariff or rate schedule approved or permitted to take effect by FERC, or (b) pursuant to a tariff or rate schedule establishing rates or charges for, or protocols governing, the sale of electric energy approved or permitted to take effect by the regulatory authority of the State or municipality having jurisdiction to regulate rates and charges for the sale of electric energy within the State or municipality, as eligible for exemption pursuant to the Commission's 4(c) exemptive authority.[70] Indeed, section 4(c)(6) provides that ''[i]f the Commission determines that the exemption would be consistent with the public interest and the purposes of this chapter, the Commission *shall''* issue such an exemption.[71] However, any exemption considered under section 4(c)(6)(A) and/or (B) must be done ''in accordance with [CEA section 4(c)(1) and (2)].'' [72]

transactions collectively as ''Operating Reserve.'' *See* RTO–ISO Order at 19913–14. *See also infra* section VI.

[58] *See* Exemption Application at 14–15; *see also infra* section VI.

[59] *See id.; see also* RTO–ISO Order at 19914.

[60] That is, the Commission is proposing to use its authority pursuant to CEA section 4(c)(3)(K) to include eligible contract participants as appropriate persons for the purposes of this Order. *See infra* note 75 and accompanying text; *see also* 7 U.S.C. 1a(18) and ''Further Definition of 'Swap Dealer,' 'Security-Based Swap Dealer,' 'Major Swap Participant,' 'Major Security-Based Swap Participant,' and 'Eligible Contract Participant,' '' 77 FR 30596, May 23, 2012.

[61] Consistent with the RTO–ISO Order, the Commission is also proposing to use its authority pursuant to CEA section 4(c)(3)(K) to include persons who are in the business of: (i) Generating, transmitting, or distributing electric energy, or (ii) providing electric energy services that are necessary to support the reliable operation of the transmission system. *See* RTO–ISO Order at 19899, 19913.

[62] As discussed in section VI.A. below, the CFTC and FERC signed a Memorandum of Understanding (''MOU'') on January 2, 2014, which addresses the sharing of information in connection with market surveillance and investigations into potential market manipulation, fraud or abuse. The MOU is *available at http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/cftcfercismou2014.pdf.*

[63] *See* RTO–ISO Order at 19914–15.

[64] *See* Exemption Application at 17.

[65] *See id.* at 2, 17.

[66] *See generally,* FERC Order 888; FERC Order 2000; 18 CFR 35.34(k)(2); *see also* Exemption Application at 17.

[67] Exemption Application at 17.

[68] *See id.* at 12–15.

[69] *See* discussions *infra* sections V.B., V.D., and V.E.

[70] The exemption language in section 4(c)(6) states: If the Commission determines that the exemption would be consistent with the public interest and the purposes of this Act, the Commission shall, in accordance with paragraphs (1) and (2), exempt from the requirements of this Act an agreement, contract, or transaction that is entered into—(A) pursuant to a tariff or rate schedule approved or permitted to take effect by the Federal Energy Regulatory Commission; (B)pursuant to a tariff or rate schedule establishing rates or charges for, or protocols governing, the sale of electric energy approved or permitted to take effect by the regulatory authority of the State or municipality having jurisdiction to regulate rates and charges for the sale of electric energy within the State or municipality; or (C) between entities described in section 201(f) of the Federal Power Act (16 U.S.C. 824(f)).

[71] *Id.* (emphasis added).

[72] CEA section 4(c)(6) explicitly directs the Commission to consider any exemption proposed under 4(c)(6) ''in accordance with [CEA section 4(c)(1) and (2)].''

2. Section 4(c)(1)

CEA section 4(c)(1) requires that the Commission act ''by rule, regulation or order, after notice and opportunity for hearing.'' It also provides that the Commission may act ''either unconditionally or on stated terms or conditions or for stated periods and either retroactively or prospectively or both'' and that the Commission may provide exemption from any provisions of the CEA except subparagraphs (C)(ii) and (D) of section 2(a)(1).

3. Section 4(c)(2)

CEA section 4(c)(2) requires the Commission to determine that: To the extent an exemption provides relief from any of the requirements of CEA section 4(a), the requirement should not be applied to the agreement, contract or transaction; the exempted agreement, contract, or transactions will be entered into solely between appropriate persons;[73] and the exemption will not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under the CEA.[74]

4. Section 4(c)(3)

CEA section 4(c)(3) outlines who may constitute an appropriate person for the purpose of a 4(c) exemption, including as relevant to this Proposed Exemption: (a) Any person that fits in one of ten defined categories of appropriate persons; or (b) such other persons that the Commission determines to be appropriate in light of their financial or other qualifications, or the applicability of appropriate regulatory protections.[75]

B. Proposed CEA Section 4(c) Determinations

In connection with the Proposed Exemption, the Commission has considered the request to exempt the Covered Transaction from most provisions of the Act, and proposes to determine that: (i) The Proposed Exemption is consistent with the public interest and the purposes of the CEA; (ii) CEA section 4(a) should not apply to the Covered Transactions or entities eligible for the Proposed Exemption, (iii) the persons eligible to rely on the Proposed Exemption are appropriate persons pursuant to CEA section 4(c)(3); and (iv) the Proposed Exemption will not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under the CEA.

1. Consistent With the Public Interest and the Purposes of the CEA

As required by CEA section 4(c)(2)(A), as well as section 4(c)(6), the Commission proposes to determine that the Proposed Exemption is consistent with the public interest and the purposes of the CEA. Section 3(a) of the CEA provides that transactions subject to the CEA affect the national public interest by providing a means for managing and assuming price risk, discovering prices, or disseminating pricing information through trading in liquid, fair and financially secure trading facilities.[76] Section 3(b) of the CEA identifies the purposes of the CEA:

> It is the purpose of this Act to serve the public interests described in subsection (a) through a system of effective self-regulation of trading facilities, clearing systems, market participants and market professionals under the oversight of the Commission. To foster these public interests, it is further the purpose of this Act to deter and prevent price manipulation or any other disruptions to market integrity; to ensure the financial integrity of all transactions subject to this Act and the avoidance of systemic risk; to protect all market participants from fraudulent or other abusive sales practices and misuses of customer assets; and to promote responsible innovation and fair competition among boards of trade, other markets and market participants.[77]

SPP asserts that the Proposed Exemption would be consistent with the public interest and purposes of the CEA,[78] stating generally that: (a) The Covered Transactions have been, and are, subject to a long-standing, comprehensive regulatory framework for the offer and sale of the Transactions established by FERC; and (b) the Covered Transactions administered by SPP are part of, and inextricably linked to, the organized wholesale electric energy markets that are subject to FERC regulation and oversight.[79] For example, SPP explains that FERC Order 2000 (which, along with FERC Order 888, encouraged the formation of RTOs and ISOs to operate the electronic transmission grid and to create organized wholesale electric markets) requires an RTO to demonstrate that it has four minimum characteristics: (1) Independence from any market participant; (2) a scope and regional configuration which enables the RTO to maintain reliability and effectively perform its required functions; (3) operational authority for its activities, including being the security coordinator for the facilities that it controls; and (4) short-term reliability.[80] In addition, SPP states that an RTO must demonstrate to FERC that it performs certain self-regulatory and/or market monitoring functions.[81] SPP also represents that it

[73] *See* CEA 4(c)(2)(B)(i) and the discussion of CEA section 4(c)(3) below.

[74] CEA section 4(c)(2)(A) also requires that the exemption would be consistent with the public interest and the purposes of the CEA, but that requirement duplicates the requirement of section 4(c)(6).

[75] Section 4(c)(3), 7 U.S.C. 6(c)(3), provides that the term ''appropriate person'' shall be limited to the following persons or classes thereof: (A) A bank or trust company (acting in an individual or fiduciary capacity); (B) A savings association; (C) An insurance company; (D) An investment company subject to regulation under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*); (E) A commodity pool formed or operated by a person subject to regulation under this Act; (F) A corporation, partnership, proprietorship, organization, trust, or other business entity with a net worth exceeding $1,000,000 or total assets exceeding $5,000,000, or the obligations of which under the agreement, contract or transaction are guaranteed or otherwise supported by a letter of credit or keepwell, support, or other agreement by any such entity or by an entity referred to in subparagraph (A), (B), (C), (H), (I), or (K) of this paragraph; (G) An employee benefit plan with assets exceeding $1,000,000, or whose investment decisions are made by a bank, trust company, insurance company, investment adviser registered under the Investment Advisers Act of 1940 (15 U.S.C. 80a–1 *et seq.*), or a commodity trading advisor subject to regulation under this Act; (H) Any governmental entity (including the United States, any state, 4–1 or any foreign government) or political subdivision thereof, or any multinational or supranational entity or any instrumentality, agency, or department of any of the foregoing; (I) A broker-dealer subject to regulation under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) acting on its own behalf or on behalf of another appropriate person; (J) A futures commission merchant, floor broker, or floor trader subject to regulation under this Act acting on its own behalf or on behalf of another appropriate person; (K) Such other persons that the Commission determines to be appropriate in light of their financial or other qualifications, or the applicability of appropriate regulatory protections.

[76] 7 U.S.C. 5(a).

[77] 7 U.S.C. 5(b).

[78] *See* Exemption Application at 17.

[79] *See id.*

[80] *See* Exemption Application at 18; 18 CFR 35.34(j).

[81] SPP states that the Covered Transactions will take place on markets that are monitored by both a market administrator (SPP) and an independent market monitor (the ''SPP Market Monitor''). *See* Exemption Application at 17. SPP also states that it ''must employ a transmission pricing system that promotes efficient use and expansion of transmission and generation facilities; develop and implement procedures to address parallel path flow issues within its region and with other regions; serve as a provider of last resort of all ancillary services required by FERC Order No. 888 including ensuring that its transmission customers have access to a Real-Time balancing market; be the single OASIS (Open-Access Same-Time Information System) site administrator for all transmission facilities under its control and independently calculate Total Transmission Capacity and Available Transmission Capability; provide reliable, efficient, and not unduly discriminatory transmission service, it must provide for objective monitoring of markets it operates or administers to identify market design flaws, market power abuses and opportunities for efficiency improvements; be responsible for planning, and for directing or arranging, necessary transmission expansions, additions, and upgrades; and ensure the integration

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is ''responsible for ensur[ing] the development and operation of market mechanisms to manage transmission congestion'' [82] and to establish ''market mechanisms [that] must accommodate broad participation by all market participants, and must provide all transmission customers with efficient price signals that show the consequences of their transmission usage decisions.'' [83]

SPP also explains that the Covered Transactions are entered into by commercial participants that are in the business of generating, transmitting, and distributing electric energy,[84] and that SPP was established for the purpose of providing affordable, reliable electric energy to consumers within their geographic region.[85] Furthermore, the Covered Transactions that take place on SPP's markets are overseen by a market monitoring function, required by FERC to identify manipulation of electric energy on SPP's markets.[86]

Fundamental to the Commission's ''public interest'' and ''purposes of the [Act]'' analysis is the fact that the Covered Transactions are inextricably tied to SPP's physical delivery of electric energy, as represented in the Exemption Application.[87] Another important factor is that the Proposed Exemption is explicitly limited to Covered Transactions taking place on markets that are monitored by the SPP Market Monitor, SPP, or both, and FERC. In contrast, an exemption for transactions that are not so monitored, or not related to the physical capacity of an electric transmission grid, or not directly linked to the physical generation and transmission of electric energy, or not limited to appropriate persons,[88] is unlikely to be in the public interest or consistent with the purposes of the CEA and would be outside the scope of this exemption.

Finally, and as discussed in detail below, the extent to which the Proposed Exemption is consistent with the public interest and the purposes of the Act can, in major part, be assessed by the extent to which the Tariff and activities of SPP, and supervision by FERC, are congruent with, and sufficiently accomplish, the regulatory objectives of the relevant core principles (''Core Principles'') set forth in the CEA for derivatives clearing organizations (''DCOs'') and swap execution facilities (''SEFs''). Specifically, ensuring the financial integrity of the Covered Transactions and the avoidance of systemic risk, as well as protection from the misuse of participant assets, are addressed by the core principles for DCOs. Providing a means for managing or assuming price risk and discovering prices, as well as prevention of price manipulation and other disruptions to market integrity, are addressed by the core principles for SEFs. Deterrence of price manipulation (or other disruptions to market integrity) and protection of market participants from fraudulent sales practices is achieved by the Commission retaining and exercising its jurisdiction over these matters. Therefore, the Commission has incorporated its DCO and SEF core principle analyses, set forth below, into its consideration of the Proposed Exemption's consistency with the public interest and the purposes of the Act. In the same way, the Commission has considered how the public interest and the purposes of the CEA are also addressed by the manner in which SPP complies with FERC's Credit Reform Policy.[89]

Based on this review, the Commission proposes to determine that the Proposed Exemption is consistent with the public interest and the purposes of the CEA,[90] and the Commission is specifically requesting comment on whether the Proposed Exemption is consistent with the public interest and the purposes of the Act.

2. CEA Section 4(a) Should Not Apply to the Transactions or Entities Eligible for the Proposed Exemption

CEA section 4(c)(2)(A) requires, in part, that the Commission determine that the Covered Transactions described in the Proposed Exemption should not be subject to CEA section 4(a)—generally, the Commission's exchange trading requirement for a contract for the purchase or sale of a commodity for future delivery. Based in major part on SPP's representations, the Commission has reviewed the Covered Transactions, SPP, and its markets using the CEA Core Principle requirements applicable to a DCO and to a SEF as a framework for its public interest and purposes of the CEA determination.[91] As further support for this determination, the Commission also is relying on the public interest and the purposes of the Act analysis in subsection V.B.4 below. In so doing, the Commission proposes to determine that, due to the FERC regulatory scheme and the RTO market structure applicable to the Covered Transactions, the linkage between the Covered Transactions and that regulatory scheme, and the unique nature of the market participants that would be eligible to rely on the Proposed Exemption,[92] CEA section 4(a) should not apply to the Covered Transactions under the Proposed Exemption.[93]

The Commission is requesting comment on whether its Proposed Exemption of the Covered Transactions from CEA section 4(a) is appropriate.

3. Appropriate Persons

Section 4(c)(2)(B)(i) of the CEA requires that the Commission determine that the Proposed Exemption is restricted to Covered Transactions entered into solely between ''appropriate persons,'' as that term is defined in section 4(c)(3) of the Act. Section 4(c)(3) defines the term ''appropriate person'' to include: (1) Any person that falls within one of the ten categories of persons delineated in sections 4(c)(3)(A) through (J) of the Act; or (2) such other persons that the Commission determines to be appropriate pursuant to the limited authority provided by section 4(c)(3)(K).[94] The Commission may determine that persons that do not meet the requirements of sections 4(c)(3)(A) through (J) are ''appropriate persons'' for purposes of section 4(c) only if it determines that such persons ''are appropriate in light of their financial or other qualifications, or the applicability of regulatory protections.'' [95]

SPP asserts that its market participants fit within the ''appropriate person'' requirement under CEA section 4(c)(3) and as set forth in the RTO–ISO Order, relying primarily on two categories of appropriate persons. The first category includes those entities that have a net worth exceeding $1,000,000

of reliability practices within an interconnection and market interface practices among regions).'' Exemption Application at 18; 18 CFR 35.34(k).

[82] *See* Exemption Application at 18.

[83] *See* Exemption Application at 18–19; 18 CFR 35.34(k)(2).

[84] *See generally,* Exemption Application at 17.

[85] *See id.*

[86] *See id.*

[87] *See id.* at 12–15, 17 (describing the Covered Transactions and noting that each of them ''is part of, and inextricably linked to, the organized wholesale electric energy markets that are subject to FERC regulation and oversight'').

[88] *See* appropriate persons discussion *infra* section V.B.3.

[89] *See* FERC Credit Reform Policy discussion *infra* section V.C.

[90] The Commission notes that such a determination would be consistent with a similar determination made in the RTO–ISO Order. *See* RTO–ISO Order at 19895.

[91] *See* DCO core principle analysis *infra* section V.D.; *see also* SEF core principle analysis *infra* section V.E.

[92] *See* appropriate persons analysis *infra* section V.B.3.

[93] The Commission notes that such a determination would be consistent with a similar determination made in the RTO–ISO Order. *See* RTO–ISO Order at 19895.

[94] *See supra* note 75.

[95] *Id.*

or total assets exceeding $5,000,000, as identified in CEA section 4(c)(3)(F).[96] The second group of appropriate persons would fall within a grouping under CEA section 4(c)(3)(K), which includes persons deemed appropriate by the Commission ''in light of their financial or other qualifications, or the applicability of appropriate regulatory protection.'' [97]

SPP explains that FERC has instructed all RTOs and ISOs subject to FERC supervision to create minimum standards for market participants. SPP states that:

> In FERC Order No. 741, FERC directed each RTOs and ISOs to establish minimum criteria for market participants. FERC did not specify the criteria the RTOs or ISOs should apply, but rather directed them to establish criteria through their stakeholder processes.[98]

SPP further states that its Tariff includes minimum capitalization criteria that require market participants to have at a minimum: (a) A tangible net worth of $1,000,000; (b) assets of $10,000,000; (c) a credit rating of BBB- or its equivalent; (d) a guaranty through which the Guarantor is used to meet alternatives (a) through (c); or (e) a minimum deposit of $200,000 in financial security, plus, if the participant's estimated market exposure is greater than $100,000, double the amount of any financial security required under the SPP Tariff.[99]

Consistent with CEA section 4(c)(3), the Commission is proposing to limit the Proposed Exemption to persons who are ''appropriate persons,'' as defined in sections 4(c)(3)(A) through (J) of the Act,[100] ''eligible contract participants,'' as defined in section 1a(18) of the Act and in Commission regulation 1.3(m),[101] or persons who are in the business of: (i) Generating, transmitting, or distributing electric energy, or (ii) providing electric energy services that are necessary to support the reliable operation of the transmission system.[102]

The Commission is requesting comment on whether such limitation on the Proposed Exemption is appropriate.

4. Effect on the Commission's or Any Contract Market's Ability To Discharge Its Regulatory or Self-Regulatory Duties Under the CEA

CEA section 4(c)(2)(B)(ii) requires the Commission to make a determination whether the Covered Transactions subject to the Proposed Exemption will have a material adverse effect on the ability of the Commission or any contract markets to perform regulatory or self-regulatory duties.[103] In making this determination, the Commission should consider such regulatory concerns as ''market surveillance, financial integrity of participants, protection of customers and trade practice enforcement.'' [104] These considerations are similar to the purposes of the CEA as defined in section 3, initially addressed in the public interest and purposes of the CEA discussion.

SPP contends that the Proposed Exemption will not have a material adverse effect on the Commission's or any contract market's ability to discharge its regulatory function,[105] asserting that:

> Under Section 4(d) of the Act, the Commission will retain authority to conduct investigations to determine whether SPP is in compliance with any exemption granted in response to this request. . . . [T]he requested exemptions would also preserve the Commission's existing enforcement jurisdiction over fraud and manipulation. This is consistent with section 722 of the Dodd-Frank Act, the existing MOU between the FERC and the Commission and other protocols for inter-agency cooperation. SPP will continue to retain records related to the Transactions, consistent with existing obligations under FERC regulations.
>
> The regulation of exchange-traded futures contracts and significant price discovery contracts (''SPDCs'') will be unaffected by the requested exemptions. Futures contracts based on electricity prices set in SPP's markets that are traded on a designated contract market and SPDCs will continue to be regulated by and subject to the requirements of the Commission. No current requirement or practice of SPP or of a contract market will be affected by the Commission's granting the requested exemptions.[106]

These factors appear to support the Proposed Exemption. In addition, the limitation of the Proposed Exemption to Covered Transactions between certain appropriate persons avoids potential issues regarding financial integrity and customer protection.

Moreover, the Proposed Exemption does not exempt SPP from certain CEA provisions, including, but not limited to, sections 2(a)(1)(B), 4(d), 4b, 4c(b), 4*o*, 4s(h)(1)(A), 4s(h)(4)(A), 6(c), 6(d), 6(e), 6c, 6d, 8, 9, and 13 of the Act, and any implementing regulations promulgated thereunder including, but not limited to, Commission regulations 23.410(a) and (b), 32.4, and part 180, to the extent that those sections prohibit fraud or manipulation of the price of any swap, contract for the sale of a commodity in interstate commerce, or for future delivery on or subject to the rules of any contract market. Therefore, the Commission retains authority to pursue fraudulent or manipulative conduct.[107]

In addition, it appears that granting the Proposed Exemption for the Covered Transactions would not have a material adverse effect on the ability of any contract market to discharge its self-regulatory duties under the Act. With respect to TCRs and Operating Reserve Transactions, these transactions do not appear to be used for price discovery or as settlement prices for other transactions in Commission-regulated markets. Therefore, the Proposed Exemption should not have a material adverse effect on any contract market carrying out its self-regulatory function.

With respect to Energy Transactions, these transactions do have a relationship to Commission-regulated markets because they can serve as a source of settlement prices for other transactions within Commission jurisdiction. Granting the Proposed Exemption, however, should not pose regulatory burdens on a contract market because, as discussed in more detail below, SPP has market monitoring systems in place to detect and deter manipulation that takes place on its markets. Also, as a condition of the Proposed Exemption, the Commission would be able to obtain data from FERC with respect to activity on SPP's markets that may impact trading on Commission-regulated markets.

Finally, the Commission notes that if the Covered Transactions ever could be used in combination with trading

[96] CEA section 4(c)(3)(F) provides that the following entities are ''appropriate persons'' that the Commission may exempt under CEA section 4(a). The relevant text of 4(c)(3)(F) provides: ''A corporation, partnership, proprietorship, organization, trust, or other business entity with a net worth exceeding $1,000,000 or total assets exceeding $5,000,000, or the obligations of which under the agreement, contract or transaction are guaranteed or otherwise supported by a letter of credit or keepwell, support, or other agreement by any such entity or by an entity referred to in subparagraph (A), (B), (C), (H), (I), or (K) of this paragraph.'' 7 U.S.C. 6(c)(3)(F).

[97] 7 U.S.C. 6(c)(3)(K).

[98] Exemption Application at 20 (citations omitted).

