AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

FEDERAL REGISTER

Vol. 80 Friday,
No. 162 August 21, 2015

Pages 50755–51112

OFFICE OF THE FEDERAL REGISTER

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.ofr.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge at *www.fdsys.gov*, a service of the U.S. Government Publishing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6:00 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, 1 (January 2, 1994) forward. For more information, contact the GPO Customer Contact Center, U.S. Government Publishing Office. Phone 202-512-1800 or 866-512-1800 (toll free). E-mail, *gpocusthelp.com.*

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Publishing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 80 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Publishing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Assistance with Federal agency subscriptions:

Email	*FRSubscriptions@nara.gov*
Phone	**202–741–6000**

Printed on recycled paper.

Contents

Federal Register

Vol. 80, No. 162

Friday, August 21, 2015

Administrative Conference of the United States
NOTICES
Meetings:
Assembly of the Administrative Conference of the United States, 50819–50820

Agricultural Marketing Service
PROPOSED RULES
United States Standards for Grades of Processed Raisins, 50803–50804

Agriculture Department
See Agricultural Marketing Service
See Forest Service
See National Agricultural Statistics Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 50820

Architectural and Transportation Barriers Compliance Board
NOTICES
Meetings:
Architectural and Transportation Barriers Compliance Board, 50823

Children and Families Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 50854–50855

Civil Rights Commission
NOTICES
Meetings:
Oklahoma Advisory Committee, 50823–50824

Coast Guard
RULES
Drawbridge Operations:
Hood Canal, Port Gamble, WA, 50768
Lewis and Clark River, Astoria, OR, 50768–50769
Safety Zones:
Cleveland National Air Show; Lake Erie and Cleveland Harbor, Cleveland, OH, 50769–50771
Swim Around Charleston; Charleston, SC, 50771–50773
Special Local Regulations:
Suncoast Super Boat Grand Prix; Gulf of Mexico, Sarasota, FL, 50765–50767
NOTICES
Meetings:
Merchant Mariner Medical Advisory Committee, 50861–50862
Recreational Boating Accident Reporting Manual, COMDTINST M16782.1, 50860–50861

Commerce Department
See Industry and Security Bureau
See National Oceanic and Atmospheric Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 50824–50825

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement List; Additions and Deletions, 50825–50827

Community Living Administration
NOTICES
Single-Source Grant Awards:
National Association of States United for Aging and Disabilities, 50855–50856

Comptroller of the Currency
NOTICES
Approval of Conversion Application:
New Buffalo Savings Bank, New Buffalo, Michigan, 50923
Meetings:
Minority Depository Institutions Advisory Committee, 50923

Consumer Product Safety Commission
NOTICES
Electronic Filing of Targeting/Enforcement Data; PGA Message Set Test and Request for Participants, 50827–50831

Defense Department
See Engineers Corps
NOTICES
Meetings:
Defense Advisory Committee on Women in the Services, 50831–50832

Education Department
RULES
Improving the Academic Achievement of the Disadvantaged; Assistance to States for the Education of Children with Disabilities, 50773–50785
NOTICES
Applications for New Awards:
Charter Schools Program Grants to Non-State Educational Agency Eligible Applicants for Planning, Program Design, and Initial Implementation and for Dissemination, 50833–50842

Energy Department
See Federal Energy Regulatory Commission
RULES
Energy Conservation Program for Consumer Products:
Definitions and Standards for Grid-Enabled Water Heaters, 50757–50758
Test Procedures for Clothes Washers; Correction, 50757
NOTICES
Meetings:
Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation, 50843

Engineers Corps
NOTICES
Environmental Impact Statements; Availability, etc.:
Ala Wai Canal Project, Oahu, HI; Draft Feasibility Study, 50832–50833

Environmental Protection Agency
RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
District of Columbia; Interstate Pollution Transport Requirements for the 24-Hour Fine Particulate Matter Standard, 50785–50789
Kansas; Cross State Air Pollution Rule, 50789–50794
Data Requirements Rule for the 2010 1-Hour Sulfur Dioxide Primary National Ambient Air Quality Standard, 51052–51088
Final Authorization of State Hazardous Waste Management Program:
Idaho; Revision, 50794–50797
National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List:
Deletion of the National Southwire Aluminum Superfund Site, 50797–50802
Water Quality Standards, 51020–51050
PROPOSED RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
District of Columbia; Interstate Pollution Transport Requirements for the 24-Hour Fine Particulate Matter Standard, 50817
Kansas; Cross State Air Pollution Rule, 50816–50817
National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List:
Deletion of the National Southwire Aluminum Superfund Site, 50817–50818
NOTICES
Administrative Settlement Agreements Under CERCLA, 50849
National Pollutant Discharge Elimination System General Permits:
Stormwater Discharges from Industrial Activities Availability for Idaho, Federal Operators in Washington, and the Spokane Tribe, 50849–50851