[99] *Id.* SPP represents that its Tariff contains the Appropriate Person Requirement set forth in RTO–ISO Order. *See* Exemption Application at 21; Exemption Application Attachments at 11–12; *see also* RTO–ISO Order at 19913.

[100] 7 U.S.C. 6(c)(3)(A)–(J).

[101] 7 U.S.C. 1a(18); *see also* ''Further Definition of 'Swap Dealer,' 'Security-Based Swap Dealer,' 'Major Swap Participant,' 'Major Security-Based Swap Participant,' and 'Eligible Contract Participant,' '' 77 FR 30596, May 23, 2012.

[102] The Commission notes that the proposed limitation on the Proposed Exemption is consistent with the RTO–ISO Order. RTO–ISO Order at 19913.

[103] 7 U.S.C. 6(c)(2)(B).

[104] *See* H.R. No. 978, 102d Cong. 2d Sess. 79 (1992).

[105] *See* Exemption Application at 22.

[106] *See id.*

[107] Nor did SPP seek an exemption from these provisions. *See id.* at 1.

activity or in a position in a DCM contract to conduct market abuse, both the Commission and DCMs have sufficient independent authority over DCM market participants to monitor for such activity.[108] Typically, cross-market abuse schemes will involve a reportable position in the DCM contract involved. In such cases, Commission regulation 18.05 requires the reportable trader to keep books and records evidencing all details concerning cash and over-the-counter positions and transactions in the underlying commodity and to provide such data to the Commission upon demand. Likewise, Commission regulation 38.254(a) requires that DCMs have rules that require traders to keep records of their trading, including records of their activity in the underlying commodity and related derivatives markets, and make such records available, upon request, to the DCM.[109] Similar recordkeeping requirements apply to swaps.[110]

The CFTC is requesting comment as to whether the Proposed Exemption will have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under the Act, and, if so, what conditions can or should be imposed on the Order to mitigate such effects.

C. FERC Credit Reform Policy

On October 21, 2010, FERC amended its regulations to encourage clear and consistent risk and credit practices in the organized wholesale electric markets to, *inter alia*, ''ensure that all rates charged for the transmission or sale of electric energy in interstate commerce are just, reasonable, and not unduly discriminatory or preferential.'' [111]

In effect, FERC Order 741 requires those RTOs that are subject to FERC supervision to implement the following reforms: ''shortened settlement timeframes, restrictions on the use of unsecured credit, elimination of unsecured credit in all [FTRs] or equivalent markets, adoption of steps to address the risk that RTOs . . . may not be allowed to use netting and set-offs, establishment of minimum criteria for market participation, clarification regarding the organized markets' administrators' ability to invoke 'material adverse change' clauses to demand additional collateral from participants, and adoption of a two-day grace period for 'curing' collateral calls.'' [112]

As discussed in more detail below, particularly in section V.D., the requirements set forth in FERC Order 741 appear to achieve goals similar to the regulatory objectives of the Commission's DCO Core Principles.

FERC regulation 35.47(c) calls for the elimination of unsecured credit in the FTR markets and equivalent markets.[113] This requirement appears to be congruent with Core Principle D's requirement that each DCO limit its exposure to potential losses from defaults by clearing members. Because, according to FERC, risks arising out of the FTR markets are ''difficult to quantify,'' [114] eliminating the use of unsecured credit in these markets may help avoid the unforeseen and substantial costs for an RTO in the event of a default.[115] Thus, the requirement set forth in regulation 35.47(c) appears to advance the objectives of Core Principle D by reducing risk and minimizing the effect of defaults through the elimination of unsecured credit in the FTR and equivalent markets.

In addition, FERC regulation 35.47(a) requires RTOs to have tariff provisions that ''[l]imit the amount of unsecured credit extended by [an RTO] to no more than $50 million for each market participant.'' [116] This requirement appears to be congruent with one of the regulatory objectives of Core Principle D, as implemented by Commission regulation 39.13, specifically the requirement that each DCO limit its exposure to potential losses from defaults by clearing members. In capping the use of unsecured credit at $50 million, FERC stated its belief that RTOs ''could withstand a default of this magnitude by a single market participant,'' [117] thereby limiting an RTO's exposure to potential losses from defaults by its market participants. Thus, it seems both Core Principle D and FERC regulation 35.47(a) help protect the markets and their participants from unacceptable disruptions, albeit in different ways and to a different extent.

FERC regulation 35.47(b) mandates that RTOs have billing periods and settlement periods of no more than seven days.[118] While this mandate does not meet the standards applicable to registered DCOs,[119] it supports Core Principle D's requirement that each DCO have appropriate tools and procedures to manage the risks associated with discharging its responsibilities. In promulgating FERC regulation 35.47(b), FERC found a shorter cycle necessary to promote market liquidity and a necessary change ''to reduce default risk, the costs of which would be socialized across market participants and, in certain events, of market disruptions that could undermine overall market function.'' [120] Recognizing the correlation between a reduction in the length of the ''settlement cycle'' and a reduction in costs attributed to a default, FERC stated that shorter cycles reduce the amount of unpaid debt left outstanding, which, in turn, reduces ''the size of any default and therefore reduces the likelihood of

[108] The Commission notes that its authority to prosecute market abuses involving the Covered Transactions would not be limited to instances where the Covered Transactions were part of some cross-market scheme involving DCM trading activity.

[109] Final Rulemaking—Core Principles and Other Requirements for Designated Contract Markets, 72 FR 36612, June 19, 2012.

[110] *See* Commission regulations 20.6, 20.7, 37.404, 37.500, 37.502, 37.503, and 45.2, which were adopted following the Dodd-Frank Act's expansion of the Commission's jurisdiction to cover swaps; *see* 7 U.S.C. 2(a)(1)(A); *see also supra* note 19 and accompanying text. For physical commodity swaps, Commission regulations 20.6 and 20.7 require a reportable trader to keep books and records evidencing all details concerning cash and over-the-counter positions and transactions in the underlying commodity and to provide such data to the Commission upon demand. Regulation 45.2 requires certain reporting entities, as denominated in the regulation, to keep full, complete, and systematic records, together with all pertinent data and memoranda, of all activities related to the business of such entity or persons with respect to swaps and available to the Commission via real time electronic access. In addition, under regulations 37.404, 37.500, 37.502 and 37.503, SEFs must have rules that require their swap participants to keep books and records evidencing all details concerning cash and over-the-counter positions and transactions in the underlying commodity, to allow examination of those books and records, and the provision of such information to the Commission upon demand.

[111] 75 FR 65942, 65942, Oct. 21, 2010 (the ''FERC Original Order 741''). These requirements were later slightly amended and clarified in an order on rehearing. *See* 76 FR 10492, Feb. 25, 2011 (''FERC Revised Order 741,'' and together with Original Order 741, ''FERC Order 741'').

[112] FERC Revised Order 741 at 10492–93.

[113] 18 CFR 35.47(c).

[114] Specifically, FERC stated that ''the risk associated with the potentially rapidly changing value of FTRs warrants adoption of risk management measures, including the elimination of unsecured credit. Because financial transmission rights have a longer-dated obligation to perform which can run from a month to a year or more, they have unique risks that distinguish them from other wholesale electric markets, and the value of a financial transmission right depends on unforeseeable events, including unplanned outages and unanticipated weather conditions. Moreover, financial transmission rights are relatively illiquid, adding to the inherent risk in their valuation.'' FERC Original Order 741 at 65950.

[115] *Id.* at 65949.

[116] In addition, FERC regulation 35.47(a) states that ''where a corporate family includes more than one market participant participating in the same [RTO], the limit on the amount of unsecured credit extended by that [RTO] shall be no more than $50 million for the corporate family.'' 18 CFR 35.47(a).

[117] FERC Original Order 741 at 65948.

[118] 18 CFR 35.47(b).

[119] *See* 17 CFR 39.14(b) (requiring daily settlements).

[120] FERC Original Order 741 at 65946.

the default leading to a disruption in the market such as cascading defaults and dramatically reduced market liquidity.'' [121] Thus, FERC regulation 35.47(b) appears to aid RTOs in managing the risks associated with their responsibilities, which also appears to support Core Principle D's goals.

FERC regulation 35.47(d) requires RTOs to ensure the enforceability of their netting arrangements in the event of the insolvency of a member by doing one of the following: (1) Establish a single counterparty to all market participant transactions, (2) require each market participant to grant a security interest in the receivables of its transactions to the relevant RTO, or (3) provide another method of supporting netting that provides a similar level of protection to the market that is approved by FERC.[122] In the alternative, the RTOs would be prohibited from netting market participants' transactions, and required to establish credit based on each market participant's gross obligations. Congruent to the regulatory objectives of Core Principles D and G, FERC regulation 35.47(d) attempts to ensure that, in the event of a bankruptcy of a participant, RTOs are not prohibited from offsetting accounts receivable against accounts payable. In effect, this requirement attempts to clarify an RTO's legal status to take title to transactions in an effort to establish mutuality in the transactions as legal support for set-off in bankruptcy.[123] This clarification, in turn, would appear to limit an RTO's exposure to potential losses from defaults by market participants.

FERC regulation 35.47(e) limits the time period within which a market participant must cure a collateral call to no more than two days.[124] This requirement appears to be congruent with Core Principle D's requirement that each DCO limit its exposure to potential losses from defaults by clearing members. In Original Order 741, FERC stated that a two day time period for curing collateral calls balances (1) the need for granting market participants sufficient time to make funding arrangements for collateral calls with (2) the need to minimize uncertainty as to a participant's ability to participate in the market, as well as the risk and costs of a default by a participant. By requiring each RTO to include this two day cure period in the credit provisions of its tariff language, FERC regulation 35.47(e) appears to both promote the active management of risks associated with the discharge of an RTO's responsibilities, while at the same time limiting the potential losses from defaults by market participants.

FERC regulation 35.47(f) imposes minimum market participant eligibility requirements that apply consistently to all market participants and, as set forth in the preamble to Original Order 741, requires RTOs to engage in periodic verification of market participant risk management policies and procedures.[125] The Commission believes that the requirements set forth in FERC regulation 35.47(f) appear congruent with some of the regulatory objectives of DCO Core Principle C, as implemented by Commission regulation 39.12. In general, DCO Core Principle C requires each DCO to establish appropriate admission and continuing eligibility standards for members of, and participants in, a DCO that are objective, publicly disclosed, and permit fair and open access.[126] In addition, Core Principle C also requires that each DCO establish and implement procedures to verify compliance with each participation and membership requirement, on an ongoing basis.[127] Similarly, while FERC regulation 35.47(f) does not prescribe the particular participation standards that must be implemented, as suggested in the preamble to Original Order 741, these standards should address ''adequate capitalization, the ability to respond to RTO direction and expertise in risk management'' [128] and ensure that proposed tariff language ''is just and reasonable and not unduly discriminatory.'' [129] Moreover, FERC specifically stated that these participation standards ''could include the capability to engage in risk management or hedging or to out-source this capability with periodic compliance verification, to make sure that each market participant has adequate risk management capabilities and adequate capital to engage in trading with minimal risk, and related costs, to the market as a whole.'' [130] Thus, both DCO Core Principle C and Order 741 appear to promote fair and open access for market participants as well as impose compliance verification requirements.

FERC regulation 35.47(g) requires RTOs to specify in their tariffs the conditions under which they will request additional collateral due to a material adverse change.[131] FERC, however, noted that the examples set forth in each RTO's tariffs are not exhaustive and that ISOs and RTOs are permitted to use ''their discretion to request additional collateral in response to unusual or unforeseen circumstances.'' [132] The Commission believes that the requirements set forth in FERC regulation 35.47(g) appear congruent with the following DCO Core Principle D requirements: (1) That DCOs have appropriate tools and procedures to manage the risks associated with discharging its responsibilities, and (2) that DCOs limit their exposure to potential losses from defaults by clearing members.[133] By requiring RTOs to actively consider the circumstances that could give rise to a material adverse change, FERC appears to be encouraging RTOs to actively manage their risks to ''avoid any confusion, particularly during times of market duress, as to when such a clause may be invoked.'' [134] Moreover, such clarification could prevent a market participant's ability to ''exploit ambiguity as to when a market administrator may invoke a 'material adverse change,' or a market administrator may be uncertain as to when it may invoke a 'material adverse change,' '' [135] thereby avoiding potentially harmful delays or disruptions that could subject the RTOs to unnecessary damage.

SPP represents that it has complied with, and fully implemented, the requirements set forth in Order 741.[136]

D. DCO Core Principle Analysis

1. DCO Core Principle A: Compliance With Core Principles

DCO Core Principle A requires a DCO to comply with each core principle set forth in section 5b(c)(2) of the CEA, as well as any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5) of the Act for a DCO to be registered and maintain its registration.[137] In addition, Core Principle A states that a DCO shall have reasonable discretion in establishing the manner by which it complies with each core principle

[121] *Id.*

[122] 18 CFR 35.47(d).

[123] *See* 11 U.S.C. 553; *see generally, In re SemCrude, L.P.,* 399 B.R. 388 (Bankr. D. Del. 2009), *aff'd,* 428 B.R. 590 (D. Del. 2010).

[124] 18 CFR 35.47(e).

[125] 18 CFR 35.47(f).

[126] 7 U.S.C. 7a–1(c)(2)(C).

[127] *Id.*

[128] FERC Original Order 741 at 65956.

[129] *Id.*

[130] *Id.*

[131] 18 CFR 35.47(g).

[132] FERC Original Order 741 at 65957.

[133] 7 U.S.C. 7a–1(c)(2)(D).

[134] FERC Original Order 741 at 65958.

[135] *Id.*

[136] *See* Exemption Application at 3–4; FERC Order 741 Implementation Chart.

[137] 7 U.S.C. 7a–1(c)(2)(A)(i).

subject to any rule or regulation prescribed by the Commission.[138]

SPP represents that, although it is principally regulated by FERC and that there are differences between it and registered DCOs, SPP's practices are consistent with the core principles for DCOs.[139] SPP represents that, though its methods are different than those employed by a registered DCO, its practices and the comprehensive regulatory regime of FERC achieve the goals of, and are consistent with, the policies of the Act.[140] Based upon SPP's representations and the Core Principle discussions below, and in the context of SPP's activities with respect to the Covered Transactions within the scope of this Proposed Exemption, SPP's practices appear congruent with, and to accomplish sufficiently, the regulatory objectives of each DCO Core Principle. The Commission seeks comment with respect to this preliminary conclusion.

2. DCO Core Principle B: Financial and Operational Resources

DCO Core Principle B requires a DCO to have adequate financial, operational, and managerial resources to discharge each of its responsibilities.[141] In addition, a DCO must have financial resources that, at a minimum, exceed the total amount that would: (i) Enable the DCO to meet its financial obligations to its clearing members notwithstanding a default by the clearing member creating the largest financial exposure for the DCO in extreme but plausible market conditions; and (ii) enable the DCO to cover its operating costs for a period of 1 year, as calculated on a rolling basis.[142]

a. Financial Resources

SPP represents that it maintains sufficient financial resources to meet its financial obligations to its members notwithstanding a default by the member creating the largest financial exposure for that organization in extreme but plausible market conditions.[143] As an initial matter, SPP must take the following steps to address the outstanding obligation: (i) Segregate funds held by SPP with respect to the defaulting market participant; (ii) draw on collateral provided by the defaulting market participant; (iii) seek to recover from any guarantor of the defaulting market participant; (iv) seek to exercise other remedies under the credit support documents provided by the defaulting market participant; and (v) pursue other available remedies for defaults, including, without limitation, initiating a filing with FERC to terminate the Service Agreement of the defaulting market participant.[144] Further, if these steps are inadequate to cover the obligation, SPP represents that its Tariff permits SPP to mutualize the loss among the non-defaulting market participants to whom SPP would otherwise be obligated.[145] Therefore, SPP will then make reduced payments to the non-defaulting market participants receiving revenues for market services associated with the outstanding obligation.[146] SPP represents that the payment to a non-defaulting market participant will be reduced in amount equal to such non-defaulting market participant's pro-rata share of the outstanding obligation.[147] This process is often referred to as ''short-paying.'' [148] SPP further represents that once SPP deems the obligation as uncollectible, the short-pay would be ''uplifted'' or ''socialized'' more broadly across the market, with the losses reallocated among *all* non-defaulting market participants.[149]

On the basis of these representations, the Commission believes that SPP's financial resource requirements appear to be congruent with, and to accomplish sufficiently, the regulatory objectives of DCO Core Principle B in the context of SPP's activities with respect to the Covered Transactions. The Commission seeks comment with respect to this preliminary conclusion.

b. Operational Resources

SPP represents that it has sufficient operational resources to cover its operating costs through a Tariff Administration Charge (''Charge'') allocated to its participants and set forth in Schedule 1–A of its Tariff.[150] SPP represents that the amount of the Charge is not subject to annual approval by FERC, but SPP submits an informational filing to FERC on an annual basis outlining its budget and this Charge.[151] SPP further represents that the Charge is based on expected costs for the following year.[152] Under the regulatory structure in the wholesale electric industry, market participants are obligated to pay the fees required by SPP,[153] and are thus, in a sense, a ''captive audience.'' SPP also represents that to the extent that an SPP member terminates its membership, its Bylaws and Membership Agreement require that the member pay its share of SPP's outstanding financial obligations, including principal and interest on SPP debt obligations.[154] These provisions protect SPP and its remaining members from increased financial exposure due to a member's termination of its participation in SPP. SPP further represents that the Bylaws also provide SPP with the ability to assess a charge to all SPP members to recover any SPP costs that SPP is not otherwise able to collect under its Tariff and other governing documents, which further insures that SPP will have sufficient operational resources to satisfy its obligations.[155] Therefore, these policies and procedures appear to be consistent with, and to accomplish sufficiently, the regulatory objectives of DCO Core Principle B in the context of the Covered Transactions. The Commission seeks comment with respect to this preliminary conclusion.

c. Managerial Resources

SPP represents that it has adequate managerial resources to discharge its responsibilities as an organized wholesale electric energy market.[156] The Commission notes that FERC Order 888 sets forth the principles used by FERC to assess ISO proposals and requires that ISOs have appropriate incentives for efficient management and administration.[157] This requirement

[138] 7 U.S.C. 7a–1(c)(2)(A)(ii).

[139] Exemption Application Attachments at 1.

[140] *Id.*

[141] 7 U.S.C. 7a–1(c)(2)(B)(i).

[142] 7 U.S.C. 7a–1(c)(2)(B)(ii).

[143] *See* Exemption Application Attachments at 3.

[144] *Id.*

[145] *See* Exemption Application Attachments at 4; Letter from SPP to the Commission dated October 7, 2014 Providing Clarifying Information in Support of Amended Application for Exemptive Order (''October 2014 Supplemental Letter'') at 3.

[146] *Id.*

[147] *Id.*

[148] *See* Notice of Proposed Order and Request for Comment on a Petition from Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission or the Public Utility Commission of Texas From Certain Provisions of the Commodity Exchange Act, 77 FR 52138, 52149, Aug. 28, 2012.

[149] *See* Exemption Application Attachments at 4. SPP states that the loss would be allocated pro-rata to all non-defaulting market participants who conducted business in the market during the period covered by the invoice(s) associated with the loss, including those market participants who had not been owed revenues. *See also* October 2014 Supplemental Letter at 3.

[150] *See* Exemption Application Attachments at 6–7. SPP states that the charge is allocated to their market participants based on each megawatt of transmission capacity reserved during the year. *Id.*

[151] *Id.* at 7.

[152] *Id.* at 6–8.

[153] *Id.* at 7.

[154] *Id.*

[155] *Id.*

[156] *See id.* at 9.

[157] *See generally,* FERC Order 888 at 21540. In addition to establishing ISOs, FERC Order 888 mandated that all public utilities file open access transmission tariffs that contain minimum terms and conditions for non-discriminatory service. As a public utility transmission provider, SPP is

provides that ISOs should procure the services needed for such management and administration in an open competitive market, similar to how Core Principle B requires a DCO to possess managerial resources necessary to discharge each responsibility of the DCO. In addition, FERC Order 2000 requires that RTOs have an open architecture so that the RTO and its members have the flexibility to improve their organizations in the future in terms of structure, geographic scope, market support and operations in order to adapt to an environment that is rapidly changing and meet market needs.[158]

SPP represents that it has sufficient human resources to fulfill its obligations to its members, market participants, and customers.[159] SPP represents that it employs more than 500 employees with experience in engineering, market operations, legal and regulatory compliance, finance and credit, and other disciplines, that carry out SPP market and services and support the various SPP member organizational groups.[160] Based on these representations, SPP's managerial resources appear to be consistent with, and to accomplish sufficiently, the regulatory objectives of DCO Core Principle B in the context of the Covered Transactions. The Commission seeks comment with respect to this preliminary conclusion.

3. DCO Core Principle C: Participant and Product Eligibility

DCO Core Principle C requires each DCO to establish appropriate admission and continuing eligibility standards for member and participants (including sufficient financial resources and operational capacity), as well as to establish procedures to verify, on an ongoing basis, member and participant compliance with such requirements.[161] The DCO's participant and membership requirements must also be objective, be publicly disclosed, and permit fair and open access.[162] In addition, Core Principle C obligates each DCO to establish appropriate standards for determining the eligibility of agreements, contracts, or transactions submitted to the DCO for clearing.[163]

a. FERC Credit Policy Requirements

As discussed above, the FERC Credit Policy appears to impose participant eligibility requirements that are consistent with regulatory objectives of DCO Core Principle C.[164] In the FERC Credit Policy, FERC notes that ''[h]aving minimum criteria in place can help minimize the dangers of mutualized defaults posed by inadequately prepared or under-capitalized participants.'' [165] Specifically, FERC regulation 35.47(f) requires organized wholesale electric markets to adopt tariff provisions that require minimum market participant eligibility criteria.[166] Though the regulation does not prescribe the particular participation standards that must be implemented; in the rule's preamble, FERC suggests that such standards should address ''adequate capitalization, the ability to respond to RTO direction and expertise in risk management.'' [167] Regarding risk management, FERC further suggests that minimum participant eligibility criteria should ''include the capability to engage in risk management or hedging or to out-source this capability with periodic compliance verification.'' [168] Although market participant criteria may vary among different types of market participants, all market participants must be subject to some minimum criteria.[169] An RTO subject to FERC's supervision is obligated to establish market participant criteria, even if the RTO applies vigorous standards in determining the creditworthiness of its market participants.[170]

Because the minimum participation criteria adopted by SPP is included in its Tariff, which is publicly available on SPP's Web site, such criteria is publicly disclosed. In addition, FERC notes that it reviews proposed tariff language ''to ensure that it is just and reasonable and not unduly discriminatory,'' [171] which practice would appear to be consistent with DCO Core Principle C's directive that market participation standards permit fair and open access.

b. SPP's Representations

SPP represents that it has adopted minimum participant eligibility criteria that include capitalization requirements (which permits participation by less-well-capitalized members if they post additional collateral), as well as certain minimum eligibility qualifications.[172] The minimum capitalization requirements state that a market participant must possess either: (i) A tangible net worth of $1,000,000; (ii) assets of $10,000,000; (iii) a credit rating of BBB- or its equivalent; or (iv) a guaranty where the guarantor meets one of those requirements. Alternatively, if the market participant cannot meet one of those requirements, it may provide a deposit of $200,000, which is segregated and unavailable to be used as financial security for market transactions. If, under this alternative provision, the market participant's expected market exposure exceeds $100,000, it must also provide twice the amount of financial security otherwise required pursuant to the SPP Tariff.[173] The capitalization requirements appear to be risk-based in that the requirements may vary by type of market and/or type or size of participant.[174]

SPP represents that its Tariff includes minimum eligibility requirements consistent with the RTO–ISO Order's Appropriate Persons Requirement.[175] Specifically, in order to participate in SPP's markets, each market participant must demonstrate to SPP that it qualifies as (a) an appropriate person as that term is defined under section 4(c)(3)(A) through (J) of the CEA; (b) an eligible contract participant (''ECP'') as that term is defined in Section 1a(18) of the CEA and in Commission regulation 1.3(m); or (c) a person or entity that is in the business of: (i) Generating transmitting or distributing electric energy or (ii) providing electric services

obligated to comply with the open access requirements of FERC Order 888, which includes the requirement for appropriate incentives for efficient management and administration. *See* Exemption Application at 2–3 n. 7.

[158] FERC Order 2000 at 502.

[159] *See* Exemption Application Attachments at 8–9.

[160] *Id.* at 8.

[161] 7 U.S.C. 7a–1(c)(2)(C).

[162] *Id.*

[163] *Id.* As set forth above, the exemption that would be provided by the Proposed Exemption would be available only with respect to the transactions specifically delineated therein. Accordingly, the DCO Core Principle C analysis is limited to a discussion of SPP's participant eligibility requirements.

[164] *See supra* note 128.

[165] FERC Original Order 741 at 65955.

[166] 18 CFR 35.47(f).

[167] FERC Original Order 741 at 65956.

[168] *Id.*

[169] Although the FERC Credit Policy states that FERC ''directs that [the market participation criteria] apply to all market participants rather than only certain participants,'' FERC clarified this comment in its Order of Rehearing by stating that its intent ''was that there be minimum criteria for all market participants and not that all market participants necessarily be held to the same criteria'' based upon, for example, the size of the participant's positions. *See* FERC Revised Order 741 at n. 43. This approach appears to be consistent with Commission regulation 39.12, which implements Core Principle C and requires that participation requirements for DCO members be risk-based.

[170] *See* FERC Original Order 741 at 65956 (noting that ''An . . . RTO's ''ability to accurately assess a market participant's creditworthiness is not infallible'' and ''[w]hile an analysis of creditworthiness may capture whether the market participant has adequate capital, it may not capture other risks, such as whether the market participant has adequate expertise to transact in an RTO . . . market.'').

[171] *Id.*

[172] *See* Exemption Application Attachments at 11–12.

[173] *Id.* at 12.

[174] *See id.*

[175] *Id.; see also* Exemption Application at 21.

that are necessary to support the reliable operation of the transmission system.[176]

In addition, SPP requires that its market participants satisfy specified credit requirements [177] and provide an attestation of their risk management capabilities.[178] SPP represents that its Tariff contains requirements that enable SPP to periodically review and verify a market participant's risk management policies, practices, and procedures pertaining to its activities in SPP's markets.[179] SPP may select market participants for review on a random basis and/or based upon identified risk factors such as, but not limited to, the SPP markets in which the market participant is transacting, the magnitude of the market participant's transactions, or the volume of the market participant's open positions.[180] SPP further represents that successful completion of SPP's verification is required for a selected market participant's continued eligibility to participate in SPP's markets.[181] In addition to requiring a market participant to describe its risk management capabilities and procedures, SPP represents that the attestation requires a market participant to describe whether it is engaged in hedging, describe the employees who perform the risk management procedures, define the special training, skills, experience, and industry tenure of those employees, and provide any additional information in determining the risk management capabilities of the market participant.[182] Market participants also are required to notify SPP of material adverse changes in their financial conditions.[183] It appears from the foregoing that SPP's arrangements with respect to participant eligibility requirements are congruent with, and sufficiently accomplish, the regulatory objectives of Core Principle C in the context of SPP's activities with respect to the Covered Transactions. The Commission seeks comment with respect to this preliminary conclusion.

4. DCO Core Principle D: Risk Management

DCO Core Principle D requires each DCO to demonstrate the ability to manage the risks associated with discharging the responsibilities of a DCO through the use of appropriate tools and procedures.[184] As amended by the Dodd-Frank Act, Core Principle D also requires a DCO to: (1) Measure and monitor its credit exposures to each clearing member daily; (2) through margin requirements and other risk control mechanisms, limit its exposure to potential losses from a clearing member default; (3) require sufficient margin from its clearing members to cover potential exposures in normal market conditions; and (4) use risk-based models and parameters in setting margin requirements that are reviewed on a regular basis.[185]

a. Risk Management Framework

SPP represents that the risk management provisions set forth in SPP's Tariff provide SPP with appropriate tools and procedures to manage the risk associated with operating its wholesale and related markets.[186] As part of the tools and procedures that RTOs use to manage the risks associated with their activities, FERC regulation 35.47(b) mandates that RTOs have billing periods and settlement periods of no more than seven days.[187] As discussed above, FERC found a shorter cycle necessary to promote market liquidity and a necessary change ''to reduce default risk, the costs of which would be socialized across market participants and, in certain events, of market disruptions that could undermine overall market function.'' [188] Recognizing the correlation between a reduction in the ''settlement cycle'' and a reduction in costs attributed to a default, FERC stated that shorter cycles reduce the amount of unpaid debt left outstanding, which, in turn, reduces ''the size of any default and therefore reduces the likelihood of the default leading to a disruption in the market such as cascading defaults and dramatically reduced market liquidity.'' [189] SPP represents that it has a Tariff in place that limits billing periods and settlement periods to no more than seven days.[190]

In addition, an RTO's participation standards can include the supervision of a market participant's risk management program.[191] As discussed in section V.C., FERC Order 741 states that an RTO could include periodic verification of market participant's capability to engage in risk management or hedging or to out-source that capability ''to make sure each market participant has adequate risk management capabilities and adequate capital to engage in trading with minimal risk, and related costs, to the market as a whole.'' [192] SPP represents that it has a verification program in place.[193] On the basis of the representations contained in the Exemption Application, it appears that these policies and procedures, are congruent with, and will sufficiently accomplish, the regulatory objectives of DCO Core Principle D with respect to SPP's risk management framework. The Commission seeks comment with respect to this preliminary conclusion.

b. Measurement and Monitoring of Credit Exposure

SPP represents that its risk management procedures measure, monitor, and mitigate its credit exposure to market participants.[194] In addition, SPP states that it calculates credit exposure daily.[195] SPP further states that it uses a highly customized system that collects data from multiple SPP systems to provide accurate and up-to-date credit exposures for each market participant.[196] It appears that, for the most part, given the unique characteristics of the wholesale electric markets, and particularly those of the TCR and equivalent markets, the practices specified in the Exemption Application appear congruent with, and to accomplish sufficiently, with respect to SPP, DCO Core Principle D's objective that a DCO measure its credit exposure to each of its clearing members. The Commission seeks comment with respect to this preliminary conclusion.

c. Unsecured Credit

SPP represents that a market participant is required to have credit that is sufficient to support its market activities or total potential exposure.[197]

[176] Exemption Application Attachments at 12; *see also* RTO–ISO Order at 19913.

[177] *Id.* at 11.

[178] *Id.* at 11–12.

[179] *Id.* at 12.

[180] *Id.*

[181] *Id.*

[182] *Id.*

[183] *Id.*

[184] 7 U.S.C. 7a–1(c)(2)(D).

[185] *Id.*

[186] *See* Exemption Application Attachments at 15–27.

[187] 18 CFR 35.47(b).

[188] FERC Original Order 741 at 65946.

[189] *Id.*

[190] Exemption Application Attachments at 17; *see* FERC Order 741 Implementation Chart at 3.

[191] *See supra* note 127.

[192] *See* FERC Original Order 741 at 65946.

[193] Exemption Application Attachments at 16; *see* FERC Order 741 Implementation Chart at 8–9.

[194] *See* Exemption Application Attachments at 11, 18–20.

[195] *Id.* at 18. For TCR auctions, SPP represents that its system calculates credit exposure for each bid or offer in real-time and compares the market participant's credit limit available. Bids and offers are systematically rejected if they contribute to exceeding the market participant's available credit. *See id.*

[196] *See id.*

[197] *See id.* SPP indicates that a market participant's total potential exposure is a calculated value applied to assure that the market participant engages in activities within its total credit limit as determined by SPP. The total potential exposure is based on the market participant's estimated

SPP further represents that this credit can either be in the form of (i) unsecured credit granted by SPP, and/or (ii) financial security [198] provided by the market participant to SPP.[199] FERC regulation 35.47(a) requires RTOs to have tariff provisions that ''[l]imit the amount of unsecured credit extended by [an RTO] to no more than $50 million for each market participant.'' As mentioned above,[200] in capping the use of unsecured credit at $50 million, FERC stated its belief that RTOs ''could withstand a default of this magnitude by a single market participant,'' thereby limiting an RTO's exposure to potential losses from defaults by its market participants. SPP represents that its Tariff limits the amount of unsecured credit extended to any market participant to no more than $25 million and therefore, complies with FERC regulation 35.47(a).[201] Moreover, FERC regulation 35.47(c) prohibits the use of unsecured credit in the FTR markets and equivalent markets because, according to FERC, risks arising out of the FTR markets are ''difficult to quantify,'' and eliminating the use of unsecured credit in these markets avoids the unforeseen and substantial costs for an RTO in the event of a default. SPP states that unsecured credit is unavailable for TCR activity and that its Tariff complies with FERC regulation 35.47(c).[202] SPP further states that a market participant is required to provide financial security to support all of its TCR activity.

Since FERC regulations 35.47(a) and 35.47(c) appear to be designed to manage risk and limit an RTO's exposure to potential losses from a market participant, SPP's compliance with these requirements would appear to be congruent with, and to accomplish sufficiently, the regulatory objectives of Core Principle D, with respect to unsecured credit, in the context of SPP's activities with respect to the Covered Transactions. The Commission seeks comment with respect to this preliminary conclusion.

d. Limiting Exposure to Potential Losses Through Use of Risk Control Mechanisms and Grace Period To Cure

SPP represents that it requires a market participant to either pay SPP invoices to reduce its credit exposure and/or post additional financial security (collateral) whenever there is a total potential exposure violation, specifically (1) the participant's total potential exposure equals or exceeds that participant's unsecured credit and posted financial security (excluding any financial security provided for TCR activity), and/or (2) the credit required for a market participant's TCR activity exceeds the financial security provided by the market participant to support the activity.[203] Moreover, FERC regulation 35.47(e) limits the time period by which a market participant must cure a collateral call to no more than two days. In Original Order 741, FERC stated that a two day time period for curing collateral calls balances the need for granting market participants sufficient time to make funding arrangements for collateral calls with the need to minimize uncertainty as to a participant's ability to participate in the market as well as the risk and costs of a default by a participant. By requiring each RTO to include this two day cure period in its tariff provisions, FERC regulation 35.47(e) appears to both promote the active management of risks associated with the discharge of an RTO's responsibilities, while at the same time limiting the potential losses from defaults by market participants. SPP represents that it has implemented this requirement.[204] If a market participant fails to pay SPP invoices and/or post additional financial security within the requisite two day period, SPP represents that this failure to cure is considered a default and SPP has a wide array of remedies available, including remedies available at law or in equity [205] and assessing a variety of sanctions against the market participant.[206] Depending on the timing and number of events of defaults, SPP will suspend any unsecured credit allowances, and if an event of default is not cured within in the requisite two day period, SPP may terminate the market participant's rights under the SPP credit policy and may terminate service in accordance with the SPP Tariff and applicable law. If the event of default is that the market participant is in bankruptcy or has commenced bankruptcy proceedings, SPP will immediately suspend the market participant's unsecured credit and may terminate the market participant's rights under the SPP credit policy, and SPP may terminate service in accordance with the SPP Tariff and applicable law. The SPP Tariff also sets forth procedures to close out and liquidate TCRs held by a defaulting market participant.[207]

On the basis of these representations, it appears that the requirements to post additional financial security and cure collateral calls in no more than two days help SPP manage risk and limit its exposure against potential losses from a market participant. These requirements appear to be congruent with, and to accomplish sufficiently, the regulatory objectives of DCO Core Principle D, with respect to limiting exposure to potential losses through the use of risk control mechanisms and the grace period to cure, in the context of SPP's activities with respect to the Covered Transactions. The Commission seeks comment with respect to this preliminary conclusion.

e. Calls for Additional Collateral Due to a Material Adverse Change

FERC regulation 35.47(g) requires RTOs to specify in their tariffs the conditions under which they will request additional collateral due to a material adverse change. However, as stated by FERC, this list of conditions is not meant to be exhaustive, and RTOs are permitted to use ''their discretion to request additional collateral in response to unusual or unforeseen circumstances.'' [208] SPP represents that

cumulative financial obligation under the SPP Tariff or otherwise to SPP, excluding TCR activity. SPP calculates a market participant's potential exposure to nonpayment separately for each category of service (except TCR activity) and then sums this information to obtain the amount of total potential exposure. *See id.* at 19.

[198] SPP represents that it only accepts financial security that is in the form of cash deposits or irrevocable letters of credit, or if the market participant is a Federal Power Marketing Agency, a Federal Power Marketing Agency Letter executed by an officer of the agency that includes an attestation that the agency is lawfully allowed to participate in the SPP TCR market and that any debt the agency incurs from such participation is a debt of the United States, and that identifies the current appropriations for the agency from the United States Congress and verifies that such amount meets or exceeds the amount required to satisfy the credit requirements set forth in the SPP Credit Policy. SPP further represents that it requires financial security for any activity where a market participant's total potential exposure is greater than the unsecured credit granted to the market participant. *See id.* at 18–19.

[199] A market participant's total credit limit is the amount of any unsecured credit allowance approved by SPP plus the amount of any financial security the market participant has provided to SPP. *Id.*

[200] *See supra* note 116.

[201] *See* FERC Order 741 Implementation Chart at 2; Exemption Application Attachments at 19–20.

[202] *See* FERC Order 741 Implementation Chart at 3; Exemption Application Attachments at 18–19.

[203] *See* Exemption Application Attachments at 20–21.

[204] *See* FERC Order 741 Implementation Chart at 5; Exemption Application Attachments at 21.

[205] SPP states that such remedies include, but are not limited to, bringing suit or otherwise initiating monetary damages, injunctive relief, specific performance, and relief available under the Federal Power Act, except to the extent such remedy is limited under the SPP Credit Policy. *See* Exemption Application Attachments at 22.

[206] *See* Exemption Application Attachments at 21; *see* DCO Core Principle G discussion *infra.*

[207] *See id.*

[208] FERC Original Order 741 at 65957.

its Tariff complies with these requirements.[209] Since SPP does not appear to be limited in its ability to call for additional collateral in unusual or unforeseen circumstances, FERC regulation 35.47(g) appears to support some of DCO Core Principle D's objectives, namely that a DCO have appropriate tools and procedures to manage the risks associated with discharging its responsibilities, and that a DCO limit its exposure to potential losses from defaults by clearing members. FERC has noted that information regarding when an RTO will request additional collateral due to a material adverse change may help to ''avoid any confusion, particularly during times of market duress, as to when such a clause may be invoked,'' [210] while at the same time preventing a market participant from ''exploit[ing] ambiguity as to when a market administrator may invoke a 'material adverse change.' '' [211] As such, this policy appears to help avoid potentially harmful delays or disruptions that could subject SPP to unnecessary damage, and thus is congruent with, and appears to accomplish sufficiently, the regulatory objectives of Core Principle D, with respect to calls for additional collateral due to a material adverse change, in the context of SPP's activities with respect to the Covered Transactions. The Commission seeks comment with respect to this preliminary conclusion.

f. Margin Requirement and Use of Risk-Based Models and Parameters in Setting Margin

As discussed previously, SPP represents that it requires a market participant to maintain unsecured credit and/or post financial security (collectively, ''margin'') that is sufficient to support its market activities or total potential exposure at all times.[212] As represented by SPP, these practices appear to be congruent with, and to accomplish sufficiently, the regulatory objectives of DCO Core Principle D, with respect to a margin requirement and the use of risk-based models and parameters in setting margin, in the context of SPP's activities with respect to the Covered Transactions. The Commission seeks comment with respect to this preliminary conclusion.

g. Ability To Offset Market Obligations

FERC regulation 35.47(d) requires RTOs to either (1) establish a single counterparty to all market participant transactions, (2) require each market participant to grant a security interest in the receivables of its transactions to the relevant RTO, or (3) provide another method of supporting netting that provides a similar level of protection to the market that is approved by FERC. Otherwise, RTOs are prohibited from netting market participants' transactions and required to establish credit based on market participants' gross obligations. FERC regulation 35.47(d), which attempts to ensure that, in the event of a bankruptcy, RTOs are not prohibited from offsetting accounts receivable against accounts payable, is congruent with the regulatory objectives of Core Principle D. In effect, this requirement appears to attempt to clarify an RTO's legal status to take title to transactions in an effort to establish mutuality in the transactions as legal support for set-off in bankruptcy.[213] This clarification, in turn, would seem to limit an RTO's exposure to potential losses from defaults by market participants.

SPP represents that it is a central counterparty and that its Tariff indicates that SPP is the counterparty to the Covered Transactions.[214] SPP has submitted a memorandum of outside counsel that states that SPP's counterparty arrangements will provide SPP with enforceable rights of set off against a market participant in the event of the market participant's bankruptcy.[215]

Compliance with FERC regulation 35.47(d) appears to be congruent with, and to accomplish sufficiently, Core Principle D's regulatory objectives, with respect to the ability to offset market obligations, in the context of SPP's activities with respect to the Covered Transactions. The Commission seeks comment with respect to this preliminary conclusion.

5. DCO Core Principle E: Settlement Procedures

Among the requirements set forth by Core Principle E are the requirements that a DCO (a) have the ability to complete settlements on a timely basis under varying circumstances, and (b) maintain an adequate record of the flow of funds associated with each transaction that the DCO clears.[216]

SPP represents that it has policies and procedures that contain detailed procedures regarding data and record-keeping, and that it has billing periods and settlement periods of no more than seven days each (for a total of 14 days).[217] Specifically, the SPP Tariff requires SPP to invoice market participants for market transactions on a weekly basis detailing all charges and payments.[218] Market participants are required to make payments equal to the net charge on the invoice by 5:00 p.m. on the third business day following the date of the invoice, while SPP makes payments to the market participants equal to the net credit on the invoice by 5:00 p.m. on the fifth business day following the date of the invoice.[219] In addition, SPP represents that it maintains records concerning the flow of funds involved in the settlements by market participants.[220] While this approach does not meet the standards applicable to registered DCOs,[221] it appears to be congruent with, and to accomplish sufficiently, the regulatory objectives of DCO Core Principle E in the context of SPP's activities with respect to the Covered Transactions. The Commission seeks comment on this preliminary conclusion.

6. DCO Core Principle F: Treatment of Funds

DCO Core Principle F requires a DCO to have standards and procedures designed to protect and ensure the safety of member and participant funds, to hold such funds in a manner that would minimize the risk of loss or delay in access by the DCO to the funds, and to invest such funds in instruments with minimal credit, market, and liquidity risks.[222]

SPP represents that it has Tariff provisions that accomplish the regulatory goals of DCO Core Principle F.[223] SPP maintains separate accounts

[209] *See* FERC Order 741 Implementation Chart at 7–8.

[210] FERC Original Order 741 at 65958.

[211] *Id.*

[212] *See* Exemption Application Attachments at 22–23.

[213] *See supra* note 123.

[214] Exemption Application Attachments at 23; *see* FERC Order 741 Implementation Chart at 4–5.

[215] As part of the Exemption Application, SPP provided the Commission with a legal opinion that, provided the Commission with assurance that the netting arrangements contained in the approach selected by SPP to satisfy the obligations contained in FERC regulation 35.47(d) will, in fact, provide SPP with enforceable rights of setoff against any of its market participants under title 11 of the United States Code in the event of the bankruptcy of the market participant. *See* Memorandum regarding Enforceability of Netting Practices from Hunton and Williams to SPP dated December 2, 2013.

[216] 7 U.S.C. 7a–1(c)(2)(E)(i) and (iv).

[217] *See* Exemption Application Attachments at 28–29.

[218] *Id.* at 28.

[219] *Id.* at 28–29.

[220] *Id.* at 29.

[221] *See* 17 CFR 39.14(b) (requiring daily settlements).

[222] 7 U.S.C. 7a–1(c)(2)(F).

[223] *See* Exemption Application Attachments at 30.

for the funds it receives or holds from market participants that are invoiced for market transactions.[224] In addition, SPP represents that the SPP Tariff requires SPP to deposit cash collateral received from a market participant/customer in a segregated, interest bearing account in SPP's name, with all of the interest accruing to the benefit of the market participant/customer.[225] As represented by SPP, these practices appear congruent with, and to accomplish sufficiently, the regulatory objectives of DCO Core Principle F in the context of SPP's activities with respect to the Covered Transactions. The Commission seeks comment with respect to this preliminary conclusion.