Federal Aviation Administration
RULES
Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures:
Miscellaneous Amendments, 50758–50761
PROPOSED RULES
Airworthiness Directives:
Dassault Aviation, 50810–50812
Empresa Brasileira de Aeronautica S.A. (Embraer) Airplanes, 50812–50814
Special Conditions
Cirrus Aircraft Corporation, SF50; Auto Throttle, 50808–50810

Federal Communications Commission
NOTICES
Meetings:
Communications Security, Reliability, and Interoperability Council, 50851

Federal Deposit Insurance Corporation
NOTICES
Terminations of Receivership:
BankEast, Knoxville, TN, 50852
Central Arizona Bank, Scottsdale, AZ, 50852
Chestatee State Bank, Dawsonville, GA, 50852
Hamilton Bank, N. A., Miami, FL, 50852
Mountain National Bank, Sevierville, TN, 50852–50853
Palm Desert National Bank, Palm Desert, CA, 50851–50852

Federal Emergency Management Agency
NOTICES
Guidance:
Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants, 50862

Federal Energy Regulatory Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 50846–50847
Applications:
Igiugig Village Council, 50848–50849
Combined Filings, 50845–50846
Environmental Assessments; Availability, etc.:
Corpus Christi Liquefaction, LLC, and Cheniere Corpus Christi Pipeline, LP; Stage 3 Project, 50843–50845
Environmental Impact Statements; Availability, etc.:
LNG Development Co., LLC, and Oregon Pipeline Co., Oregon LNG Terminal and Pipeline Project; LLC, Northwest Pipeline, LLC, Washington Expansion Project, 50848
Requests for Information:
Common Performance Metrics, 50847–50848

Federal Highway Administration
NOTICES
Federal Agency Actions:
Pennsylvania; Proposed Highway, 50904
Surface Transportation Project Delivery Program; TxDOT Audit Report, 50905–50912

Federal Housing Finance Agency
PROPOSED RULES
Stress Test, 50805–50808
NOTICES
Federal Home Loan Bank Community Support Program:
Opportunity to Comment on Members Subject to Review, 50853–50854

Federal Motor Carrier Safety Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Motor Carrier Identification Report, 50914–50915
Hours of Service of Drivers; Exemption Applications:
American Trucking Associations, Inc., 50912–50914
Qualification of Drivers; Exemption Applications:
Epilepsy and Seizure Disorders, 50918–50920
Vision, 50915–50918

Federal Reserve System
NOTICES
Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 50854

Federal Transit Administration
NOTICES
Buy America Waivers, 50920–50921

Fish and Wildlife Service
RULES
Migratory Bird Hunting:
Final Frameworks for Early Season Migratory Bird Hunting, 51090–51111

Food and Drug Administration
RULES
Color Additives:
Spirulina Extract; Certification Exemption, 50762–50765

Forest Service
NOTICES
Meetings:
Black Hills National Forest Advisory Board, 50821
Mineral County Resource Advisory Committee, 50820–50822

Health and Human Services Department
See Children and Families Administration
See Community Living Administration
See Food and Drug Administration
See National Institutes of Health

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency

Housing and Urban Development Department
NOTICES
Federal Property Suitable as Facilities to Assist the Homeless, 50863–50864

Industry and Security Bureau
RULES
Update to List of Countries Where Persons in the United States May Request Department of Defense Assistance in Obtaining Priority Delivery of Contracts, 50761–50762

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service

Internal Revenue Service
PROPOSED RULES
Exception From Passive Income for Certain Foreign Insurance Companies; Hearing; Correction, 50814–50815

International Trade Commission
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Barium Chloride from China; Expedited Five-Year Review, 50869–50870
Investigations; Determinations, Modifications, and Rulings, etc.:
Certain Activity Tracking Devices, Systems, and Components Thereof, 50870–50871

Justice Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 50871–50872
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Certification of Compliance with the Statutory Eligibility Requirements of the Violence Against Women Act as Amended, 50873
Sequestered Juror Information Form, 50872–50873
Proposed Consent Decrees under the Clean Water Act, 50873–50874

Land Management Bureau
NOTICES
Environmental Impact Statements; Availability, etc.:
Coeur Rochester Mine Plan of Operations Amendment 10 and Closure Plan, Pershing County, NV, 50864–50866
Moab Master Leasing Plan and Draft Resource Management Plan Amendments for the Moab and Monticello Field Offices, UT, 50867–50868
Fee Collections:
Upper Missouri National Wild and Scenic River in Blaine, Chouteau, Fergus, and Phillips Counties, MT, 50866–50867
Meetings:
Sierra Front-Northwest Great Basin Resource Advisory Council, 50864