7. DCO Core Principle G: Default Rules and Procedures

DCO Core Principle G requires a DCO to have rules and procedures designed to allow for the efficient, fair, and safe management of events when members or participants become insolvent or otherwise default on their obligations to the DCO.[226] Core Principle G also requires a DCO to clearly state its default procedures, make publicly available its default rules, and ensure that it may take timely action to contain losses and liquidity pressures and to continue meeting each of its obligations.[227]

a. General Default Procedures

SPP represents that it has Tariff procedures that address events surrounding the insolvency or default of a market participant.[228] For example, SPP represents that its Tariff identifies events of default (*e.g.*, failure to post any financial security required under the SPP credit policy, failure to pay in full amounts payable, unless cured, events of insolvency, defaults under the credit policy, and failure to provide information under the credit policy in a timely manner), describes the cure period associated with an event of default, and describes the actions to be taken in the event of default and detail the remedies available to SPP—which may include, among other things, suspension of unsecured credit allowances, termination of services in accordance with the SPP Tariff, termination of market activity, and close out and liquidation of TCRs held by a defaulting market participant.[229] As detailed above, in the event that the remedies outlined in SPP's Tariff are insufficient to timely cure a default, SPP has the right to socialize losses from the default among other market participants by, for example, ''short-paying'' such other participants.[230]

b. Setoff

Generally speaking, it is a well-established tenet of clearing that a DCO acts as the buyer to every seller and as the seller to every buyer, thereby substituting the DCO's credit for bilateral counter-party risk. As such, when a DCO is involved, there is little question as to the identity of a counterparty to a given transaction. However, because an RTO can act as agent for its participants, there could be ambiguity as to the identity of a counterparty to a given transaction. As a result, in the event of a bankruptcy of a market participant and in the event of a lack of the mutuality of obligation required by the Bankruptcy Code,[231] an RTO may be liable to pay a bankrupt market participant for transactions in which that participant is owed funds, without the ability to offset amounts owed by that participant with respect to other transactions. Stated differently, although the defaulting market participant may owe money to the RTO, if the RTO also owes money to such participant, the RTO may be required to pay the defaulting participant the full amount owed without being able to offset the amounts owed by that participant to the RTO, which latter amounts may be relegated to claims in the bankruptcy proceedings. As more fully described in section V.D.4.g., the memorandum of counsel provided by SPP addresses this issue.

The foregoing arrangements appear congruent to, and to accomplish sufficiently, the regulatory objectives of DCO Core Principle G in the context of SPP's activities with respect to the Covered Transactions. The Commission seeks comment with respect to this preliminary conclusion.

8. DCO Core Principle H: Rule Enforcement

DCO Core Principle H requires a DCO to (1) maintain adequate arrangements and resources for the effective monitoring and enforcement of compliance with its rules and for resolution of disputes, (2) have the authority and ability to discipline, limit, suspend, or terminate a clearing member's activities for violations of those rules, and (3) report to the Commission regarding rule enforcement activities and sanctions imposed against members and participants.[232]

SPP represents that it maintains a Tariff or other procedures that accomplish the regulatory goals of DCO Core Principle H.[233] SPP maintains that its Bylaws, Membership Agreement and Tariff contain substantial rules governing member, customer, and market participant conduct, and provide SPP with the ability to discipline such conduct and report certain conduct to FERC.[234] SPP has, *e.g.*, the power to take a range of actions against participants that fail to pay, pay late, or fail to comply with SPP's credit policy.[235] In addition, SPP's Bylaws, Membership Agreement and Tariff establish dispute resolution procedures.[236]

Based on SPP's representations, it appears that these practices are congruent with, and sufficiently accomplish, the regulatory objectives of DCO Core Principle H in the context of SPP's activities with respect to the Covered Transactions. The Commission seeks comment with respect to this preliminary conclusion.

9. DCO Core Principle I: System Safeguards

DCO Core Principle I requires a DCO to demonstrate that: (1) It has established and will maintain a program of oversight and risk analysis to ensure that its automated systems function properly and have adequate capacity and security, and (2) it has established and will maintain emergency procedures and a plan for disaster recovery and will periodically test backup facilities to ensure daily processing, clearing and settlement of transactions.[237] Core Principle I also requires that a DCO establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allows for the timely recovery and resumption of the DCO's

[224] *Id.* As discussed above, SPP represents that pursuant to the SPP tariff, market participants pay amounts they owe by the third business day after being invoiced, and SPP pays amounts owed to market participants pertaining to market transactions by the fifth business day after the invoice is issued.

[225] *Id.*

[226] 7 U.S.C. 7a–1(c)(2)(G)(i).

[227] 7 U.S.C. 7a–1(c)(2)(G)(ii).

[228] *See* Exemption Application Attachments at 32–35.

[229] *Id.* at 32–33. SPP states that these remedies are without prejudice to other remedies. SPP also may exercise any rights or remedies it may have at law or in equity, including, but not limited to, bringing suit or otherwise initiating monetary damages, injunctive relief, specific performance, and relief available under the Federal Power Act, except to the extent such remedy is limited under the SPP Credit Policy. *Id.* at 33.

[230] *See supra* notes 148 and 149 and accompanying text.

[231] *See* 11 U.S.C. 553.

[232] 7 U.S.C. 7a–1(c)(2)(H).

[233] Exemption Application Attachments at 36–40.

[234] *Id.* at 36.

[235] *Id.* at 38–39.

[236] *Id.* at 36, 40.

[237] 7 U.S.C. 7a–1(c)(2)(I)(i)–(ii).

operations and the fulfillment of each of its obligations and responsibilities.[238]

SPP represents that it has policies and procedures that accomplish the regulatory goals of DCO Core Principle I,[239] albeit in a manner that is somewhat different than the way in which a DCO complies with DCO Core Principle I. This is because SPP is also responsible for managing power reliably and, thus, requires additional operational safeguards to specifically address that function. For example, SPP is subject to reliability rules established by the North American Electric Reliability Corporation.[240] In order to comply with these rules, SPP has procedures in place to address emergency situations and maintains redundant communication and computer systems, and redundant primary and back-up control centers in separate secured locations.[241] SPP also has implemented on- and off-site data storage and back-up.[242] SPP has emergency preparedness, business continuity, and disaster recovery plans, which are reviewed and updated on a regular basis.[243] SPP also conducts periodic emergency drills and mock disaster scenarios to ensure the readiness of back-up facilities and personnel. Multiple SPP business units, including SPP's Internal Audit Department, work to review, test, and update SPP's business continuity plans.[244] In addition, SPP has a business continuity plan to provide for the calculation of market prices in the event of Day-Ahead Market or Real-Time Balancing Market system failures or isolation of portions of the SPP market from the rest of the market footprint.[245]

Based on SPP's representations, it appears that these system safeguard practices are congruent with, and accomplish sufficiently, the regulatory objectives of DCO Core Principle I in the context of SPP's activities with respect to the Covered Transactions. The Commission seeks comment with respect to this preliminary conclusion.

10. DCO Core Principle J: Reporting

DCO Core Principle J requires a DCO to provide to the Commission all information that the Commission determines to be necessary to conduct oversight of the DCO.[246] SPP represents that it has adopted substantial data and information disclosure provisions, which enables SPP to provide information to the Commission, including information deemed confidential by market participants.[247] Moreover, pursuant to SPP's Tariff and FERC regulations, FERC has access to the information that it would need to oversee SPP.[248] With respect to the disclosure of confidential information received from market participants, SPP states that it has adopted procedures to allow for disclosure of such information to FERC and state regulatory agencies.[249] These procedures apply both to SPP and the SPP Market Monitor. SPP represents that its Tariff permits the disclosure of confidential information to the Commission.[250] In addition, when SPP receives a request that involves a market participant's confidential information, SPP is not required to provide notice to such market participant(s), where the Commission or FERC, or their respective staffs, are the party requesting the confidential information.[251]

Based on the foregoing, including SPP's representations, it appears that these practices are congruent with, and sufficiently accomplish, the regulatory objectives of Core Principle J in the context of Petitioners' activities with respect to the Covered Transactions. The Commission seeks comment with respect to this preliminary conclusion.

11. DCO Core Principle K: Recordkeeping

DCO Core Principle K requires a DCO to maintain records of all activities related to its business as a DCO in a form and manner acceptable to the Commission for a period of not less than five years.[252]

SPP represents that its practices satisfy the regulatory goals of DCO Core Principle K because it has adequate recordkeeping requirements or systems.[253] SPP represents that it complies with FERC's comprehensive regulations governing public utility recordkeeping, many of which require retention of data for at least five years.[254] In addition, under SPP's Standards of Conduct, SPP is required to maintain records showing the transactions under the SPP Tariff for a period of 5 years unless otherwise provided in the Tariff or by law or regulation.[255] SPP retains such records in either electronic or paper format. SPP further represents that its Market Monitoring Plan requires all market data and information held by SPP or the SPP Market Monitor to be retained for a minimum period of three years, and requires market participants to retain such data in their possession for a minimum period of three years.[256]

Based on these regulations and SPP's representations, it appears that these practices are congruent with, and sufficiently accomplish, the regulatory objectives of DCO Core Principle K in the context of SPP's activities with respect to the Covered Transactions. The Commission seeks comment with respect to this preliminary conclusion.

12. DCO Core Principle L: Public Information

DCO Core Principle L requires a DCO to make information concerning the rules and operating procedures governing its clearing and settlement systems (including default procedures) available to market participants.[257] Core Principle L also requires a DCO to provide market participants with sufficient information to enable them to identify and evaluate accurately the risks and costs associated with using the DCO's services, and to disclose publicly and to the Commission information concerning: (1) The terms and conditions of each contract, agreement, and transaction cleared and settled by the DCO; (2) the fees that the DCO charges its members and participants; (3) the DCO's margin-setting methodology, and the size and composition of its financial resources package; (4) daily settlement prices, volume, and open interest for each contract the DCO settles or clears; and (5) any other matter relevant to participation in the DCO's settlement and clearing activities.[258]

SPP represents that it makes its Tariff and related governing documents, such as the SPP Bylaws, Membership Agreement, and the IM Protocols, publicly available on its Web site, which, in turn, allows market participants (and the public) to access information about the rules and operations of the SPP markets, including among other things, participant and product eligibility requirements, credit requirements for

[238] 7 U.S.C. 7a–1(c)(2)(I)(iii).

[239] *See generally,* Exemption Application Attachments at 41–43.

[240] *See id.* at 41.

[241] *See id.*

[242] *See id.*

[243] *See id.* at 42.

[244] *See id.*

[245] *See id.*

[246] 7 U.S.C. 7a–1(c)(2)(J).

[247] *See* Exemption Application Attachments at 44–46.

[248] *Id.*

[249] *Id.* at 44.

[250] *See* Exemption Application at 22; Exemption Application Attachments at 44–45.

[251] *See* Exemption Application Attachments at 44–45.

[252] 7 U.S.C. 7a–1(c)(2)(K).

[253] Exemption Application Attachments at 48.

[254] Exemption Application Attachments at 47; *see* 18 CFR part 125.

[255] Exemption Application Attachments at 47.

[256] *Id.*

[257] 7 U.S.C. 7a–1(c)(2)(L)(i)–(ii).

[258] 7 U.S.C. 7a–1(c)(2)(L)(iii).

market participants, default procedures and default allocations, settlement procedures, SPP fees, and extensive data regarding market and transmission system operations, policies, and procedures.[259]

Based on SPP's representations, it appears that these practices are congruent with, and sufficiently accomplish, the regulatory objectives of DCO Core Principle L in the context of SPP's activities with respect to the Covered Transactions. The Commission seeks comment with respect to this preliminary conclusion.

13. DCO Core Principle M: Information Sharing

DCO Core Principle M requires a DCO to enter into and abide by the terms of all appropriate and applicable domestic and international information-sharing agreements, and use relevant information obtained from the agreements in carrying out the DCO's risk management program.[260]

SPP represents that it has policies and procedures that allow it to share information with, and receive information from, other entities as necessary to carry out its risk management functions.[261] SPP represents that its Tariff, Bylaws, Membership Agreement, and Standards of Conduct set forth rules for SPP's information sharing with SPP members, market participants, regulatory agencies, and other stakeholders.[262] SPP further represents that it has executed ''Joint Operating Agreements,'' with interconnected electric transmission providers, such as (among others) the Midcontinent Independent System Operator, to provide for the sharing of certain transmission system planning and operational information between SPP and the counterparty.[263] Moreover, SPP represents that its Tariff contains procedures to allow for disclosure to the Commission, FERC and state regulatory agencies of confidential information it receives from a market participant.[264] SPP states that notice of such request is not provided to the market participant when the Commission, FERC or their respective staffs are the party requesting the confidential information.[265]

Based on the foregoing and SPP's representations, it appears that these practices are congruent with, and sufficiently accomplish, the regulatory objectives of Core Principle M in the context of SPP's activities with respect to the Covered Transactions. The Commission seeks comment with respect to this preliminary conclusion.

14. DCO Core Principle N: Antitrust

DCO Core Principle N requires a DCO to avoid, unless necessary or appropriate to achieve the purposes of the CEA, adopting any rule or taking any action that results in any unreasonable restraint of trade, or imposing any material anticompetitive burden.[266]

As discussed above, the formation of SPP and other RTOs and ISOs was encouraged by FERC (pursuant to FERC Orders 888 and 2000) in order to foster greater competition in the electric energy generation sectors by allowing open access to transmission lines.[267] In addition, SPP represents that its rules and actions are subject to continued oversight by FERC and the SPP Market Monitor.[268] Such oversight could detect activities such as undue concentrations or market power, discriminatory treatment of market participants or other anticompetitive behavior.[269]

Based on SPP's representations, it appears that SPP's existence and practices are congruent with, and sufficiently accomplish, the regulatory objectives of Core Principle N. The Commission seeks comment with respect to this preliminary conclusion.

15. DCO Core Principle O: Governance and Fitness Standards

DCO Core Principle O requires a DCO to establish governance arrangements that are transparent to fulfill public interest requirements and to permit the consideration of the views of owners and participants.[270] A DCO must also establish and enforce appropriate fitness standards for directors, members of any disciplinary committee, members of the DCO, any other individual or entity with direct access to the settlement or clearing activities of the DCO, and any party affiliated with any of the foregoing individuals or entities.[271]

SPP represents that its Tariff, governing documents, and applicable state law set forth specific governance standards that are consistent with the regulatory goals which address, for example, director independence and fitness requirements.[272] In addition, SPP asserts that FERC Orders 719 and 2000 set out certain minimum governance structures for RTOs. SPP states that Order 719 requires sets forth minimum standards for RTO governance regarding responsiveness to stakeholders. Specifically, Order 719 directed RTOs to adopt means for direct access to their boards of directors for customers and stakeholders and established obligations for RTOs to increase responsiveness to customers and stakeholders using four responsiveness criteria: (1) Inclusiveness; (2) fairness in balancing diverse interests; (3) representation of minority positions; and (4) ongoing responsiveness.[273] SPP asserts that FERC Order 2000 likewise identified minimum characteristics that RTOs must exhibit, including, independence from all market participants.[274]

Based on SPP's representations, it appears that SPP's governance structure is congruent with, and sufficiently accomplishes, the regulatory objectives of DCO Core Principle O in the context of SPP's activities with respect to the Covered Transactions. The Commission seeks comment with respect to this preliminary conclusion.

16. DCO Core Principle P: Conflicts of Interest

Pursuant to DCO Core Principle P, each DCO must establish and enforce rules to minimize conflicts of interest in the decision-making process of the DCO.[275] In addition, each DCO must establish a process for resolving conflicts of interest.[276]

SPP represents that it has adopted stringent conflict of interest requirements as well as a process for resolving such conflicts in its Standards of Conduct for members of its board of

[259] *See* Exemption Application Attachments at 49–50.

[260] 7 U.S.C. 7a–1(c)(2)(M).

[261] *See generally,* Exemption Application Attachments at 52–55; *see also* DCO Core Principle J discussion *supra.*

[262] *See id.* at 52.

[263] *See id.* at 53.

[264] *See* Exemption Application Attachments at 54.

[265] *Id.*

[266] 7 U.S.C. 7a–1(c)(2)(N).

[267] *See* FERC Order 888; FERC Order 2000.

[268] *See* Exemption Application Attachments at 56.

[269] *See id.*

[270] 7 U.S.C. 7a–1(c)(2)(O)(i).

[271] 7 U.S.C. 7a–1(c)(2)(O)(ii)

[272] *See* Exemption Application Attachments at 57–61.

[273] *See* FERC Order 719. SPP represents that FERC has determined that SPP has met the governance criteria for stakeholder responsiveness set forth in FERC Order 719. *See* Exemption Application Attachments at 58.

[274] *See* Exemption Application Attachments at 57 (citing to FERC Order 2000). SPP represents that all SPP Officers and employees are required to execute a statement certifying they have read the SPP Standards of Conduct (which outline the independence requirements for all SPP employees) upon employment and annually thereafter, and to complete an annual review of the Standards of Conduct and certification thereof. The Standards of Conduct govern and limit employee conduct regarding: (1) Involvement in marketing of electric energy; (2) handling and disclosure of confidential information and transmission system information; (3) access to facilities; (4) implementation of the SPP Tariff; (5) recordkeeping; (6) investments; (7) relationships with other parties; (8) reporting of violations of the Standards of Conduct; and (9) conflicts of interest. *Id.* at 61.

[275] 7 U.S.C. 7a–1(c)(2)(P)(i).

[276] 7 U.S.C. 7a–1(c)(2)(P)(ii).

directors and its employees (including officers).[277] The Standards of Conduct for board members and employees require such individuals to, among other things, avoid activities that are contrary to the interests of SPP.[278] SPP further represents that members of the SPP Board of Directors are also subject to conflict of interest and independence standards set forth in the SPP Bylaws.[279]

In addition to the Standards of Conduct, SPP asserts that the SPP Market Monitor and all of its employees must comply with additional independence and ethics standards set forth in the SPP Tariff, including prohibiting: (a) Material affiliation with any market participant or any affiliate of a market participant; (b) serving as an officer, employee, or partner of a market participant; (c) material financial interest in any market participant or any affiliate of a market participant (allowing for such potential exceptions as mutual funds and non-directed investments); (d) engaging in any market transactions other than the performance of their duties under the Tariff; (e) receiving compensation, other than by SPP, for any expert witness testimony or other commercial services to SPP or to any other party in connection with any legal or regulatory proceeding or commercial transaction relating to SPP; and (f) acceptance of anything of value from a market participant in excess of a *de minimis* amount.[280]

Based upon SPP's representations, it appears that the conflict of interest policies SPP has adopted and that the requirements SPP is subject to are congruent with, and sufficiently accomplish, the regulatory objectives of DCO Core Principle P in the context of SPP's activities with respect to the Covered Transactions. The Commission seeks comment with respect to this preliminary conclusion.

17. DCO Core Principle Q: Composition of Governing Boards

DCO Core Principle Q provides that each DCO shall ensure that the composition of the governing board or committee of the derivatives clearing organization includes market participants.[281]

FERC regulations require that an RTO ''must have a decision making process that is independent of control by any market participant or class of participants.'' [282] However, FERC also requires that each RTO ''adopt business practices and procedures that achieve Commission-approved independent system operator and regional transmission organization board of directors' responsiveness to customers and other stakeholders and satisfy [specified] criteria.'' [283] SPP represents that its Bylaws require members of its board of directors to be independent of any member, and that board members may not be a director, officer, or employee of, or have a direct business relationship or affiliation with or a financial interest in a member or customer of services provided by SPP.[284] SPP further represents that the composition of its board of directors is influenced by SPP's members through the nomination and election process.[285] In addition, SPP asserts that its members and market participants have ample opportunity to express their viewpoints to the board of directors through member committees, market participant committees, taskforces, and working groups.[286]

Based on SPP's representations, and the regulations and supervision of FERC, it appears that these practices are congruent with, and sufficiently accomplish, the regulatory objectives of DCO Core Principle Q in the context of SPP's activities with respect to the Covered Transactions. The Commission seeks comment with respect to this preliminary conclusion.

18. DCO Core Principle R: Legal Risk

DCO Core Principle R requires a DCO to have a well-founded, transparent, and enforceable legal framework for each aspect of its activities.[287]

SPP asserts that it operates under a transparent and comprehensive legal framework that is grounded in the Federal Power Act and administered by FERC.[288] Indeed, SPP asserts that it is subject to FERC orders rules and regulations and that SPP operates pursuant to a Tariff that has been reviewed and approved by FERC.[289] SPP further asserts that its Tariff states that SPP is the counterparty to the Covered Transactions.[290] Moreover, with respect to eligibility for setoff in bankruptcy, SPP has submitted a separate legal memorandum of outside counsel that SPP's counterparty arrangements will provide SPP with enforceable rights of set off against a market participant in the event of the market participant's bankruptcy.[291]

Based on SPP's representations, it appears that this framework is congruent with, and sufficiently accomplishes, the regulatory objectives of Core Principle R in the context of SPP's activities with respect to the Covered Transactions. The Commission seeks comment with respect to this preliminary conclusion.

E. SEF Core Principle Analysis

1. SEF Core Principle 1: Compliance With Core Principles

SEF Core Principle 1 requires a SEF to comply with the Core Principles described in part 37 of the Commission's Regulations.[292] SPP represents that, although that there are differences between it and registered SEFs and it is principally regulated by FERC, SPP's practices are consistent with the SEF core principles.[293] In addition, SPP represents that, though its methods are different than those employed by a registered SEF, its practices and the comprehensive regulatory regime of FERC achieve the goals of, and are consistent with, the policies of the Act.[294]

As demonstrated by the following analysis, based upon SPP's representations and the Core Principle discussions below, and in the context of SPP's activities with respect to the Covered Transactions within the scope of this Proposed Exemption, the Commission has made a preliminary determination that in the context of SPP's activities with respect to the Covered Transactions within the scope of this Proposed Exemption, SPP's practices appear congruent with, and to accomplish sufficiently, the regulatory objectives of each SEF Core Principle. The Commission requests comment with respect to this preliminary determination.