National Agricultural Statistics Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 50822–50823

National Highway Traffic Safety Administration
NOTICES
Petitions; Certain Nonconforming Motor Vehicles Eligible for Importation, 50921–50922

National Institutes of Health
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Web-Based Resource for Youth about Clinical Research, 50857–50858
Charter Renewals:
Advisory Committee to the Deputy Director for Intramural Research, 50860
Government-Owned Inventions; Availability for Licensing, 50858–50859
Meetings:
Center for Scientific Review, 50856
National Cancer Institute, 50858–50859
National Institute on Aging, 50856–50857

National Oceanic and Atmospheric Administration
RULES
Endangered and Threatened Wildlife and Plants:
Critical Habitat for Hawaiian Monk Seals, 50926–50988
NOTICES
Environmental Impact Statements; Availability, etc.:
Fisheries of the Northeastern United States; Atlantic Herring Fishery; Scoping Process; Request for Comments, 50825
Takes of Marine Mammals:
Geophysical and Geotechnical Survey in Cook Inlet, AK, 50990–51018

National Park Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Use of iNaturalist by the National Park Service to Record Natural History Observations, 50869
Meetings:
Boston Harbor Islands National Recreation Area Advisory Council, 50868–50869

Nuclear Regulatory Commission
PROPOSED RULES
Linear No-Threshold Model and Standards for Protection Against Radiation, 50804–50805
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Billing Instructions for NRC Cost-Reimbursement Type Contracts, 50874–50875
Requests to Agreement States for Information, 50877–50878
Environmental Impact Statements; Availability, etc.:
Department of Energy; Yucca Mountain, Nye County, NV, 50875–50877
Guidance:
Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness, 50878–50879
Temporary Exemptions:
Lost Creek ISR, LLC; Correction, 50875

Postal Regulatory Commission
PROPOSED RULES
Periodic Reporting, 50815–50816
NOTICES
International Mail Contract, 50879–50880
New Postal Products, 50880–50881

Presidential Documents
ADMINISTRATIVE ORDERS
Colombia; Continuation of Drug Interdiction Assistance (Presidential Determination No. 2015–10 of August 5, 2015), 50755

Securities and Exchange Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 50881, 50896
Applications:
Amplify Investments LLC and Amplify ETF Trust, 50887–50896
Orders:
Designation of Financial Industry Regulatory Authority to Administer Professional Qualification Tests for Associated Persons of Registered Municipal Advisors, 50883–50885
Self-Regulatory Organizations; Proposed Rule Changes:
BATS Exchange, Inc., 50900–50902
EDGA Exchange, Inc., 50881–50883
EDGX Exchange, Inc., 50896–50898
NASDAQ OMX BX, Inc., 50885–50887
NASDAQ Stock Market, LLC, 50898–50900

Small Business Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 50903
Disaster Declarations:
Colorado; Amendment 1, 50903
Kentucky, 50902–50903

Surface Transportation Board
NOTICES
Abandonment Exemptions:
V and S Railway, LLC, Pueblo, Crowley, and Kiowa Counties, CO, 50922
Acquisition and Operation Exemptions:
New England Central Railroad, Inc.; Claremont Concord Railroad Corp., 50922–50923

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Motor Carrier Safety Administration
See Federal Transit Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board

Treasury Department
See Comptroller of the Currency
See Internal Revenue Service

Veterans Affairs Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Notice of Lapse – Government Life Insurance/Application for Reinstatement and Notice of Past Due Payment/Application for Reinstatement, 50923–50924

Separate Parts In This Issue

Part II
Commerce Department, National Oceanic and Atmospheric Administration, 50926–50988

Part III
Commerce Department, National Oceanic and Atmospheric Administration, 50990–51018

Part IV
Environmental Protection Agency, 51020–51050

Part V
Environmental Protection Agency, 51052–51088

Part VI
Interior Department, Fish and Wildlife Service, 51090–51111

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Administrative Orders:

Presidential Determinations:

No. 2015-10 of August 5, 2015 50755

07 CFR

Proposed Rules:

52 50803

10 CFR

429 50757

430 (2 documents) 50757

Proposed Rules:

20 50804

12 CFR

Proposed Rules:

1238 50805

14 CFR

97 (2 documents) 50758, 50760

Proposed Rules:

23 50808

39 (2 documents) 50810, 50812

15 CFR

700 50761

21 CFR

73 50762

26 CFR

Proposed Rules:

1 50814

33 CFR

100 50765

117 (2 documents) 50768

165 (2 documents) 50769, 50771

34 CFR

200 50773

300 50773

39 CFR

Proposed Rules:

3050 50815

40 CFR

51 51052

52 (2 documents) 50785, 50789

131 51020

271 50794

300 50797

Proposed Rules:

52 (2 documents) 50816, 50817

300 50817

50 CFR

20 51090

226 50926

Federal Register
Vol. 80, No. 162
Friday, August 21, 2015

Presidential Documents

Title 3—

The President

Presidential Determination No. 2015–10 of August 5, 2015

Continuation of U.S. Drug Interdiction Assistance to the Government of Colombia

Memorandum for the Secretary of State [and] the Secretary of Defense

By the authority vested in me as President by section 1012 of the National Defense Authorization Act for Fiscal Year 1995, as amended (22 U.S.C. 2291–4), I hereby certify, with respect to Colombia, that: (1) interdiction of aircraft reasonably suspected to be primarily engaged in illicit drug trafficking in that country's airspace is necessary, because of the extraordinary threat posed by illicit drug trafficking to the national security of that country; and (2) Colombia has appropriate procedures in place to protect against innocent loss of life in the air and on the ground in connection with such interdiction, which shall at a minimum include effective means to identify and warn an aircraft before the use of force is directed against the aircraft.

The Secretary of State is authorized and directed to publish this determination in the *Federal Register* and to notify the Congress of this determination.

THE WHITE HOUSE,
August 5, 2015.

[FR Doc. 2015–20857
Filed 8–20–15; 8:45 am]
Billing code 4710–10

Rules and Regulations

Federal Register

Vol. 80, No. 162

Friday, August 21, 2015

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.

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[Docket No. EERE–2013–BT–TP–0009]

RIN 1904–AC97

Energy Conservation Program for Consumer Products: Test Procedures for Clothes Washers; Correction

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

ACTION: Final rule; correction.

SUMMARY: On August 5, 2015, the U.S. Department of Energy published a final rule amending the test procedures for clothes washers. This correction addresses a numbering error in the regulatory text, by which two provisions were inadvertently assigned the same section number. Neither the error nor the correction in this document affects the substance of the rulemaking or any of the conclusions reached in support of the final rule.

DATES: *Effective Date:* September 4, 2015.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Berringer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–0371. Email: *Bryan.Berringer@ee.doe.gov.*

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–9507. Email: *Eric.Stas@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy (DOE) published a final rule in the **Federal Register** on August 5, 2015 (''the August 2015 final rule''), amending the test procedures for clothes washers. 80 FR 46729. In the rule, DOE made a drafting error in the regulatory text within section 3.10, *Energy consumption for the purpose of determining the cycle selection(s) to be included in the energy test cycle,* of Appendix J2 to subpart B of 10 CFR part 430, Uniform Test Method for Measuring the Energy Consumption of Automatic and Semi-automatic Clothes Washers. Specifically, DOE inadvertently designated two provisions as section 3.10.3 of that appendix. However, the substance of both provisions are correct and are to be retained in the test procedure. The effective date for this rule is September 4, 2015.

In order to remedy this error, DOE is renumbering the relevant provisions on page 46781 of the **Federal Register** in the August 2015 final rule at 80 FR 46729, as set forth below. The effective date of the August 2015 final rule at 80 FR 46729 remains September 4, 2015.

Correction

In FR Doc. 2014–18330 appearing on page 46729 in the issue of Wednesday, August 5, 2015, the following correction is made:

Appendix J2 to Subpart B of Part 430 [Corrected]

On page 46781, third column, section 3.10.4 is redesignated as 3.10.5, and the two sections 3.10.3 are redesignated as 3.10.3 and 3.10.4, respectively.

Issued in Washington, DC, on August 14, 2015.

Kathleen B. Hogan,

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

[FR Doc. 2015–20715 Filed 8–20–15; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket Number EERE–2015–BT–STD–0017]

RIN 1904–AD55

Energy Conservation Program for Consumer Products: Definitions and Standards for Grid-Enabled Water Heaters

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

ACTION: Final rule; technical correction.

SUMMARY: On August 11, 2015, the U.S. Department of Energy published a final rule in the **Federal Register** to place in the Code of Federal Regulations the energy conservation standards and related definitions that Congress prescribed for grid-enabled water heaters in the Energy Efficiency Improvement Act of 2015, which amended the Energy Policy and Conservation Act of 1975. Due to a drafting error, a numeral was omitted from the energy factor equation for grid-enabled water heaters. This document corrects that error.

DATES: *Effective:* September 21, 2015.

FOR FURTHER INFORMATION CONTACT: Ms. Ashley Armstrong, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue SW., Washington, DC, 20585–0121. Telephone: (202) 586–6590. Email: *Ashley.Armstrong@ee.doe.gov.*

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

SUPPLEMENTARY INFORMATION:

I. Background

The U.S. Department of Energy (DOE) published a final rule in the **Federal Register** on August 11, 2015 (''the August 2015 final rule'') to place in the Code of Federal Regulations (CFR) the energy conservation standards and related definitions that Congress prescribed for grid-enabled water heaters in the Energy Efficiency Improvement Act of 2015 (EEIA 2015), which amended the Energy Policy and Conservation Act of 1975 (EPCA). 80 FR 48004. Since the publication of that final rule, it has come to DOE's attention that, due to a drafting oversight, the August 2015 final rule incorrectly omitted a numeral in the equation to determine the energy factor for grid-enabled water heaters. This final rule corrects this error, adding the missing numeral.