[277] *See* Exemption Application Attachments at 62–64; *see, e.g.,* sections 9.3–9.5 of Attachment to the October 2014 Supplemental Letter.

[278] *See* Exemption Application Attachments at 62–64.

[279] *See id.* at 62; October 2014 Supplemental Letter at 4.

[280] *See* Exemption Application Attachments at 63–64.

[281] 7 U.S.C. 7a–1(c)(2)(Q).

[282] *See* 18 CFR 35.34(j)(1)(ii).

[283] *See* 18 CFR 35.28(g)(6).

[284] *See* Exemption Application Attachments at 65. SPP also notes that except for the President of SPP, no other board member may be an employee of SPP. *Id.*

[285] *See id.* SPP states that its Corporate Governance Committee, which includes member representatives, nominates candidates for board positions.

[286] *See id.*

[287] 7 U.S.C. 7a–1(c)(2)(R).

[288] *See* Exemption Application Attachments at 68.

[289] *See id.*

[290] *See id.*

[291] *See id.; see* discussion *supra* section V.D.4.g.

[292] 7 U.S.C. 7b–3(f)(1).

[293] *See* Exemption Application Attachments at 70–71.

[294] *Id.*

2. SEF Core Principle 2: Compliance With Rules

SEF Core Principle 2 requires a SEF to establish and enforce compliance with any rule of the SEF.[295] A SEF is also required to (1) establish and enforce rules with respect to trading, trade processing, and participation that will deter market abuses and (2) have the capacity to detect, investigate and enforce those rules, including a means to (i) provide market participants with impartial access to the market, and (ii) capture information that may be used in establishing whether rule violations have occurred.[296]

According to SPP, each of the Covered Transactions takes place on markets that are monitored by both SPP and the SPP Market Monitor (its independent market monitor responsible to FERC). In addition, SPP states that an RTO must demonstrate to FERC that it performs certain self-regulatory and/or market monitoring functions.[297]

SPP asserts that FERC Order Nos. 719 and 2000 require RTOs to employ a Market Monitor to monitor the conduct of both the RTO and its market participants with regard to all RTO markets and services, stating that the SPP Market Monitor is an independent department within SPP that reports directly to the SPP Board of Directors, except that the President of SPP (a member of the Board of Directors) is excluded from participating in oversight of the Market Monitor. Moreover, according to SPP, it is obligated to ensure that the Market Monitor is appropriately staffed and provided with sufficient resources and access to data to carry out its duties under the Tariff.[298]

SPP represents that it has transparent rules for its market, including rules to deter abuses, market monitoring and mitigation plans aimed at discovering and addressing potential and actual abuses, and has enforcement mechanisms that allow SPP and the SPP Market Monitor to, among other things, monitor its markets, investigate suspected Tariff violations, take actions against violators and refer potential violations to FERC.[299]

Based on the foregoing, it appears that SPP's practices are consistent with, and sufficiently accomplish, the regulatory goals of SEF Core Principle 2 in the context of SPP's activities with respect to the Covered Transactions. The Commission requests comment with respect to this preliminary determination.

3. SEF Core Principle 3: Swaps Not Readily Susceptible to Manipulation

SEF Core Principle 3 requires a SEF submitting a contract to the Commission for certification or approval to demonstrate that the swap is not readily susceptible to manipulation.[300] SPP represents that it has detailed rules in its Tariff and IM Protocols to deter, detect, and prevent market manipulation in the SPP markets, and a staffed and resourced Market Monitor to implement the rules.[301] SPP also makes specific representations regarding its cash-settled energy transactions, transmission congestion rights and capacity and reserve transactions to demonstrate that they are consistent with the Commission's focus in the RTO–ISO Order.[302] SPP also indicated that the Covered Transactions for which SPP is seeking an exemption under Section 4(c) of the CEA include the three categories of transactions mentioned above, as well as any product or any modifications that are offered in the future pursuant to the FERC-approved Tariff that do not alter the characteristics of the transactions in a way that would cause them to fall outside of the definitions in the RTO–ISO Order.[303]

a. Cash-Settled Energy Transactions

SPP defines Energy Transactions as transactions in the SPP Day-Ahead-Market or Real-Time Balancing Market for the purchase or sale of a specified quantity of electric energy at a specified location (including virtual bids and offers) where among other conditions, the aggregate cleared volume of both physical and cash-settled energy transactions for any period of time is limited by the physical capability of the electric energy transmission system operated by SPP for that period of time.[304] SPP further indicates that the purpose of the virtual transactions in the Day-Ahead-Market is to promote convergence between the Day-Ahead-Market and Real-Time Balancing Market prices, which reduces price volatility normally found in electric markets.[305]

SPP indicates that its representations to the Commission are similar to that of other RTOs and ISOs to which the RTO–ISO Order was issued with respect to SEF Core Principle 3.[306] The Commission understands that the SPP Market Monitor operated by SPP has been organized in such a way that both the Real-Time Balancing and Day-Ahead markets are monitored to identify suspicious trading activity and that the SPP Market Monitor notifies FERC of suspicious activity, including transactions that involve repeated losses.[307] Furthermore, SPP represents that they are obligated to ensure that the SPP Market Monitor is appropriately staffed and provided with sufficient resources and access to data to carry out its duties under its Tariff.[308]

Based on SPP's representations regarding the surveillance carried out by its SPP Market Monitor and the method by which the Day-Ahead and Real-Time Balancing auctions are conducted, it appears that SPP's policies and procedures to mitigate the susceptibility of Energy Transactions to manipulation are congruent with, and sufficiently accomplish, the regulatory objectives of SEF Core Principle 3 in the context of SPP's activities with respect to the Energy Transactions. The Commission seeks comment with respect to this preliminary conclusion.

b. Transmission Congestion Rights

SPP represents that a Transmission Congestion Right (''TCR'') is a transaction that entitles one party to receive, and obligates another party to pay, an amount based solely on the difference the price of electric energy, established on an electric energy market administered by SPP, at a specified source and a specified sink.[309] Based

[295] 7 U.S.C. 7b–3(f)(2).

[296] SEF Core Principle 2 also requires a SEF to establish rules governing the operation of the facility, including trading procedures, and provide rules that, when a swap is subject to the mandatory clearing requirement, hold swap dealers and major swap participants responsible for compliance with the mandatory trading requirement under section 2(h)(8) of the Act.

[297] According to SPP, it is required to satisfy four minimum characteristics as a FERC-approved RTO: (1) Independence from any market participant; (2) a scope and regional configuration which enables the RTO or ISO to maintain reliability and effectively perform its required functions; (3) operational authority for its activities, including being the security coordinator for the facilities that it controls; and (4) short-term reliability, as well as other requirements FERC imposes on RTOs. Exemption Application at 18.

[298] Exemption Application Attachments at 73–74.

[299] *See* Exemption Application at 17; *see also* Exemption Application Attachments at 72–76.

[300] 7 U.S.C. 7b–3(f)(3).

[301] *See* Exemption Application Attachments at 77–79.

[302] *See* Exemption Application Attachments at 79–81.

[303] *See* Exemption Application at 11.

[304] *See* Exemption Application at 13–14. SPP represents that its definition is similar to the definition for energy transactions used by the Commission in the RTO–ISO Order (*see* RTO–ISO Order at 19913, Order section VI.5.b(1), (2) and (3), which, according to SPP, contain the same provisions as SPP's definition).

[305] *See* Exemption Application Attachments at 79.

[306] Exemption Application Attachments at 80.

[307] *Id.*

[308] *Id.* at 78, 83.

[309] As noted above, TCRs are SPP's equivalent transaction to what was referred in the RTO–ISO Order as ''Financial Transmission Rights'' or ''FTRs.'' *See* Exemption Application at 1 n. 3; *see*

Continued

upon SPP's representations, the Commission understands TCRs to be cash-settled contracts that entitle the holder to a payment equal to the difference in the price of electric energy between the specified source and the specified sink. The difference in price between the two them represents the settlement price. The price at each node (source or sink) is established through auctions conducted on the Day-Ahead market of SPP. The Commission notes that in the RTO–ISO Order, it made a preliminary determination that the Real-Time Balancing and Day-Ahead markets, which set energy transaction prices on SPP's platform, appears to be consistent with SEF Core Principle 3. The Commission seeks comment regarding whether this preliminary conclusion is correct.

As previously discussed, SPP and the SPP Market Monitor conduct market surveillance of both the Real-Time Balancing and Day-Ahead markets to identify manipulation of the price of electric energy. In the event unusual trading activity is detected by the SPP Market Monitor, the SPP Market Monitor will immediately contact FERC's Office of Enforcement, so that an investigation into the unusual activity may begin.[310] Although the price of TCRs may be altered by the manipulation of the Real-Time Balancing or Day-Ahead markets, FERC requires that the Applicant have systems to monitor for such activity.

The Commission believes that SPP's policies and procedures should mitigate the susceptibility of TCRs to manipulation and that they are congruent with, and sufficiently accomplish, the regulatory objectives of SEF Core Principle 3 in the context of SPP's activities with respect to TCRs. The Commission seeks comment with respect to this preliminary conclusion.

c. Reserve Transactions Market

SPP has proposed a Reserve Transactions Market.[311] Reserve Transactions are entered into pursuant to auctions carried out by SPP.[312] However, unlike the auctions for the Real-Time Balancing and Day-Ahead markets, the auctions for reserve transactions simply allow SPP to accept bids submitted by market participants that have the ability to inject electric energy into SPP's electric energy transmission system.[313]

The Commission notes that SPP would apply the same oversight policies and procedures to Reserve Transactions that it applies to Energy Transactions and FTRs. The Commission believes that these measures appear to be consistent with, and to accomplish sufficiently, the regulatory objectives of SEF Core Principle 3 in the context of SPP's activities with respect to Reserve Transactions. The Commission seeks comment with respect to this preliminary conclusion.

4. SEF Core Principle 4: Monitoring of Trading and Trade Processing

SEF Core Principle 4 requires a SEF to establish and enforce rules or terms and conditions defining trading procedures to be used in entering and executing orders traded on or through the SEF and procedures for the processing of swaps on or through the SEF.[314] SEFs are also required to establish a system to monitor trading in swaps to prevent manipulation, price distortion and disruptions of the delivery or cash settlement process through surveillance, compliance and disciplinary practices and procedures. The main goal of this Core Principle is to monitor trading activity to detect or deter market participants from manipulating the price or deliverable supply of a commodity.

a. Energy Transactions

Generally, SPP's Tariff lists how Energy Transactions are to be entered into the trading platform.[315] Using these procedures, the SPP Market Monitor is able to track the Energy Transactions submitted by market participants and identify trading activity that could be manipulative. As a result, SPP's policies and procedures regarding monitoring of trading and trade processing appear to be consistent with, and to accomplish sufficiently, the regulatory objectives of SEF Core Principle 4 in the context of SPP's activities with respect to Energy Transactions. The Commission seeks comment with respect to this preliminary conclusion.

b. TCRs [316]

The process by which the TCR allocation and auction takes place provides SPP with a basic system that allows SPP to determine which market participants hold TCRs. According to SPP's Tariff, and similar to other RTOs, SPP offers ARRs to eligible transmission customers to address their exposure to transmission congestion costs, which is based on their transmission service or network load, with SPP performing a simultaneous feasibility analysis to ensure that ARR awards do not exceed physical system capability. SPP then conducts auctions for TCRs, and also oversees a secondary TCR market. SPP systems track ownership of ARRs and TCRs, including transfers of TCR ownership in the secondary market and SPP verification that secondary TCR owners qualify under SPP's TCR creditworthiness requirements. SPP applies to this market the market monitoring and mitigation plans that SPP has developed for all markets and services under the SPP Tariff.[317]

Based on the foregoing representations, it appears that SPP's policies and procedures regarding the monitoring of trading and trade processing are consistent with, and to accomplish sufficiently, the regulatory objectives of SEF Core Principle 4 in the context of SPP's activities with respect to TCRs. The Commission seeks comment with respect to this preliminary conclusion.

c. Reserve Transactions

As discussed above, the auction process used for Reserve Transactions differs from the process used in the Real-Time Balancing and Day-Ahead markets.[318] Furthermore, Reserve Transactions are not used to limit exposure to price volatility, discover prices or engage in arbitrage. The transactions are predominantly bilateral agreements between SPP and certain of SPP's market participants for the provision of electric energy in order to meet the technical requirements necessary to operate the electric transmission system. The contracts are not readily susceptible to manipulation and there is no market trading that must be monitored to prevent manipulation or congestion of the physical delivery market. As a result, SPP's policies and procedures regarding the monitoring of trading and trade processing appear to be consistent with, and to accomplish sufficiently, the regulatory objectives of SEF Core Principle 4 in the context of SPP's activities with respect to Capacity and Reserve Transactions. The

also, Exemption Application at 12 n. 54 and accompanying text.

[310] *See* Exemption Application Attachments at 81.

[311] The Commission notes that while the RTO–ISO Order also addressed Forward Capacity Transactions Market, SPP's Exemption Application does not propose such transactions.

[312] *See* Exemption Application at 14–15.

[313] *See id.*

[314] 7 U.S.C. 7b–3(f)(4).

[315] *See generally,* Exemption Application Attachments at 82–86.

[316] As noted above, the RTO–ISO Order used the term FTRs. *See* Exemption Application at 12 n. 54 (noting that TCR is SPP's equivalent of FTR in the RTO–ISO Order).

[317] *See generally,* Exemption Application Attachments at 82–86.

[318] The Commission notes that SPP does not propose a Forward Capacity Market.

Commission seeks comment with respect to this preliminary conclusion.

5. SEF Core Principle 5: Ability To Obtain Information

SEF Core Principle 5 requires a SEF to establish and enforce rules that will allow it to obtain any necessary information to perform the functions described in section 733 of the Dodd-Frank Act, provide information to the Commission upon request, and have the capacity to carry-out such international information-sharing agreements as the Commission may require.[319] As discussed above,[320] SPP represents that it has rules in place that require market participants to submit information to SPP upon request so that SPP may conduct investigations and provide or give access to such information to the SPP Market Monitor and FERC.[321] On the basis of these representations, it appears that SPP's practices are consistent with, and sufficiently accomplish, the regulatory goals of SEF Core Principle 5. The Commission seeks comment with respect to this preliminary determination.

6. SEF Core Principle 6: Position Limits or Accountability

SEF Core Principle 6 requires SEFs that are trading facilities, as that term is defined in CEA section 1a(51), to establish position limits or position accountability for speculators, as is necessary and appropriate, for each swap traded on the SEF in order to reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month.[322] While the markets administered by SPP are subject to the SPP Market Monitor (as discussed above in section IV.C.), SPP does not have position limits or position accountability thresholds for speculators in order to reduce the potential threat of market manipulation or congestion.

The Commission notes that in the RTO–ISO Order, it did not impose position limits on the transactions covered by the Order. Instead, without making any determinations regarding the merits of the concerns regarding position limits raised in comments responding to that proposal, the Commission stated that it accepted the Requesting Parties' representations that the physical capability of their transmission grids limits the size of positions that any single market participant can take at a given time.[323] Furthermore, the Commission stated that as the RTO–ISO Order limited each transaction category it covered to the physical capability of the transmission grid, the Commission stated its belief that imposing position limits on the transactions covered by that Order was not necessary at that time in order to make the requisite public interest and purposes of the CEA determinations.[324]

According to SPP's Exemption Application, each category of transactions for which SPP is requesting relief would be limited by the physical capability of the transmission grid and that the physical capability of its transmission grid limits the size of positions that any single market participant can take at a given time.[325] On the basis of SPP's representations, and consistent with the RTO–ISO Order, the Commission is preliminarily determining that it is not necessary, when considering the requisite public interest and purposes of the CEA determinations, to impose position limits on SPP's Integrated Marketplace. The Commission seeks comment with respect to this preliminary determination.

7. SEF Core Principle 7: Financial Integrity of Transactions

SEF Core Principle 7 requires a SEF to establish and enforce rules and procedures for ensuring the financial integrity of swaps entered on or through the facilities of the SEF, including the clearance and settlement of swaps pursuant to section 2(h)(1) of the CEA.

a. Risk Management Requirements and Credit Policies

SPP represents that its risk management provisions provide it with appropriate tools and procedures to manage risk associated with operating its wholesale and related markets.[326] According to SPP, the credit policy contained in its Tariff includes, in compliance with FERC's Order No. 741, minimum capitalization requirements and an attestation of a market participant's risk management capabilities.[327] The attestation requires that the market participant describe its risk management capabilities and procedures and whether it is engaged in hedging, describe the employees who perform the risk management procedures, define the special training, skills, experience, and industry tenure of those employees, and provide any additional information in determining the risk management capabilities of the market participant. Market participants also are required to notify SPP of material adverse changes in their financial conditions.[328]

SPP represents that its credit policy provides the process by which SPP will periodically review and verify a market participant's risk management policies, practices, and procedures pertaining to its activities in SPP, as well as procedures for SPP to complete credit assessments. Successful completion of SPP's verification is required for a selected market participant's continued eligibility to participate in the SPP markets.[329]

b. Minimum Financial Standards and Ongoing Monitoring for Compliance

In addition, based on SPP's representations, it appears that SPP's policies and procedures include minimum financial standards and creditworthiness standards for their market participants.[330] Moreover, SPP represents that its policies and procedures, require SPP to monitor, on an ongoing basis, their market participants for compliance with such standards.[331]

c. Establishment of a Central Counterparty

As discussed in section V.C. above, FERC regulation 35.47(d) requires RTOs

[319] 7 U.S.C. 7b–3(f)(5).

[320] *See generally,* discussions *supra* in sections V.D.10. and V.D.13.

[321] *See generally,* Exemption Application Attachments at 87–89.

[322] Further Definition of 'Swap Dealer,' 'Security-Based Swap Dealer,' 'Major Swap Participant,' 'Major Security-Based Swap Participant' and 'Eligible Contract Participant,'" 77 FR 30596, May 23, 2012.

[323] RTO–ISO Order at 19902.

[324] *Id.*

[325] *See* Exemption Application at 12–15, 17; Exemption Application Attachments at 90–93.

[326] *See* Exemption Application at 17–20; Exemption Application Attachments at 94–100.

[327] *See* Exemption Application Attachments at 94.

[328] *Id.*

[329] *See* Exemption Application Attachments at 95.

[330] *See, e.g.,* Exemption Application Attachments at 10–14, 96–100. SPP requires market participants to demonstrate and maintain the certain minimum financial requirements. The Commission notes that SPP has represented that it has market participants that may not meet the definition of eligible contract participant as defined by the CEA, but are ''appropriate persons'' for purposes of the 4(c) exemption. *See* Exemption Application Attachments at 11–12, 16–17, 60, 95. The Commission proposes to condition the granting of the 4(c) request on all parties to the agreement, contract or transaction being (1) ''appropriate persons,'' as defined sections 4(c)(3)(A) through (J) of the Act; (2) ''eligible contract participants'' as defined in section 1a(18)(A) of the Act and in Commission regulation 1.3(m); or (3) a person who actively participates in the generation, transmission, or distribution of electric energy,'' as defined in paragraph 5(h) of the Proposed Exemption. *See* provision 2.b. of the Proposed Exemption.

[331] *See, e.g.,* Exemption Application Attachments at 12–14, 16–20, 24–25, 96–97, 99–100. For example, according to SPP, it completes credit assessments annually and has access to and reviews multiple rating agency and industry advisories on market participant activities. *Id.* at 95.

and ISOs to (1) establish a single counterparty to all market participant transactions, (2) require each market participant to grant a security interest in the receivables of its transactions to the relevant RTO or ISO, or (3) provide another method of supporting netting that provides a similar level of protection to the market that is approved by FERC.[332]

According to SPP, in compliance with FERC Order No. 741's requirement to establish the ability to net and offset market obligations in bankruptcy, SPP is the counterparty to certain market transactions that are pooled within the Integrated Marketplace.[333] SPP also is the counterparty with each market participant for that market participant's Integrated Marketplace agreements and transactions in the TCR Market, Day-Ahead Market, and Real-Time Balancing Market, with specified exclusions regarding bilateral transactions between market participants, and self-committed, self-scheduled, and self-supplied arrangements.[334] SPP also is the counterparty to TCR and ARR instruments held by market participants.

As noted in section V.D.4.g. above, SPP submitted a legal memorandum from outside counsel that states that SPP's counterparty arrangements will provide SPP with enforceable rights of set-off in the event of the market participant's bankruptcy.

d. Conclusion

Issues regarding risk management requirements, financial standards, and the use of a central counterparty are also addressed within the context of DCO Core Principle D. The Commission's preliminary conclusion that SPP's policies and procedures are congruent with, and sufficiently accomplish, the regulatory objectives of Core Principle D in the context of SPP's activities with respect to the Covered Transactions is relevant in considering SEF Core Principle 7.

Based on the foregoing analysis, including the representations and submissions of SPP, SPP's policies and procedures appear to be consistent with, and to accomplish sufficiently, the regulatory objectives of SEF Core Principle 7 in the context of SPP's activities with respect to the Covered Transactions. The Commission seeks comment with respect to this preliminary conclusion.