II. Need for Correction

As published, the August 2015 final rule contains a typographical error in

the first column of 80 FR 48010, in § 430.32(d)(2), ''*Grid-enabled water heaters.*'' The equation in that paragraph, ''1.06 − (0.00168 × Rated Storage Volume in gallons)'' should read ''1.061 − (0.00168 × Rated Storage Volume in gallons).'' This revision accurately reflects the values found in the energy factor equation in the preamble (80 FR 48007), as well as the text in EEIA 2015 and, consequently, EPCA. Thus, the final rule has been corrected to eliminate this error. DOE notes that this equation to measure the energy factor for grid-enabled water heaters has been the law under EPCA through EEIA 2015 since April 30, 2015, and that the August 2015 final rule and this correction simply place that language into DOE's codified regulations.

III. Procedural Requirements

DOE has concluded that the determinations made pursuant to the various procedural requirements applicable to the August 2015 final rule remain unchanged for this final rule technical correction. These determinations are set forth in the August 2015 final rule. 80 FR 48004, 48009–10 (Aug. 11, 2015).

List of Subjects in 10 CFR part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Intergovernmental relations, Small businesses.

Issued in Washington, DC, on August 14, 2015

Kathleen B. Hogan,

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

For the reasons set forth in the preamble, DOE amends part 430 of Chapter II, Subchapter D, of Title 10 of the Code of Federal Regulations as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. Section 430.32 is amended by revising paragraph (d)(2) to read as follows:

§ 430.32 Energy and water conservation standards and their compliance dates.

* * * * *

(d) * * *

(2) *Grid-enabled water heaters.* The energy factor of grid-enabled water heaters, as of April 30, 2015, shall not be less than 1.061 − (0.00168 × Rated Storage Volume in gallons).

* * * * *

[FR Doc. 2015–20712 Filed 8–20–15; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31032; Amdt. No. 3656]

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 August 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 August 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 July 31, 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.

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

■ 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
17–Sep–15	KS	Syracuse	Syracuse-Hamilton County Muni.	5/0596	07/21/15	RNAV (GPS) RWY 36, Orig.
17–Sep–15	NM	Albuquerque	Albuquerque Intl Sunport	5/0613	07/21/15	RNAV (RNP) Y RWY 21, Orig-A.
17–Sep–15	TX	El Paso	El Paso Intl	5/0614	07/21/15	RNAV (RNP) Y RWY 4, Orig-D.
17–Sep–15	TX	El Paso	El Paso Intl	5/0615	07/21/15	RNAV (RNP) Z RWY 4, Orig-C.
17–Sep–15	GA	Atlanta	Dekalb-Peachtree	5/1465	07/16/15	RNAV (GPS) Y RWY 21L, Amdt 1A.
17–Sep–15	GA	Atlanta	Dekalb-Peachtree	5/1466	07/16/15	ILS OR LOC RWY 21L, Amdt 8B.
17–Sep–15	VA	Danville	Danville Rgnl	5/2541	07/15/15	RNAV (GPS) RWY 31, Orig.
17–Sep–15	VA	Brookneal	Brookneal/Campbell County	5/3677	07/16/15	RNAV (GPS) RWY 6, Orig.
17–Sep–15	GA	Macon	Middle Georgia Rgnl	5/4287	07/15/15	ILS OR LOC/DME RWY 5, Amdt 1A.
17–Sep–15	GA	Macon	Middle Georgia Rgnl	5/4288	07/15/15	RNAV (GPS) RWY 5, Amdt 1A.
17–Sep–15	MS	Jackson	Jackson-Medgar Wiley Evers Intl.	5/5477	07/16/15	VOR/DME OR TACAN RWY 16R, Orig.
17–Sep–15	MS	Jackson	Jackson-Medgar Wiley Evers Intl.	5/5478	07/16/15	VOR/DME OR TACAN RWY 16L, Orig.
17–Sep–15	MS	Jackson	Jackson-Medgar Wiley Evers Intl.	5/5479	07/16/15	VOR/DME OR TACAN RWY 34L, Orig.
17–Sep–15	MS	Jackson	Jackson-Medgar Wiley Evers Intl.	5/5486	07/16/15	VOR/DME OR TACAN RWY 34R, Orig-A.
17–Sep–15	PA	Meadville	Port Meadville	5/5667	07/16/15	LOC RWY 25, Amdt 6A.
17–Sep–15	PA	Meadville	Port Meadville	5/5669	07/16/15	RNAV (GPS) RWY 25, Amdt 1A.
17–Sep–15	PA	Meadville	Port Meadville	5/5671	07/16/15	RNAV (GPS) RWY 7, Amdt 1A.
17–Sep–15	PA	Meadville	Port Meadville	5/5672	07/16/15	VOR RWY 7, Amdt 8A.
17–Sep–15	TX	Rockport	Aransas Co	5/6318	07/21/15	VOR/DME OR TACAN–A, Amdt 9.
17–Sep–15	NC	Washington	Warren Field	5/6319	07/21/15	LOC RWY 5, Amdt 1B.
17–Sep–15	NC	Washington	Warren Field	5/6436	07/21/15	VOR/DME RWY 5, Amdt 3.
17–Sep–15	NC	Washington	Warren Field	5/6437	07/21/15	RNAV (GPS) RWY 17, Amdt 1.
17–Sep–15	NC	Washington	Warren Field	5/6438	07/21/15	RNAV (GPS) RWY 23, Amdt 1.

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
17–Sep–15 ...	NC	Washington	Warren Field	5/6439	07/21/15	RNAV (GPS) RWY 35, Amdt 1.
17–Sep–15 ...	NC	Washington	Warren Field	5/6440	07/21/15	Takeoff Minimums and (Obstacle) DP, Amdt 1.
17–Sep–15 ...	NC	Washington	Warren Field	5/6528	07/21/15	RNAV (GPS) RWY 5, Amdt 1A.
17–Sep–15 ...	NC	North Wilkesboro	Wilkes County	5/8443	07/15/15	ILS OR LOC RWY 1, Orig-B.
17–Sep–15 ...	VT	Newport	Newport State	5/9046	07/15/15	RNAV (GPS) RWY 36, Orig-A.

[FR Doc. 2015–20522 Filed 8–20–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31031; Amdt. No. 3655]

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 August 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 August 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 July 31, 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 17 SEPTEMBER 2015

Atmore, AL, Atmore Muni, RNAV (GPS) RWY 36, Amdt 1B
Fort Wayne, IN, Fort Wayne Intl, Takeoff Minimums and Obstacle DP, Amdt 3
South Haven, MI, South Haven Area Rgnl, RNAV (GPS) RWY 5, Amdt 1C
South Haven, MI, South Haven Area Rgnl, RNAV (GPS) RWY 23, Amdt 1C

Effective 15 OCTOBER 2015

Anchorage, AK, Ted Stevens Anchorage Intl, ILS RWY 15, Amdt 6B
Anchorage, AK, Ted Stevens Anchorage Intl, ILS OR LOC/DME RWY 7L, ILS RWY 7L (SA CAT I), ILS RWY 7L (SA CAT II), Amdt 3B
Anchorage, AK, Ted Stevens Anchorage Intl, ILS OR LOC/DME RWY 7R, ILS RWY 7R (CAT II), ILS RWY 7R (CAT III), ILS RWY 7R (SA CAT I), Amdt 3B
Anchorage, AK, Ted Stevens Anchorage Intl, RNAV (GPS) RWY 7L, Amdt 2C
Anchorage, AK, Ted Stevens Anchorage Intl, RNAV (GPS) RWY 15, Amdt 2C
Anchorage, AK, Ted Stevens Anchorage Intl, RNAV (GPS) Y RWY 7R, Amdt 4C
Anchorage, AK, Ted Stevens Anchorage Intl, RNAV (RNP) RWY 33, Orig-A
Anchorage, AK, Ted Stevens Anchorage Intl, RNAV (RNP) Z RWY 7R, Orig-A
Nogales, AZ, Nogales Intl, NDB OR GPS–C, Amdt 2C, CANCELED
Hawthorne, CA, Jack Northrop Field/ Hawthorne Muni, Takeoff Minimums and Obstacle DP, Amdt 4
Miami, FL, Miami Intl, RNAV (RNP) Y RWY 8R, Orig-B
Raymond, MS, John Bell Williams, RNAV (GPS) RWY 30, Amdt 4
New York, NY, John F Kennedy Intl, ILS OR LOC RWY 4L, Amdt 11
New York, NY, John F Kennedy Intl, RNAV (RNP) Z RWY 4L, Amdt 1
New York, NY, John F Kennedy Intl, VOR RWY 4L, Amdt 1
Greenville, SC, Donaldson Field, Takeoff Minimums and Obstacle DP, Orig-A
Greenville, SC, Greenville Downtown, Takeoff Minimums and Obstacle DP, Amdt 7
Tullahoma, TN, Tullahoma Rgnl Arpt/Wm Northern Field, VOR RWY 6, Amdt 1A, CANCELED
Tullahoma, TN, Tullahoma Rgnl Arpt/Wm Northern Field, VOR RWY 24, Orig-D, CANCELED
Tyler, TX, Tyler Pounds Rgnl, RNAV (GPS) RWY 17, Orig
Tyler, TX, Tyler Pounds Rgnl, RNAV (GPS) RWY 35, Orig
Tyler, TX, Tyler Pounds Rgnl, Takeoff Minimums and Obstacle DP, Amdt 2