8. SEF Core Principle 8: Emergency Authority

SEF Core Principle 8 requires that SEFs adopt rules to provide for the exercise of emergency authority.[335] The SEF should have procedures and guidelines for decision-making and implementation of emergency intervention in the market. The SEF should have the authority to perform various actions, including without limitation: Liquidating or transferring open positions in the market, suspending or curtailing trading in any swap, and taking such market actions as the Commission may direct. In addition, SEFs must provide prompt notification and explanation to the Commission of the exercise of emergency authority.[336]

SPP represents that its Tariff generally provides a wide range of authorities to address emergency situations, and that its emergency authority provisions are similar to those of the RTOs/ISOs covered by the RTO–ISO Order.[337] According to SPP, its Tariff and applicable law includes provisions to address a market participant's default on its obligations, including the ability, in the event of default, to suspend any unsecured credit allowances, terminate the market participant's rights under the SPP credit policy, terminate service, liquidate a market participant's TCR positions in the Integrated Marketplace, as well as the authority to suspend or curtail trading in its markets.[338]

Just as the SEF's have rules in place that require them to take emergency actions to protect the markets by ''including imposing or modifying position limits, imposing or modifying price limits, imposing or modifying intraday market restrictions, imposing special margin requirements, ordering the liquidation or transfer of open positions in any contract, ordering the fixing of a settlement price,'' SPP represents that it may take actions to protect its markets. SPP states that if the SPP Market Monitor discovers any weaknesses or failures in market design that requires immediate corrective action, the SPP Market Monitor may request that the president of SPP authorize an immediate FERC filing to implement a corrective action while the appropriate SPP organizational group considers a solution, and that SPP has additional Tariff provisions to govern the calculation of market prices in the event of a failure of either the Day-Ahead Market or Real-Time Balancing Market systems, as well as calculation of prices in the event that a portion of the SPP system becomes isolated from the remainder of the market.[339]

Based on the foregoing representations, it appears that SPP's policies and procedures regarding the exercise of emergency authority are congruent with, and sufficiently accomplish, the regulatory objectives of SEF Core Principle 8 in the context of SPP's activities with respect to the Covered Transactions. The Commission seeks comment with respect to this preliminary conclusion.

9. SEF Core Principle 9: Timely Publication of Trading Information

SEF Core Principle 9 requires a SEF to make public timely information on price, trading volume, and other data on swaps to the extent prescribed by the Commission.[340] In addition, SEFs are required to have the capacity to electronically capture and transmit trade information with respect to transactions executed on the SEF.[341]

SPP represents that its Tariff requires the timely publication of trading information, and SPP is subject to FERC's Open Access Same-Time Information System (''OASIS'') regulations and publishes market operation and grid management data on the SPP OASIS.[342] SPP also asserts that it is able to publicly release market operations and grid management information using their OASIS program.[343] This system transmits information which includes market

[332] 18 CFR 35.47(d).

[333] SPP represents that it has become a central counterparty and that its Tariff indicates that SPP will be the counterparty to certain market transactions that are pooled in SPP's market. *See* Exemption Application Attachments at 95 n. 450; *see generally*, Exemption Application at 19–21, Exemption Application Attachments at 94–100, and FERC Order 741 Implementation Chart at 4.

[334] *See* Exemption Application Attachments at 96 n. 453 and accompanying text. SPP represents that it is not the counterparty to agreements and transactions for transmission service and certain ancillary services, which are not agreements and transactions in the Integrated Marketplace. *Id.*

[335] 7 U.S.C. 7b–3(f)(8).

[336] Final Rulemaking—Core Principles and Other Requirements for Swap Execution Facilities, 78 FR 33476, 33536, June 4, 2013.

[337] *See* Exemption Application Attachments at 101–103.

[338] *Id.* SPP notes that its Tariff also provides for SPP's response to transmission system emergency conditions related to the physical operation of the system. *See also* system safeguards discussion *infra* section V.E.14. In addition, SPP notes that it is revenue neutral with respect to all market transactions and services that SPP provides, and that shortfalls resulting from a failure of one or more market participants to pay market service invoices are socialized among the market participants receiving revenues for the market services associated with the unpaid obligations. For discussion of financial integrity of transactions, see section V.E.7 for SEF Core Principle 7, Financial Integrity of Transactions discussion.

[339] Exemption Application Attachments at 103.

[340] 7 U.S.C. 7b–3f(9)(A).

[341] 7 U.S.C. 7b–3f(9)(B).

[342] *See* Exemption Application Attachments at 104–106. *See, e.g., id.* at 104, n. 492; *see also id.* at 106.

[343] *See id.* at 104.

results, the market clearing price and volume.[344]

Based on the foregoing representations, it appears that SPP's policies and procedures regarding the publication of trading information are congruent with, and sufficiently accomplish, the regulatory objectives of SEF Core Principle 9 in the context of SPP's activities with respect to the Covered Transactions. The Commission seeks comment with respect to this preliminary conclusion.

10. SEF Core Principle 10: Recordkeeping and Reporting

SEF Core Principle 10 requires a SEF to maintain records of all activity relating to the business of the SEF, report such information to the Commission and to keep swaps information open to inspection by the Commission.[345] SPP represents that it has adopted data retention and disclosure policies and is required to comply with FERC regulations regarding data retention and disclosure.[346] In addition, SPP represents that its Tariff requires its market participants to provide the SPP Market Monitor with certain information on a regular and *ad hoc* basis for use in its market monitoring activities.[347] SPP further represents that it is required to comply with FERC regulations regarding the maintenance of information by public utilities.[348]

Based on SPP's representations and the discussion regarding DCO Core Principles J and K above,[349] it appears that these practices are congruent with, and sufficiently accomplish the regulatory objectives of SEF Core Principle 10 in the context of SPP's activities with respect to the Covered Transactions. The Commission seeks comment with respect to this preliminary conclusion.

11. SEF Core Principle 11: Antitrust Considerations

SEF Core Principle 11 prevents a SEF from adopting any rule or taking any action that results in any unreasonable restraint of trade, or imposes any material anticompetitive burden, unless necessary or appropriate to achieve the purposes of the Act.[350] As discussed above, FERC established the RTO/ISO system to promote competition in the electric energy market.[351] SPP represents that its rates and actions are subject to the oversight of FERC.[352] SPP further represents that FERC and the SPP Market Monitor review trading activity to identify anticompetitive behavior and market design flaws.[353]

Based on SPP's representations and the discussion of DCO Core Principle N above,[354] it appears that SPP's existence and practices are congruent with, and sufficiently accomplish, the regulatory objectives of SEF Core Principle 11 in the context of SPP's activities with respect to the Covered Transactions. The Commission seeks comment on this preliminary conclusion.

12. SEF Core Principle 12: Conflicts of Interest

Core Principle 12 requires a SEF to establish and enforce rules to minimize conflicts of interest and establish a process for resolving conflicts of interest.[355] FERC Order 888 requires ISOs to adopt or enforce strict conflict of interest policies.[356] Similarly, FERC Order 2000 requires RTOs to be independent of any market participant, and to include in their demonstration of independence that the RTO, its employees, and any non-stakeholder directors do not have financial interests in any market participant.[357]

SPP represents that it meets the requirements of FERC's Order No. 2000. Moreover, it represents that it has developed extensive standards of conduct and conflict of interest provisions for members of the Board of Directors and employees (including officers).[358] SPP's Standards of Conduct for board members and employees require such individuals to, among other things, avoid activities that are contrary to the interests of SPP.[359] In addition to the Standards of Conduct, SPP asserts that the SPP Market Monitor and all of its employees must comply with additional independence and ethics standards set forth in the SPP Tariff, including prohibiting: (a) Material affiliation with any market participant or any affiliate of a market participant; (b) serving as an officer, employee, or partner of a market participant; (c) material financial interest in any market participant or any affiliate of a market participant (allowing for such potential exceptions as mutual funds and non-directed investments); (d) engaging in any market transactions other than the performance of their duties under the Tariff; (e) receiving compensation, other than by SPP, for any expert witness testimony or other commercial services to SPP or to any other party in connection with any legal or regulatory proceeding or commercial transaction relating to SPP; and (f) acceptance of anything of value from a market participant in excess of a *de minimis* amount.[360]

Based on SPP's representations and the discussion of DCO Core Principle P above,[361] it appears that SPP's conflict of interest policies and the requirements SPP is subject to are congruent with, and sufficiently accomplish, the regulatory objectives of SEF Core Principle 12 in the context of SPP's activities with respect to the Covered Transactions. The Commission seeks comment with respect to this preliminary conclusion.

13. SEF Core Principle 13: Financial Resources

SEF Core Principle 13 requires a SEF to have adequate financial, operational and managerial resources to discharge each responsibility of the SEF.[362] In addition, the financial resources of a SEF are considered to be adequate if the value of the financial resources exceeds the total amount that would enable the SEF to cover the operating costs of the SEF for a 1-year period, as calculated on a rolling basis.[363]

SPP represents that it has adopted provisions to ensure adequate financial, operational and managerial resources to

[344] *See id.; see also* October 2014 Supplemental Letter at 3.

[345] 7 U.S.C. 7b–3(f)(10).

[346] *See generally,* Exemption Application Attachments at 107–111; *see also,* October 2014 Supplemental Letter at 3.

[347] *See generally,* Exemption Application Attachments at 107 n. 503 and accompanying text; *see also id.* at 111.

[348] *See, e.g., id.* at 111.

[349] *See* discussions *supra* sections V.D.10. and V.D.11.

[350] 7 U.S.C. 7b–3(f)(11).

[351] *See generally,* discussion in section III.B, including consideration of FERC Orders 888 and 2000; *see also* Exemption Application Attachments at 112; *see also* discussion *supra* section V.D.14.

[352] *See generally,* Exemption Application Attachments at 112.

[353] *Id.*

[354] *See also*, discussion *supra* section V.D.14.

[355] 7 U.S.C. 7b–3(f)(12).

[356] *See* FERC Order 888 at 281.

[357] *See* FERC Order 2000 at 709; 18 CFR 35.34(j)(1).

[358] *See* Exemption Application Attachments at 113–115, and October 2014 Supplemental Letter at 4–5 (*see, e.g.*, SPP representation that ''[m]embers of the SPP Board of Directors are subject to Conflict of Interest and Independence standards set forth in the SPP Bylaws,'' and that ''SPP Officers are required to execute the Standards of Conduct upon employment. SPP staff members are required to execute the Standards of Conduct upon employment and annually thereafter.'' In addition, SPP represents ''SPP's discussion of DCO Core Principles O and P also supports SPP's discussion of SEF Core Principle 12.'' October 2014 Supplemental Letter at 4–5. *See also* discussion *supra* section V.D.16, DCO Core Principle P.

[359] Exemption Application Attachments at 113–115; October 2014 Supplemental Letter at 4–5.

[360] *Id.*

[361] *Id. See also* DCO Core Principle P discussion *supra* section V.D.16.

[362] 7 U.S.C. 7b–3(f)(13)(A).

[363] 7 U.S.C. 7b–3(f)(13)(B).

discharge its responsibilities.[364] For example, SPP states that it is revenue neutral with respect to all market transactions and services that it provides, that it has rules in place that allow it to collect revenue from market participants sufficient for each of their operations, that it imposes strict creditworthiness and collateral requirements on market participants to reduce the possibility of a market participant's default and mitigate the impact of such a default on SPP's ability to meet its obligations to other market participants, and has authority to terminate a market participant's ability to transact in the market in situations of default or bankruptcy.[365] SPP further represents to it has sufficient operational resources to fulfill its obligations, and has adequate managerial resources to operate its systems.[366] In addition, SPP states that FERC Orders 888 and 2000 provides RTOs with incentives and imposes requirements to promote effective management of RTOs.[367] SPP represents that it has sufficient staff necessary for its operations, and has sufficient human resources to fulfill its obligations to its members, market participants, and customers.[368]

Based on SPP's representations and the discussion regarding DCO Core Principle B above,[369] it appears that SPP's practices are congruent with, and sufficiently accomplish, the regulatory objectives of SEF Core Principle 13 in the context of SPP's activities with respect to the Covered Transactions. The Commission seeks comment with respect to this preliminary conclusion.

14. SEF Core Principle 14: System Safeguards

SEF Core Principle 14 requires a SEF to establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk, through the development of appropriate controls and procedures, and automated systems, that are reliable and secure, and have adequate scalable capacity.[370] Moreover, a SEF must establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allows for the timely recovery and resumption of operations, and the fulfillment of the responsibilities and obligations of the SEF.[371] The SEF must also conduct tests to verify that the backup resources of the SEF are sufficient to ensure continued order processing and trade matching, price reporting, market surveillance, and maintenance of a comprehensive and accurate audit trail.[372]

SPP represents that it has developed and adopted system safeguard controls and procedures to identify and minimize operational risk, including back-up facilities, emergencies and disaster.[373] Indeed, SPP states that as a North American Electric Reliability Corporation registered entity, it is required to comply with mandatory electric reliability standards that include (among other things) protecting against risk to control centers, information systems and communications, thus, requires additional operational safeguards to specifically address that function.[374]

For example, SPP represents that in order to comply with these requirements, it has computer systems that incorporate adequate business continuity and disaster recovery functionality.[375] SPP has installed and maintains redundant communications and computer systems, has redundant primary and back-up control centers in separate secured locations, and has implemented on- and off-site data storage and back-up.[376] Furthermore, SPP states that it has emergency preparedness, business continuity and disaster recovery plans that are regularly reviewed and updated, and it conducts periodic emergency drills and mock disaster scenarios to ensure the readiness of backup facilities and personnel.[377] Multiple SPP business units, including SPP's Internal Audit Department, work to review, test, and update SPP's business continuity plans. In addition, SPP has a business continuity plan to provide for the calculation of market prices in the event of Day-Ahead Market or Real-Time Balancing Market system failures or isolation of portions of the SPP market from the rest of the market footprint. Separately, if the SPP Market Monitor discovers any weakness or failures in market design that requires immediate corrective action, the Market Monitor may request authorization for an immediate FERC filing to implement a corrective action while a solution is being considered.[378]

Based on SPP's representations as well as the discussion regarding DCO Core Principle I above,[379] it appears that SPP's practices are congruent with, and sufficiently accomplish, the regulatory objectives of SEF Core Principle 14 in the context of SPP's activities with respect to the Covered Transactions. The Commission seeks comment with respect to this preliminary conclusion.

15. SEF Core Principle 15: Designation of Chief Compliance Officer

SEF Core Principle 15 requires that a SEF designate an individual as Chief Compliance Officer, with specific delineated duties.[380] The Chief Compliance Officer for a SEF would be responsible for reporting to the board and ensuring that the SEF is in compliance with the SEF rules.

SPP represents that it has a Chief Compliance Officer, who is responsible for overseeing compliance, internal audit and market monitoring.[381] In addition, SPP's Board of Director's Oversight Committee is responsible for overseeing the process of monitoring compliance with SPP and NERC policies, including market monitoring and internal compliance with NERC Operating Standards, while its Finance Committee oversees SPP's compliance with financially-based legal and regulatory requirements.[382]

Based on SPP's representations, it appears that SPP's practices are congruent with, and sufficiently accomplish, the regulatory objectives of SEF Core Principle 15 in the context of SPP's activities with respect to the Covered Transactions. The Commission

[364] *See* Exemption Application Attachments at 116.

[365] *Id.* at 116–120.

[366] *Id.* at 118–119.

[367] *Id.* at 119.

[368] *Id.* at 118–120; *see also* DCO Core Principle B analysis *supra.*

[369] *Id.* at 116–120; *see also* DCO Core Principle B discussion *supra* section V.D.2.

[370] 7 U.S.C. 7b–3(f)(14)(A).

[371] 7 U.S.C. 7b–3(f)(14)(B).

[372] 7 U.S.C. 7b–3(f)(14)(C).

[373] *See generally,* Exemption Application Attachments at 41–43, 121–123.

[374] *See* Exemption Application Attachments at 121–123*; see also, supra* notes 239–245 and accompanying text.

[375] *See* Exemption Application Attachments at 41–43, 121–123.

[376] *See id.*

[377] *See id.* at 42, 122.

[378] *See id.* at 122–123.

[379] *See id.* at 121–123; *see also* discussion *supra* section V.D.9.

[380] *See* 7 U.S. C. 7b–3(f)(15). This provision requires that the chief compliance officer (i) report directly to the board or to the senior officer of the facility; (ii) review compliance with the core principles in this subsection; (iii) in consultation with the board of the facility, a body performing a function similar to that of a board, or the senior officer of the facility, resolve any conflicts of interest that may arise; (iv) be responsible for establishing and administering the policies and procedures required to be established pursuant to this section; (v) ensure compliance with this Act and the rules and regulations issued under this Act, including rules prescribed by the Commission pursuant to this section; and (vi) establish procedures for the remediation of noncompliance issues found during compliance office reviews, look backs, internal or external audit findings, self-reported errors, or through validated complaints.

[381] *See* Exemption Application Attachments at 124–125. SPP also has a compliance department.

[382] *See id.*

seeks comment with respect to this preliminary conclusion.

VI. Proposed Exemption

A. Discussion of Proposed Exemption

Pursuant to the authority provided by section 4(c)(6) of the CEA,[383] in accordance with CEA sections 4(c)(1) and (2), and consistent with the Commission's determination that the statutory requirements for granting an exemption pursuant to section 4(c)(6) of the Act have been satisfied, the Commission is proposing to issue the exemption described in the Proposed Exemption set forth below. The Proposed Exemption would exempt, subject to the limitations and conditions contained therein, contracts, agreements and transactions for the purchase and sale of certain electric energy-related products, including specifically-defined ''transmission congestion rights,'' ''energy transactions,'' and ''operating reserve transactions,'' from most provisions of the CEA. The Commission is proposing to explicitly exclude from the exemption relief the Commission's general anti-fraud and anti-manipulation authority, and scienter-based prohibitions, under CEA sections 2(a)(1)(B), 4(d), 4b, 4c(b), 4*o,* 4s(h)(1)(A), 4s(h)(4)(A), 6(c), 6(d), 6(e), 6c, 6d, 8, 9, and 13, and any implementing regulations promulgated under these sections including, but not limited to, Commission regulations 23.410(a) and (b), 32.4 and part 180.[384] The preservation of the Commission's anti-fraud and anti-manipulation authority provided by these provisions generally is consistent with both the scope of the exemption requested in the Exemption Application [385] and recent Commission practice.[386]

The particular categories of contracts, agreements and transactions to which the Proposed Exemption would apply correspond to the types of transactions for which relief was explicitly requested in the Exemption Application.[387] SPP requested relief for three specific types of transactions and the Proposed Exemption would exempt those transactions. With respect to those transactions, the Exemption Application also included the parenthetical ''(including convergence or virtual bids and offers).'' [388] The Commission notes that such transactions would be included within the scope of the exemption if they would qualify as the transmission congestion rights, energy transactions, or operating reserve transactions for which relief is explicitly provided within the exemption. SPP also has requested relief for ''the purchase and sale of a product or service that is directly related to, and a logical outgrowth of, any of SPP's core functions as an RTO and all services related thereto.'' [389] The Commission has determined that it would be inappropriate, and, accordingly, has declined to propose that the exemption be extended beyond the scope of the transactions that are specifically defined in the Proposed Exemption. As noted above, the authority to issue an exemption from the CEA provided by section 4(c) of the Act may not be automatically or mechanically exercised. Rather, the Commission is required to affirmatively determine, *inter alia,* that the exemption would be consistent with the public interest and the purposes of the Act.[390] With respect to the three groups of transactions explicitly detailed in the Proposed Exemption, the Commission's proposed finding that the Proposed Exemption would be in the public interest and would be consistent with the purposes of the CEA was grounded, in part, on certain transaction characteristics and market circumstances described in the Exemption Application that may or may not be shared by other, as yet undefined, transactions engaged in by SPP or other RTO market participants.[391] Similarly, unidentified transactions might include novel features or have market implications or risks that are not present in the specified transactions. Such elements may impact the Commission's required section CEA 4(c) public interest analysis or may warrant the attachment of additional or differing terms and conditions to any relief provided. Due to the potential for adverse consequences resulting from an exemption that includes transactions whose qualities and effect on the broader market cannot be fully appreciated absent further specification, it does not appear that the Commission can justify a conclusion that it would be in the public interest to provide an exemption of the full breadth requested. The Commission notes, however, that it has requested comment on whether the proposed scope of the exemption is sufficient to allow for innovation and, if not, how the scope could be expanded, without exempting products that may be substantially different from those reviewed by the Commission. The Commission also notes that it stands ready to review promptly any additional applications for an exemption pursuant to section 4(c)(6), in accordance with CEA sections 4(c)(1) and (2), of the CEA for other precisely defined products.

The scope of the Proposed Exemption is limited by two additional factors. First, it is restricted to agreements, contracts or transactions where all parties thereto are either: (1) Entities described in section 4(c)(3)(A) through (J) of the CEA; [392] (2) ''eligible contract participants,'' as defined in section 1a(18) of the Act [393] or in Commission regulation 1.3(m); [394] or (3) a person who actively participates in the generation, transmission, or distribution of electric energy.[395] Although SPP has requested an exemption pursuant to section 4(c)(6) of the CEA, any exemption pursuant to this subsection must be issued ''in accordance with'' sections 4(c)(1) and 4(c)(2).[396] Section 4(c)(2) prohibits the Commission from issuing an exemption pursuant to section 4(c) unless the Commission determines that the agreement, contract or transaction ''will be entered into solely between 'appropriate persons.' '' Appropriate persons include those entities explicitly delineated in sections 4(c)(3)(A) through (J) of the Act as well as others that the Commission, under the discretionary authority provided by

[383] 7 U.S.C. 6(c).

[384] 17 CFR 23.410(a)–(b), 32.4, and part 180.

[385] *See* Exemption Application at 1. SPP requested relief from ''all provisions of the CEA and Commission rules thereunder, except the Commission's general anti-fraud and anti-manipulation authority, and scienter-based prohibitions, under CEA sections 2(a)(1)(B), 4(d), 4b, 4c(b), 4o, 4s(h)(1)(A), 4s(h)(4)(A), 6(c), 6(d), 6(e), 6c, 6d, 8, 9, and 13 of the Act, and any implementing regulations promulgated under these sections including, but not limited to, Commission regulations 23.410(a)–(b), 32.4 and part 180.'' The Proposed Exemption simply would preserve the Commission's authority under the delineated provisions and their implementing regulations without caveat, in order to avoid ambiguity as to what conduct remains prohibited.

[386] *See, e.g.,* Order (1) Pursuant to Section 4(c) of the Commodity Exchange Act, Permitting the Kansas City Board of Trade Clearing Corporation To Clear Over-the-Counter Wheat Calendar Swaps, (2) Pursuant to Section 4d of the Commodity Exchange Act, Permitting Customer Positions in Such Cleared-Only Swaps and Associated Funds To Be Commingled With Other Positions and Funds Held in Customer Segregated Accounts, 75 FR 34983, 34985 (2010), and (3) RTO–ISO Order at 19880.

[387] Exemption Application at 11–15.

[388] *Id.* at 12.

[389] *Id.* at 15.

[390] 7 U.S.C. 6(c).