[FR Doc. 2015–20521 Filed 8–20–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 700

[Docket No. 150720623–5623–01]

RIN 0694–AG68

Update to List of Countries Where Persons in the United States May Request Department of Defense Assistance in Obtaining Priority Delivery of Contracts

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Defense Priorities and Allocations System (DPAS) Regulations contain a list of countries with which the Department of Defense (DOD) has entered into security of supply arrangements. Persons in the United States may request the assistance of the DOD in seeking priority delivery from parties in those countries. This rule adds Spain to the list, reflecting DOD's recent security of supply arrangement with that country. Listing these countries in the DPAS Regulations is purely informational and does not affect any right, duty or prohibition that applies to any person under those regulations.

DATES: The rule is effective August 21, 2015.

FOR FURTHER INFORMATION CONTACT: Liam McMenamin at (202) 482–2233, or *liam.mcmenamin@bis.doc.gov*

SUPPLEMENTARY INFORMATION:

Background

The Defense Priorities and Allocations System (DPAS) Regulations implement priorities and allocations authority of the Defense Production Act of 1950, as amended. Through the regulations, certain national defense and energy programs may be supported through the prioritization of contracts, or the allocation of resources. The priorities authority applies to the prioritization of contracts to support an approved national defense and/or energy program. Once a program is approved, the Bureau of Industry and Security (BIS) (or another agency to which BIS has delegated authority) may place priority ratings on certain contracts. These ratings effectively expedite contractual performance to support the approved program.

The Department of Defense (DOD) has entered into bilateral security of supply arrangements with certain countries that allow DOD to request priority delivery of DOD contracts, subcontracts or orders from companies in those countries. Persons in the United States who need assistance in obtaining priority delivery for such a contract, subcontract or order in those countries may request DOD to provide assistance in obtaining priority delivery. The DPAS Regulations list the countries with which DOD has entered into such arrangements to provide readers whose need for contract prioritization may extend beyond the United States with information about how to seek such prioritizations. Recently, DOD entered into a bilateral security of supply arrangement with Spain. Accordingly, this rule adds Spain

to the list of countries with which DOD has such arrangements. The list is informational only and does not affect any right, duty or prohibition that applies to any person under the DPAS Regulations. DOD would be able to request priority delivery in countries with which it has security of supply arrangements and persons in the United States would be able to request assistance from DOD in obtaining priority delivery even if the list did not appear in the DPAS Regulations.

With the addition of Spain, the list will read: Australia, Finland, Italy, The Netherlands, Spain, Sweden and the United Kingdom.

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). This rule does not impose any regulatory burden on the public and is consistent with the goals of Executive Order 13563. This rule has been determined not to be significant for purposes of 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.*), unless that collection of information displays a currently valid Office of Management and Budget control number. This rule does not involve a collection of information that is subject to the Paperwork Reduction Act.

3. This rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

4. BIS finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice of proposed rulemaking and the opportunity for public comment because it is unnecessary. This rule merely updates the list of countries with which the DOD has entered into security of supply arrangements and thus may seek prioritization of contracts in those countries. Persons in the United States who need such prioritization may request DOD assistance to obtain it. The lists are in the DPAS regulations to inform persons whose need for contract prioritization may extend beyond the United States of where they may be able to obtain assistance. DOD may seek such prioritization and persons in the United States may request DOD assistance regardless whether or not the countries with which DOD has entered into security of supply arrangements are identified in the DPAS Regulations. Listing these countries in the DPAS Regulations does not affect any right, duty or prohibition that applies to any person under those regulations. Because these revisions are not substantive changes, it is unnecessary to provide notice and opportunity for public comment. Because neither the Administrative Procedure Act nor any other law requires that notice and an opportunity for public comment be given for this rule, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

In addition, the 30-day delay in effectiveness otherwise required by 5 U.S.C. 553(d) is not applicable because this rule is not a substantive rule.

List of Subjects in 15 CFR Part 700

Administrative practice and procedure, Business and industry, Government contracts, National defense, Reporting and recordkeeping requirements, Strategic and critical materials.