[391] For example, the transactions that are included within the scope of the Proposed Exemption appear to be limited to those tied to the physical capacity of SPP's electric energy grid. Exemption Application at 11–15.

[392] 7 U.S.C. 6(c)(3)(A)–(J).

[393] 7 U.S.C. 1a(18).

[394] 17 CFR 1.3(m).

[395] Consistent with the RTO–ISO Order, the term ''a person who actively participates in the generation, transmission, or distribution of electric energy'' is defined as a person that is in the business of: (1) Generating, transmitting, or distributing electric energy or (2) providing electric energy services that are necessary to support the reliable operation of the transmission system. RTO–ISO Order at 19897.

[396] 7 U.S.C. 6(c).

section 4(c)(3)(K), deems to be appropriate persons ''in light of their financial or other qualifications, or the applicability of appropriate regulatory protections.''[397] As noted above, the Commission has proposed to determine that eligible contract participants, as defined in section 1a(18) of the Act or in Commission regulation 1.3(m), and persons that ''active[ly] participat[e] in the generation, transmission or distribution of electric energy'' [398] should be considered appropriate persons for purposes of the Proposed Exemption.[399]

Second, in order to be eligible for the exemption that would be provided by the Proposed Exemption, the agreement, contract or transaction also must be offered or sold pursuant to SPP's ''Tariff'' and the tariff must have been approved by FERC. This requirement reflects the range of the Commission's authority as set forth in section 4(c)(6) [400] of the CEA and is consistent with the scope of the relief requested.[401]

Consistent with the range of the statutory authority explicitly provided by CEA section 4(c), the Proposed Exemption would extend the exemption to the agreements, contracts or transactions set forth therein and ''any person or class of persons offering, entering into, rendering advice, or rendering other services with respect to'' such transactions. In addition, for as long as the Proposed Exemption would remain in effect, SPP would be able to avail itself of the Proposed Exemption with respect to all three expressly-identified groups of products, regardless of whether or not SPP offers the particular product at the present time. That is, SPP would not be required to request future supplemental relief for a product that it does not currently offer, but that qualifies as one of the three types of transactions in the Proposed Exemption. SPP's Exemption Application requested an exemption of the scope provided and the Exemption Application was analyzed accordingly.[402]

The Proposed Exemption indicates that, when a final order is issued, it would be made effective upon publication. The Proposed Exemption also contains two information-sharing conditions. First, the Proposed Exemption is expressly conditioned upon the continuation of information sharing arrangements between the Commission and FERC. The Commission notes that the CFTC and FERC have executed several MOUs since 2005, pursuant to which the agencies have shared information successfully. Most recently, the Commission and FERC signed an MOU on January 2, 2014 which provides for the sharing of information for use in analyzing market activities and protecting market integrity.[403] The terms of this MOU provide that FERC will furnish information in its possession to the CFTC upon its request and will notify the CFTC if any information requested by it is not in FERC's possession. Moreover, the Proposed Exemption requires SPP to comply with the Commission's requests through FERC to share, on an as-needed basis and in connection with an inquiry consistent with the CEA and Commission regulations, positional and transactional data within SPP's possession for products in its markets that are related to markets that are subject to the Commission's jurisdiction, including any pertinent information concerning such data.[404] Second, the Proposed Exemption includes an information-sharing condition that requires that neither SPP's Tariff nor any other SPP governing documents shall include any requirement that SPP notify its members prior to providing information to the Commission in response to a subpoena or other request for information or documentation.[405] The Commission specifically requests comment on this condition and as to whether there may be an alternative condition that the Commission might use to achieve the same result.

Finally, the Proposed Exemption expressly notes that it is based upon the representations made in the Exemption Application, including those representations with respect to compliance with FERC regulation 35.47. It is also based on supporting materials provided to the Commission by SPP and its counsel, including a legal memorandum that, in the Commission's sole discretion, provides the Commission with assurance that the netting arrangements contained in the approach selected by SPP to satisfy the obligations contained in FERC regulation 35.47(d) will, in fact, provide SPP with enforceable rights of setoff against any of its market participants under title 11 of the United States Code in the event of the bankruptcy of the market participant. Any material change or omission in the facts and circumstances pursuant to which the Proposed Exemption is granted might require the Commission to reconsider its finding that the exemption contained therein is appropriate and/or in the public interest. The Commission has also explicitly reserved the discretionary authority to suspend, terminate or otherwise modify or restrict the exemption provided. The reservation of these rights is consistent with prior Commission practice and is necessary to provide the Commission with the flexibility to address relevant facts or circumstances as they arise.

B. Proposed Exemption

Upon due consideration and consistent with the determinations set forth above, the Commission hereby proposes to issue the following order (''Order''):

Pursuant to its authority under section 4(c)(6) of the Commodity Exchange Act (''CEA'' or Act'') and in accordance with sections 4(c)(1) and (2) of the Act, the Commodity Futures Trading Commission (''CFTC'' or ''Commission'')

1. Exempts, subject to the conditions and limitations specified herein, the execution of the electric energy-related agreements, contracts, and transactions that are specified in paragraph 2 of this Order and any person or class of persons offering, entering into, rendering advice, or rendering other services with respect thereto, from all provisions of the CEA, except, in each case, the Commission's general anti-fraud and anti-manipulation authority, and scienter-based prohibitions, under CEA sections 2(a)(1)(B), 4(d), 4b, 4c(b), 4*o,* 4s(h)(1)(A), 4s(h)(4)(A), 6(c), 6(d), 6(e), 6c, 6d, 8, 9, and 13, and any implementing regulations promulgated under these sections including, but not limited to, Commission regulations 23.410(a) and (b), 32.4, and part 180.

2. *Scope.* This exemption applies only to agreements, contracts and transactions that satisfy each of the following requirements:

[397] 7 U.S.C. 6(c)(3).

[398] *See supra* note 395.

[399] *See* discussion *supra* section V.B.3.

[400] *See* discussion *supra* section V.A.

[401] Exemption Application at 1.

[402] SPP requests that ''the exemptive Order it seeks apply to each relevant class of contracts, agreements or transactions offered or entered into under SPP's FERC-approved Tariff that will be in effect . . . as well as any product or any modifications that are offered in the future pursuant to the FERC-approved Tariff that do not alter the characteristics of the Transactions in a way that would cause them to fall outside of the definitions.'' Exemption Application at 11.

[403] MOU, *available at http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/cftcfercismou2014.pdf.*

[404] SPP further represents that it will comply with the Commission's requests for related transactional and positional market data. *See* Exemption Application at 22.

[405] SPP represents that its Tariff permits the sharing of information with the Commission without prior notice to market participants. *See* Exemption Application at 22; Exemption Application Attachments at 52, 54.

a. The agreement, contract or transaction is for the purchase and sale of one of the following electric energy-related products:

(1) ''Transmission Congestion Rights'' defined in paragraph 5(a) of this Order, except that the exemption shall only apply to such Transmission Congestion Rights where:

(a) Each Transmission Congestion Right is linked to, and the aggregate volume of Transmission Congestion Rights for any period of time is limited by, the physical capability (after accounting for counterflow) of the electric energy transmission system operated by SPP for such period;

(b) SPP serves as the market administrator for the market on which the Transmission Congestion Rights are transacted;

(c) Each party to the transaction is a member of SPP (or is SPP itself) and the transaction is executed on a market administered by SPP; and

(d) The transaction does not require any party to make or take physical delivery of electric energy.

(2) ''Energy Transactions'' as defined in paragraph 5(b) of this Order.

(3) ''Operating Reserve Transactions'' as defined in paragraph 5(c) of this Order.

b. Each party to the agreement, contract or transaction is:

(1) An ''appropriate person,'' as defined sections 4(c)(3)(A) through (J) of the CEA;

(2) an ''eligible contract participant,'' as defined in section 1a(18)(A) of the CEA and in Commission regulation 1.3(m); or

(3) a ''person who actively participates in the generation, transmission, or distribution of electric energy,'' as defined in paragraph 5(f) of this Order.

c. The agreement, contract or transaction is offered or sold pursuant to SPP's Tariff and that Tariff has been approved by the Federal Energy Regulatory Commission (''FERC'').

3. *Applicability to SPP.* Subject to the conditions contained in the Order, the Order applies to SPP with respect to the transactions described in paragraph 2 of this Order.

4. *Conditions.* The exemption provided by this Order is expressly conditioned upon the following:

a. Information sharing: Information sharing arrangements between the Commission and FERC that are acceptable to the Commission continue to be in effect, and SPP's compliance with the Commission's requests through FERC to share, on an as-needed basis and in connection with an inquiry consistent with the CEA and Commission regulations, positional and transactional data within SPP's possession for products in SPP's markets that are related to markets that are subject to the Commission's jurisdiction, including any pertinent information concerning such data.

b. Notification of requests for information: Neither the Tariff nor any other governing documents of SPP shall include any requirement that SPP notify its members prior to providing information to the Commission in response to a subpoena or other request for information or documentation.

5. *Definitions.* The following definitions shall apply for purposes of this Order:

a. A ''Transmission Congestion Right'' is a transaction, however named, that entitles one party to receive, and obligates another party to pay, an amount based solely on the difference between the price for electric energy, established on an electric energy market administered by SPP, at a specified source (*i.e.,* where electric energy is deemed injected into the grid of SPP) and a specified sink (*i.e.,* where electric energy is deemed withdrawn from the grid of SPP).

b. ''Energy Transactions'' are transactions in a ''Day-Ahead Market'' or ''Real-Time Balancing Market,'' as those terms are defined in paragraphs 5(d) and 5(e) of this Order, for the purchase or sale of a specified quantity of electric energy at a specified location (including virtual bids and offers), where:

(1) The price of the electric energy is established at the time the transaction is executed;

(2) Performance occurs in the Real-Time Balancing Market by either:

(a) Delivery or receipt of the specified electric energy, or

(b) A cash payment or receipt at the price established in the Day-Ahead Market or Real-Time Balancing Market (as permitted by SPP in its Tariff); and

(3) The aggregate cleared volume of both physical and cash-settled energy transactions for any period of time is limited by the physical capability of the electric energy transmission system operated by SPP for that period of time.

c. ''Operating Reserve Transactions'' are transactions:

(1) In which SPP, for the benefit of load-serving entities and resources, purchases, through auction, the right, during a period of time as specified in SPP's Tariff, to require the seller of such right to operate electric energy facilities in a physical state such that the facilities can increase or decrease the rate of injection or withdrawal of a specified quantity of electric energy into or from the electric energy transmission system operated by SPP with:

(a) Physical performance by the seller's facilities within a response time interval specified in SPP's Tariff (Reserve Transaction); or

(b) prompt physical performance by the seller's facilities (Area Control Error Regulation Transaction);

(2) For which the seller receives, in consideration, one or more of the following:

(a) Payment at the price established in SPP's Day-Ahead or Real-Time Balancing Market, as those terms are defined in paragraphs 5(d) and 5(e) of this Order, price for electric energy applicable whenever SPP exercises its right that electric energy be delivered (including ''Demand Response,'' as defined in paragraph 5(g) of this Order);

(b) Compensation for the opportunity cost of not supplying or consuming electric energy or other services during any period during which SPP requires that the seller not supply energy or other services;

(c) An upfront payment determined through the auction administered by SPP for this service;

(d) An additional amount indexed to the frequency, duration, or other attributes of physical performance as specified in SPP's Tariff; and

(3) In which the value, quantity, and specifications of such transactions for SPP for any period of time shall be limited to the physical capability of the electric energy transmission system operated by SPP for that period of time.

d. ''Day-Ahead Market'' means an electric energy market administered by SPP on which the price of electric energy at a specified location is determined, in accordance with SPP's Tariff, for specified time periods, none of which is later than the second operating day following the day on which the Day Ahead Market clears.

e. ''Real-Time Balancing Market'' means an electric energy market administered by SPP on which the price of electric energy at a specified location is determined, in accordance with SPP's Tariff, for specified time periods within the same 24-hour period.

f. ''Person who actively participates in the generation, transmission, or distribution of electric energy'' means a person that is in the business of: (1) Generating, transmitting, or distributing electric energy; or (2) providing electric energy services that are necessary to support the reliable operation of the transmission system.

g. ''Demand Response'' means the right of SPP to require that certain sellers of such rights curtail consumption of electric energy from the

electric energy transmission system operated by SPP during a future period of time as specified in SPP's Tariff.

h. ''SPP'' means Southwest Power Pool, Inc. or any successor in interest to Southwest Power Pool.

i. ''Tariff.'' Reference to a SPP ''Tariff'' includes a tariff, rate schedule or protocol.

j. ''Exemption Application'' means the application for an exemptive order under 4(c)(6) of the CEA filed by SPP on October 17, 2013, as amended August 1, 2014.

6. *Effective Date.* This Order is effective upon publication in the **Federal Register**.

7. *Delegation of Authority.* The Commission hereby delegates, until such time as the Commission orders otherwise, to the Director of the Division of Market Oversight (''Division'') and to such members of the Division's staff acting under his or her direction as he or she may designate, in consultation with the General Counsel or such members of the General Counsel's staff acting under his or her direction as he or she may designate, the authority to request information from SPP pursuant to sections 4(a)(1) and 4(a)(2) of this Order.

This Order is based upon the representations made in the Exemption Application for an exemptive order under 4(c) of the CEA filed by SPP,[406] including those representations with respect to compliance with FERC regulation 35.47. It is also based on supporting materials provided to the Commission by SPP and its counsel, including a legal memorandum that, in the Commission's sole discretion, provides the Commission with assurance that the netting arrangements contained in the approach selected by SPP to satisfy the obligations contained in FERC regulation 35.47(d) will, in fact, provide SPP with enforceable rights of setoff against any of its market participants under title 11 of the United States Code in the event of the bankruptcy of the market participant. Any material change or omission in the facts and circumstances pursuant to which this Order is granted might require the Commission to reconsider its finding that the exemption contained therein is appropriate and/or consistent with the public interest and purposes of the CEA. Further, the Commission reserves the right, in its discretion, to revisit any of the terms and conditions of the relief provided herein, including but not limited to, making a determination that certain entities and transactions described herein should be subject to the Commission's full jurisdiction, and to condition, suspend, terminate or otherwise modify or restrict the exemption granted in this Order, as appropriate, upon its own motion.

VII. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') requires that agencies consider whether the Proposed Exemption will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis respecting the impact.[407] The Commission believes that the Proposed Exemption will not have a significant economic impact on a substantial number of small entities. The Proposed Exemption includes entities that qualify as (1) ''appropriate persons'' pursuant to CEA sections 4(c)(3)(A) through (J), (2) ''eligible contract participants,'' as defined in CEA section 1a(18)(A) and Commission regulation 1.3(m), or (3) persons who are in the business of: (i) generating, transmitting, or distributing electric energy, or (ii) providing electric energy services that are necessary to support the reliable operation of the transmission system. The Proposed Exemption also would include any person or class of persons offering, entering into, rendering advice or rendering other services with respect to the transactions set forth above.[408] The Commission previously determined that ECPs are not ''small entities'' for purposes of the RFA.[409] In addition, the Commission believes that SPP should not be considered a small entity based on the central role it plays in the operation of the electronic transmission grid and the creation of organized wholesale electric markets that are subject to FERC regulatory oversight,[410] analogous to functions performed by DCMs and DCOs, which the Commission has determined not to be small entities.[411]

Accordingly, the Commission does not expect the Proposed Exemption to have a significant impact on a substantial number of entities. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the Proposed Exemption would not have a significant economic impact on a substantial number of small entities. The Commission invites the public to comment on whether the entities covered by the Proposed Exemption should be considered small entities for purposes of the RFA, and, if so, whether there is a significant impact on a substantial number of entities.

B. Paperwork Reduction Act

The purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* (''PRA'') are, among other things, to minimize the paperwork burden to the private sector, ensure that any collection of information by a government agency is put to the greatest possible uses, and minimize duplicative information collections across the government. The PRA applies to all information, ''regardless of form or format,'' whenever the government is ''obtaining, causing to be obtained [or] soliciting'' information, and includes and requires ''disclosure to third parties or the public, of facts or opinions,'' when the information collection calls for ''answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons.'' The Proposed Exemption provides that the exemption is expressly conditioned upon information sharing arrangements between the Commission and FERC that are acceptable to the Commission continue to be in effect. The PRA would not apply in this case given that the exemption would not impose any new recordkeeping or information collection requirements, or other collections of information on ten or more persons that require approval of the Office of Management and Budget (''OMB'').

[406] In the Matter of the Application for an Exemptive Order Under Section 4(c) of the Commodity Exchange Act by Southwest Power Pool, Inc., amended Aug. 1, 2014.

[407] 5 U.S.C. 601 *et seq.*

[408] Under CEA section 2(e), only ECPs are permitted to participate in a swap subject to the end-user clearing exception.

[409] *See* Opting Out of Segregation, 66 FR 20740, 20743, Apr. 25, 2001.

[410] *See* Enhancement of Electricity Market Surveillance and Analysis Through Ongoing Electronic Delivery of Data from Regional Transmission Organizations and Independent System Operators, 77 FR 26674 at 26685–26686, May 7, 2012 (RFA analysis as conducted by FERC regarding six RTOs and ISOs, including SPP).

Commission staff also performed an independent RFA analysis based on Subsector 221 of Sector 22 (utilities companies) of the SBA which defines any small utility corporation as one that does not have more than 250 employees. *See* 13 CFR 121.201 (1–1–15 Edition). Staff concludes that SPP is not a small entity, since SPP represents that it employs more than 500 employees. *See* Exemption Application Attachments at 8.

[411] *See* A New Regulatory Framework for Clearing Organizations, 66 FR 45604 at 45609, Aug. 29, 2001 (DCOs); Policy Statement and Establishment of Definitions of ''Small Entities'' for Purposes of the Regulatory Flexibility Act, 47 FR 18618 at 18618–18619, Apr. 30, 1982 (DCMs).

C. Cost-Benefit Considerations

1. Consideration of Costs and Benefits

a. Introduction

Section 15(a) of the CEA [412] requires the Commission to ''consider the costs and benefits'' of its actions before promulgating a regulation under the CEA or issuing certain orders. In proposing this exemption, the Commission is required by section 4(c)(6) to ensure the same is consistent with the public interest. In much the same way, section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) factors.

As discussed above, in response to an Exemption Application from SPP, the Commission is proposing to exempt certain transactions from the provisions of the CEA and Commission regulations with the exception of those prohibiting fraud and manipulation (*i.e.,* sections 2(a)(1)(B), 4(d), 4b, 4c(b), 4*o,* 4s(h)(1)(A), 4s(h)(4)(A), 6(c), 6(d), 6(e), 6c, 6d, 8, 9, and 13, and any implementing regulations promulgated under these sections including, but not limited to, Commission regulations 23.410(a) and (b), 32.4 and part 180). The Proposed Exemption is transaction-specific—that is, it would exempt contracts, agreements and transactions for the purchase or sale of the limited set of electric energy-related products that are offered or entered into in a market administered by SPP pursuant to SPP's Tariff for the purposes of allocating its physical resources.

More specifically, the Commission is proposing to exempt from most provisions of the CEA certain ''transmission congestion rights,'' ''energy transactions,'' and ''operating reserve transactions,'' as those terms are defined in the Proposed Exemption (collectively referred to as Covered Transactions), if such transactions are offered or entered into pursuant to a Tariff under which SPP operates that has been approved or permitted to take effect by FERC. The Proposed Exemption would extend to a person who is: (1) An ''appropriate person,'' as defined in CEA sections 4(c)(3)(A) through (J); (2) an ''eligible contract participant,'' as defined in CEA section 1a(18)(A) and in Commission regulation 1.3(m); or (3) a person who actively participates in the generation, transmission, or distribution of electric energy.[413] The Proposed Exemption also would extend to any person or class of persons offering, entering into, rendering advice or rendering other services with respect to the Covered Transactions. Important to the Commission's Proposed Exemption is SPP's representation that the aforementioned transactions are: (i) Tied to the physical capacity of SPP's electric energy grids; (ii) used to promote the reliable delivery of electric energy; and (iii) are intended for use by commercial participants that are in the business of generating, transmitting and distributing electric energy.[414] In other words, these are not purely financial transactions; rather, they are inextricably linked to, and limited by, the capacity of the grid to physically deliver electric energy.[415]

In the discussion that follows, the Commission considers the costs and benefits of the Proposed Exemption to the public and market participants generally, including the costs and benefits of the conditions precedent that must be satisfied before SPP may claim the exemption.

b. Proposed Baseline

The Commission's proposed baseline for consideration of the costs and benefits of this Proposed Exemption are the costs and benefits that the public and market participants (including SPP) would experience in the absence of this proposed regulatory action. In other words, the proposed baseline is an alternative situation in which the Commission takes no action and exercises jurisdiction, meaning that the transactions that are the subject of this Exemption Application would be required to comply with all of the CEA and Commission regulations, as applicable. In such a scenario, the public and market participants would experience the full benefits and costs related to the CEA and Commission regulations, but as discussed in detail above, the transactions would still be subject to the congruent regulatory regime of FERC.

The Commission also considers the regulatory landscape as it exists outside the context of the Dodd-Frank Act's enactment. In this instance, it also is important to highlight SPP's representation that each of the transactions for which an exemption is requested is already subject to a long-standing, comprehensive regulatory framework for the offer and sale of such transactions established by FERC.[416] For example, the costs and benefits attendant to the Commission's condition that transactions be entered into between ''appropriate persons'' as described in CEA section 4(c)(3) has an analog outside the context of the Dodd-Frank Act in FERC's minimum criteria for RTO market participants as set forth in FERC Order 741. Moreover, the Commission has granted similar relief to other RTOs and ISOs regulated by either FERC or the Public Utility Commission of Texas.[417]

In the discussion that follows, where reasonably feasible, the Commission endeavors to estimate quantifiable dollar costs of the Proposed Exemption. The benefits and costs of the Proposed Exemption, however, are not presently susceptible to meaningful quantification. Most of the costs arise from limitations on the scope of the Proposed Exemption, and many of the benefits tied to those limitations arise from avoiding defaults and their implications that are clearly large in magnitude, but impracticable to estimate. Where it is unable to quantify, the Commission discusses proposed costs and benefits in qualitative terms.

c. Costs

The Proposed Exemption is exemptive and would provide ''appropriate persons'' engaging in the Covered Transactions relief from certain of the requirements of the CEA and attendant Commission regulations. As with any exemptive rule or order, the Proposed Exemption is permissive, meaning that SPP was not required to request it and is not required to rely on it. Accordingly, the Commission assumes that SPP would rely on the Proposed Exemption only if the anticipated benefits to SPP outweigh the costs of the exemption. Here, the Proposed Exemption identifies certain conditions to the grant of the Proposed Exemption. The Commission is of the view that, as a result of the conditions, SPP, market participants and the public would experience minimal, if any, ongoing costs as a result of these conditions because, as SPP certifies pursuant to CFTC Rule 140.99(c)(3)(ii), the attendant conditions are substantially similar to requirements that SPP and its market participants

[412] 7 U.S.C. 19(a).

[413] *See supra* note 395.

[414] *See* Exemption Application at 17.

[415] *Id.*

[416] *Id.*

[417] RTO–ISO Order. *See supra* section III.C.

already incur in complying with FERC regulations.

The condition that all parties to the agreements, contracts or transactions that are covered by the Proposed Exemption must be (1) an ''appropriate person,'' as defined in sections 4(c)(3)(A) through (J) of the CEA; (2) an ''eligible contract participant,'' as defined in section 1a(18)(A) of the CEA and in Commission regulation 1.3(m); or (3) a ''person who actively participates in the generation, transmission, or distribution of electric energy'' [418]—is not likely to impose any significant, incremental costs on SPP because its existing legal and regulatory obligations under the FPA and FERC regulations mandate that only eligible market participants may engage in the Covered Transactions, as explained above.[419]

The second condition is that the Covered Transactions must be offered or sold pursuant to SPP's Tariff—which has been approved or permitted to take effect by FERC. This is a statutory requirement for the exemption set forth in CEA section 4(c)(6) and therefore is not a cost attributable to an act of discretion by the Commission.[420] Moreover, requiring that SPP not operate outside its Tariff requirements derives from existing legal requirements and is not a cost attributable to this proposal.

As discussed above, FERC imposes on SPP, and its market monitor, various information management requirements.[421] These existing requirements are not materially different from the condition, in the Proposed Exemption, that neither SPP's Tariff nor other governing documents may include any requirement that SPP notify a member prior to providing information to the Commission in response to a subpoena, special call, or other request for information or documentation. SPP indicated in its Exemption Application that on March 1, 2014, FERC accepted a revision to SPP's Tariff governing the sharing of information that meets this proposed condition.[422] The Commission requests comment as to whether a provision in the Proposed Exemption that effectively requires SPP continues to meet this condition imposes a significant burden or increase in cost on SPP, and whether there are alternative conditions that may be used to achieve a similar result. Further, SPP has agreed to provide any information to the Commission upon request that will further enable the Commission to perform its regulatory and enforcement duties. While the Commission is mindful that the process of responding to subpoenas or requests for information involves costs, the requirement to respond to such subpoenas and requests for information, and thus the associated costs, is independent of the current Proposed Exemption.

Finally, the condition that information sharing arrangements that are satisfactory to the Commission between the Commission and FERC must be in full force and effect is not a cost to SPP or to other members of the public and has been an inter-agency norm since 2005.[423] Moreover, the condition that SPP comply with the Commission's requests on an as-needed basis for related transactional and positional market data will impose only minimal costs on SPP to respond because the Commission contemplates that any information requested will already be in SPP's possession.[424]

d. Benefits

In proposing this exemption, the Commission is required by section 4(c)(6) to ensure that it is consistent with the public interest. In much the same way, CEA section 15(a) requires that the Commission consider the benefits to the public of its action. In meeting its public interest obligations under both 4(c)(6) and 15(a), the Commission in sections V.B.1., V.D., and V.E. proposes a detailed consideration of the nature of the transactions and FERC's regulatory regime, including whether the protections provided by that regime is, at a minimum, congruent with the Commission's oversight of DCOs and SEFs.

This exercise is not rote; rather, in proposing that this exemption is in the public interest, the Commission's comprehensive action benefits the public and market participants in several substantial ways, as discussed below. First, the parameters for the Covered Transactions set forth in the Proposed Exemption limit the financial risk that may impact the markets. The mitigation of such risk inures to the benefit of SPP, market participants and the public, especially SPP's members and electric energy ratepayers.

The condition that only ''appropriate persons'' may enter the Covered Transactions benefits the public and the entities that fall under the ''appropriate persons'' definition themselves, by ensuring that (1) only persons with resources sufficient to understand and manage the risks of the transactions are permitted to engage in the same, and (2) persons without such resources do not impose credit costs on other participants (and the ratepayers for such other participants). Further, the condition requiring that the Covered Transactions only be offered or sold pursuant to a FERC-approved tariff benefits the public by, for example, ensuring that the Covered Transactions are subject to a regulatory regime that is focused on the physical provision of reliable electric energy, and also has credit requirements that are designed to achieve risk management goals congruent with the regulatory objectives of the Commission's DCO and SEF Core Principles. Absent these and other similar limitations on participant- and financial-eligibility, the integrity of the markets at issue could be compromised and members and ratepayers left unprotected from potentially significant losses resulting from purely financial, speculative activity.

Finally, the Commission's retention of its authority to redress any fraud or manipulation in connection with the Covered Transactions protects market participants and the public generally, as well as the financial markets for electric energy products. For example, the Proposed Exemption is conditioned upon effective information sharing arrangements between the FERC and the Commission being in place. Through such an arrangement, the Commission expects that it will be able to request information necessary to examine whether activity on SPP's markets is adversely affecting the Commission-regulated markets. Further, the Proposed Exemption is conditioned upon the Commission's ability to obtain certain data within SPP's possession from SPP. Through this condition, the Commission expects that it will be able to continue discharging its regulatory duties under the CEA. Further, the condition that SPP may not, in the future, maintain any Tariff provisions that would require SPP to notify members prior to providing the Commission with information will help maximize the effectiveness of the Commission's enforcement program.

[418] *See supra* notes 393–395.

[419] *See supra* section V.B.3.

[420] *See* 7 U.S.C. 6(c)(6)(A), (B).

[421] *See supra* section V.B.1.

[422] SPP represents that its Tariff requires the sharing of information with the Commission without prior notice to market participants. *See* Exemption Application Attachments at 52, 54.

[423] The CFTC and FERC first signed an MOU on October 12, 2005. On January 2, 2014, as directed by Congress under the Dodd-Frank Act, the Commission and FERC entered into an MOU, which superseded the 2005 MOU and provided for the sharing of information for use in analyzing market activities and protecting market integrity. *See supra* note 62.

[424] *See supra* section IV.B.

e. Consideration of Alternatives

The Commission considered alternatives to the proposed rulemaking. For instance, the Commission could have chosen: (i) Not to propose an exemption or (ii), as SPP requested, to provide relief for ''the purchase and sale of a product or service that is directly related to, and a logical outgrowth of, any of SPP's core functions as an RTO . . . and all services related thereto.'' Regarding this latter request, the Commission understands the Exemption Application as requesting relief for transactions not yet in existence. In this exemption, the Commission proposes what it considers a measured approach—in terms of the implicated costs and benefits of the exemption—given its current understanding of the Covered Transactions.

Regarding the first alternative, the Commission considered that Congress, in the Dodd-Frank Act, required the Commission to exempt certain contracts, agreements or transactions from duties otherwise required by statute or Commission regulation by adding a new section that requires the Commission to exempt from its regulatory oversight agreements, contracts, or transactions traded pursuant to an RTO tariff that has been approved or permitted to take effect by FERC, where such exemption was in the public interest and consistent with the purposes of the CEA. Having concluded that the Proposed Exemption meets those tests, the Commission proposes that a no exemption alternative would be inconsistent with Congressional intent and contrary to the public interest. At the same time, however, the Commission believes it would also be inappropriate to adopt the second alternative.

The second alternative would extend the Proposed Exemption to future products that are ''logical outgrowths'' of the Covered Transactions. The Commission proposes that such alternative would be contrary to the Commission's obligation under section 4(c) of the Act. As noted above, the authority to issue an exemption from the CEA provided by section 4(c) of the Act may not be automatically or mechanically exercised. Rather, the Commission is required to affirmatively determine, *inter alia,* that the exemption would be consistent with the public interest and the purposes of the Act.

The Commission is concerned that such an open-ended definition could present risks beyond those contemplated. At the same time, the Commission believes that any new transactions that fall within the Covered Transactions, which are explicitly defined in the Proposed Exemption, and any modifications to existing transactions that do not alter the Covered Transactions' characteristics in a way that would cause them to fall outside those definitions, that are offered by SPP pursuant to a FERC-approved Tariff, are intended to be included within the Proposed Exemption. This provides a benefit in that no supplemental relief for such products would be required, which is a cost mitigating efficiency gain for SPP. Moreover, unidentified transactions might include novel features or have market implications or risks that are beyond evaluation at the present time, and are not present in the specified transactions.

2. Consideration of CEA Section 15(a) Factors

a. Protection of Market Participants and the Public

In proposing the exemption as it did, the Commission endeavored to provide relief that was in the public interest. A key component of that consideration is the assessment of how the Proposed Exemption protects market participants and the public. As discussed above, market participants and the public are protected by the existing regulatory structure that includes congruent regulatory goals, and by the four conditions placed upon the proposed relief by requiring, *inter alia,* that: (i) Only those with the financial wherewithal are permitted to engage in the transactions; (ii) the transactions at issue must be within the scope of SPP's FERC-approved Tariff; (iii) no advance notice to members of information requests to SPP from the Commission; and (iv) the Commission and FERC, must continue to have an information sharing arrangement in full force and effect. In addition, the Proposed Exemption is limited to the transactions identified and defined herein. In this way, the Commission eliminates the potential that as-yet-unknown transactions not linked to the physicality of the electric system may be offered or sold under this Proposed Exemption, protecting market participants and the public from risk that might arise from sale of such unknown transactions.

b. Efficiency, Competitiveness, and Financial Integrity of Futures Markets

In this Proposed Exemption, the Commission considered its effect on the efficiency, competitiveness, and financial integrity of the markets subject to the Commission's jurisdiction. As means of increasing competition and efficiency, the Commission recognizes that entities falling under the ''appropriate persons'' definition will benefit from increased competition among RTOs benefiting from this type of exemption with the addition of SPP to the existing ones and will be able to engage in the Covered Transactions in a more efficient manner. Further, the Commission's retention of its full enforcement authority will help ensure that any misconduct in connection with the exempted transactions does not jeopardize the financial integrity of the markets under the Commission's jurisdiction.

c. Price Discovery

As discussed above in section V.B.4, with respect to TCRs and Operating Reserve Transactions, these transactions do not appear to directly impact transactions taking place on Commission-regulated markets—they are not used for price discovery and are not used as settlement prices for other transactions in Commission-regulated markets.

With respect to Energy Transactions, these transactions have a relationship to Commission-regulated markets because they can serve as a source of settlement prices for other transactions subject to the Commission's jurisdiction. Granting the Proposed Exemption, however, does not mean that these transactions will be unregulated. To the contrary, as explained in more detail above, SPP has a market monitoring system in place to detect and deter manipulation that takes place on its markets. Further, as noted above, the Commission retains all of its anti-fraud and anti-manipulation authority as a condition of the Proposed Exemption.

d. Sound Risk Management Practices

As with the other areas of cost-benefit consideration, the Commission's evaluation of sound risk management practices occurs throughout this release, notably in sections V.D.4.a. and V.E.7.a. which consider SPP's risk management policies and procedures, and the related requirements of FERC (in particular, FERC Order 741 on Credit Policies), in light of the Commission's risk management requirements for DCOs and SEFs.

In addition, the Commission believes that the Proposed Exemption will allow market participants who are eligible for this exemption to more effectively manage their operational risk arising from the non-storable nature of electric energy and fluctuating end-user demand for it.

e. Other Public Interest Considerations

The Commission proposes that because these transactions are part of, and inextricably linked to, the organized wholesale, physical electric energy markets that are subject to regulation and oversight of FERC, the Commission's Proposed Exemption, with its attendant conditions, requirements, and limitations, is in the public interest. The Commission recognizes that the Proposed Exemption supports eligible market participants' supply of affordable and reliable electric energy to the public by exempting their use of the Covered Transactions from CEA.

3. Request for Public Comment on Costs and Benefits

The Commission invites public comment on its cost-benefit considerations and dollar cost estimates, including the consideration of reasonable alternatives. Commenters are invited to submit any data or other information that they may have quantifying or qualifying the costs and benefits of the proposal with their comment letters.

VIII. Request for Comment

The Commission requests comment on all aspects of its Proposed Exemption. In addition, the Commission specifically requests comment on the specific provisions and issues highlighted in the discussion above and on the issues presented in this section. For each comment submitted, please provide a detailed rationale supporting the response.

1. Has the Commission used the appropriate standard in analyzing whether the Proposed Exemption is in the public interest?

2. Is the scope set forth for the Proposed Exemption sufficient to allow for innovation? Why or why not? If not, how should the scope be modified to allow for innovation without exempting products that may be materially different from those reviewed by the Commission? Should the Commission exempt such products without considering whether such exemption is in the public interest? In answering this question, please consider that SPP may separately petition the Commission for an amendment of any final order granted in this matter. In addition, please consider that the Commission has, to a certain extent, addressed these innovation questions in the RTO–ISO Order.

3. Should the Proposed Exemption be conditioned upon the requirement that SPP cooperate with the Commission in its conduct of special calls/further requests for information with respect to contracts, agreements or transactions that are, or are related to, the contracts, agreements, or transactions that are the subject of the Proposed Exemption?

4. What is the basis for the conclusion that SPP does, or does not, provide to the public sufficient timely information on price, trading volume, and other data with respect to the markets for the contracts, agreements and transactions that are the subject of the Proposed Exemption? What Tariff provisions, if any, requires it to do so or precludes it from doing so?

5. What is the basis for the conclusion that the Proposed Exemption will, or will not, have any material adverse effect on the Commission's ability to discharge its regulatory duties under the CEA, or on any contract market's ability to discharge its self-regulatory duties under the CEA?

6. What are the bases for the conclusions that SPP's Tariff, practices, and procedures do, or do not, appropriately address the regulatory goals of each of the DCO and SEF Core Principles?

7. What factors support, or detract from, the Commission's preliminary conclusion that TCRs, Energy Transactions, and Operating Reserve Transactions are not susceptible to manipulation for the reasons stated above? What is the basis for the conclusion that market participants can, or cannot, use Energy Transactions to manipulate electric energy prices without detection by the SPP Market Monitor?

8. What is the basis for the conclusion that SPP has, or has not, satisfied applicable market monitoring requirements with respect to TCRs, Energy Transactions, and Operating Reserve Transactions? What is the basis for the conclusion that the record-keeping functions performed by SPP is, or is not, appropriate to address any concerns raised by the market monitoring process? What is the basis for the conclusion that the market monitoring functions performed by SPP and the SPP Market Monitor do, or do not, provide adequate safeguards to prevent the manipulation of SPP's markets?

9. What are the bases for the conclusions that SPP does, or does not, adequately satisfy the SEF requirements for (a) recordkeeping and reporting, (b) preventing restraints on trade or imposing any material anticompetitive burden, (c) minimizing conflicts of interest, (d) providing adequate financial resources, (e) establishing system safeguards and (f) designating a CCO? Specifically, do the procedures and principles in place allow SPP to meet the requirements of SEF core principles 10–15?

10. What is the basis for the conclusion that SPP's eligibility requirements for participants are, or are not, appropriate to ensure that market participants can adequately bear the risks associated with the Participants markets?

11. What is the basis for the conclusion that SPP does, or does not, have adequate rules in place to allow it to deal with emergency situations as they arise? What deficiencies, if any, are there with respect to SPP's emergency procedures that would prevent SPP from taking necessary action to address sudden market problems?

12. What would be the basis for the conclusion that SPP should not receive relief that is substantially similar to the relief the Commission granted other RTOs and ISOs in the RTO–ISO Order?

13. The Commission invites comment on its consideration of the costs and benefits of the Proposed Exemption, including the costs of any information requirements imposed therein. The Commission also seeks comment on the costs and benefits of this Proposed Exemption, including, but not limited to, those costs and benefits specified within this proposal. Commenters are also are invited to submit any data or other information that they may have quantifying or qualifying the costs and benefits of the proposal with their comment letters.

Issued in Washington, DC, on May 18, 2015, by the Commission.

Christopher J. Kirkpatrick,

Secretary of the Commission.

Appendix to Notice of Proposed Order and Request for Comment on an Application for an Exemptive Order From Southwest Power Pool, Inc. From Certain Provisions of the Commodity Exchange Act Pursuant to the Authority Provided in Section 4(c)(6) of the Act—Commission Voting Summary

On this matter, Chairman Massad and Commissioners Wetjen, Bowen, and Giancarlo voted in the affirmative. No Commissioner voted in the negative.

[FR Doc. 2015–12346 Filed 5–20–15; 8:45 am]

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Part VI

The President

Proclamation 9284—50th Anniversary of Head Start

Notice of May 19, 2015—Continuation of the National Emergency With Respect to the Stabilization of Iraq

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Title 3—

The President

Proclamation 9284 of May 18, 2015

50th Anniversary of Head Start

By the President of the United States of America

A Proclamation

Supporting our children in their earliest years with high-quality care and education is one of the best investments we can make as a Nation—and for 50 years, Head Start has helped to lift up millions of America's children and their families in communities across our country. The oldest and largest Federal program to deliver high-quality early learning opportunities to low-income children, Head Start was founded on the idea that every child—no matter who they are, what they look like, or where they grow up—deserves the chance to reach their full potential. Since 1965, it has given meaning to the simple truth that in America, where you start should not determine how far you can go.

In the last half-century, Head Start has served 32 million children, supporting them in every aspect of their development—from early learning and health and nutrition to social and emotional well-being. Designed to cultivate original ideas and innovative approaches to preparing children for success later in school and in life, Head Start has pioneered new solutions to fight the harmful effects of poverty and build ladders of opportunity into the middle class. In small towns and large cities—in America's immigrant communities and with migrant and seasonal families, faith-based communities, and tribal leaders—Head Start programs and providers empower children and their families to foster positive parent-child relationships, to reach for economic and family stability, and to make important connections to their peers and their communities.

During a critical period in a child's life, Head Start sets our Nation's young people on the path to success. We know that investments in early childhood education boost graduation rates, increase earnings, and reduce violent crime. And 3- and 4-year-olds who attend high-quality preschool—including Head Start—are less likely to repeat a grade, less likely to need special education, and more likely to graduate from high school. This head start in life leaves a lasting impact on our students and fuels their curiosity, helping them to grow up with a passion for learning, a fair shot at good-paying jobs, and a more secure future.

This year also marks the 20th anniversary of Early Head Start, created to enhance the impact of Head Start by serving children from birth to age 3, as well as expectant mothers—ensuring all children receive the best care possible. This expansion has made a real difference for thousands of infants, toddlers, and their families. As President, I have endeavored to strengthen Head Start and build on its legacy. My Administration has expanded the program to reach tens of thousands of additional children and families in the depth of the economic recession. We have instituted reforms to raise the standards and focus on improving outcomes across Head Start programs and classrooms, so that children and families can rely on the highest quality of services. And we have launched new ways to build connections between Early Head Start and America's child care subsidy system to reach additional infants and toddlers in need of high-quality early care and education. We will continue to invest in Head Start

and strive to expand its reach to additional children and families throughout America. Our children deserve nothing less.

Despite five decades of tremendous success, too many young people still grow up without access to a world-class education. Instead of receiving a head start in life, they start out a step behind. As a Nation, we must continue our work to ensure the promise of education is within reach for all our daughters and sons. That is why I have proposed a series of new investments that will establish a continuum of high-quality early learning for every child, beginning at birth and continuing to age 5. This year, I unveiled a plan that would make quality child care available to every middle-class and low-income family with young children under the age of 3. I have also called on the Congress to expand access to high-quality preschool and full-day kindergarten for every child in America. And I am calling on all Americans—including leaders of private and philanthropic organizations, communities, and governments at every level—to make their own commitments to our children, an effort that has already led to an investment of more than $1 billion to support our next generation of thinkers, dreamers, and doers.

The history of Head Start has taught us that if our Nation invests in the future of all our children, we can strengthen our economy, bolster our communities, and give every young person the chance to build a better life. As we mark the 50th anniversary of Head Start, let us rededicate ourselves to building an education system worthy of our daughters' and sons' enormous potential, and to providing a strong, healthy, and safe head start in life for all of America's children.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim May 18, 2015, as the 50th Anniversary of Head Start. I call upon all Americans to observe this day with appropriate ceremonies and activities that recognize the importance of this vital program and support high-quality education for all Americans.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of May, in the year of our Lord two thousand fifteen, and of the Independence of the United States of America the two hundred and thirty-ninth.

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Filed 5–20–15; 11:15 am]
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Presidential Documents

Notice of May 19, 2015

Continuation of the National Emergency With Respect to the Stabilization of Iraq

On May 22, 2003, by Executive Order 13303, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States posed by obstacles to the continued reconstruction of Iraq, the restoration and maintenance of peace and security in the country, and the development of political, administrative, and economic institutions in Iraq.

The obstacles to the orderly reconstruction of Iraq, the restoration and maintenance of peace and security in the country, and the development of political, administrative, and economic institutions in Iraq continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, the national emergency declared in Executive Order 13303, as modified in scope and relied upon for additional steps taken in Executive Order 13315 of August 28, 2003, Executive Order 13350 of July 29, 2004, Executive Order 13364 of November 29, 2004, Executive Order 13438 of July 17, 2007, and Executive Order 13668 of May 27, 2014, must continue in effect beyond May 22, 2015. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to the stabilization of Iraq declared in Executive Order 13303.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,

May 19, 2015.

[FR Doc. 2015–12575

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H.R. 2252/P.L. 114–13
To clarify the effective date of certain provisions of the Border Patrol Agent Pay Reform Act of 2014, and for other purposes. (May 19, 2015; 129 Stat. 197)

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