For the reasons set forth in the preamble, the Defense Priorities and Allocations System Regulations (15 CFR part 700) are amended as follows:

PART 700—[AMENDED]

■ 1. The authority citation for 15 CFR part 700 continues to read as follows:

Authority: 50 U.S.C. App. 2061, *et seq.;* 42 U.S.C. 5195, *et seq.;* 50 U.S.C. App 468; 10 U.S.C. 2538; 50 U.S.C. 82; E.O. 12656, 53 FR 226, 3 CFR, 1988, Comp. 585; E.O. 12742, 56 FR 1079, 3 CFR, 1991 Comp. 309; E.O. 13603, 77 FR 16651, 3 CFR, 2012 Comp., p. 225.

§ 700.57 [Amended]

■ 2. Section 700.57 is amended by adding ''Spain'' after ''The Netherlands,'' in:

■ a. The last sentence of paragraph (a);

■ b. The italicized heading of paragraph (c);

■ c. Paragraph (c)(1); and

■ d. The first and second sentences of paragraph (c)(2).

Dated: August 17, 2015.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2015–20704 Filed 8–20–15; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. FDA–2014–C–1552]

Listing of Color Additives Exempt From Certification; Spirulina Extract

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA or we) is amending the color additive regulations to provide for the safe use of spirulina extract as a color additive in coating formulations applied to dietary supplement and drug tablets and capsules. This action is in response to a petition filed by Colorcon, Inc. (Colorcon).

DATES: This rule is effective September 22, 2015. See section IX for information on the filing of objections. Submit either electronic or written objections and requests for a hearing by September 21, 2015.

ADDRESSES: You may submit either electronic or written objections and requests for a hearing, identified by Docket No. FDA–2014–C–1552, by any of the following methods:

Electronic Submissions

Submit electronic objections in the following way:

• Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

Written Submissions

Submit written objections in the following ways:

• Mail/Hand delivery/Courier (for paper submissions): Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name and Docket No. FDA–2014–C–1552 for this rulemaking. All objections received will be posted without change to *http://www.regulations.gov,* including any personal information provided. For detailed instructions on submitting objections, see the ''Objections'' heading of the **SUPPLEMENTARY INFORMATION** section.

Docket: For access to the docket to read background documents or objections received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the

heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Molly A. Harry, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 240–402–1075.

SUPPLEMENTARY INFORMATION:

I. Introduction

In a notice published in the **Federal Register** of October 22, 2014 (79 FR 63062), we announced that we had filed a color additive petition (CAP 4C0300), submitted by Colorcon, Inc. (petitioner), 275 Ruth Rd., Harleysville, PA 19438. The petition proposed to amend the color additive regulations in Title 21, Code of Federal Regulations (CFR) part 73 *Listing of Color Additives Exempt From Certification* to provide for the safe use of spirulina extract, prepared by the filtered aqueous extraction of the dried biomass of *Arthrospira platensis* (*A. platensis*), as a color additive in coating formulations applied to dietary supplement and drug tablets and capsules.

II. Background

In the **Federal Register** of August 13, 2013 (78 FR 49117), we issued a final rule in response to a color additive petition (CAP 2C0293) approving the use of a filtered aqueous extract of the dried biomass of *A. platensis* as a color additive in candy and chewing gum at levels consistent with good manufacturing practice (GMP). We established spirulina extract as the common or usual name for the color additive and listed it in § 73.530 (21 CFR 73.530). In addition to the identity of the color additive, the regulation in § 73.530 includes specifications that must be met for lead, arsenic, mercury, and microcystin toxin.

In the **Federal Register** of April 11, 2014 (79 FR 20095), we issued a final rule in response to a color additive petition (CAP 2C0297) amending § 73.530 to include the use of spirulina extract as a color additive in confections (including candy and chewing gum), frostings, ice cream and frozen desserts, dessert coatings and toppings, beverage mixes and powders, yogurts, custards, puddings, cottage cheese, gelatin, breadcrumbs, and ready-to-eat cereals (excluding extruded cereals), at levels consistent with GMP.

The spirulina extract used for the purposes of CAP 4C0300 is a blue-colored powder produced by the filtered aqueous extraction of the spray-dried biomass of *A. platensis* (also known as *Spirulina platensis*), an edible blue-green cyanobacterium. The color additive contains phycocyanins as the principal coloring component. The maximum phycocyanin content of the color additive is 28 percent. Based on data and information provided in the petition on the identity, physical and chemical properties, manufacturing process, and composition of the color additive, we have determined that the color additive meets the specifications for spirulina extract in § 73.530 (Ref. 1).

Spirulina extract is intended to be used as a color additive in film coating formulations applied to dietary supplement and drug tablets and capsules in amounts consistent with GMP. The maximum GMP use level for spirulina extract in an individual coating will be determined by the desired coloring effect. Therefore, because the amount of the color additive used in these coatings is self-limiting, we have determined that there is no need for a specific upper limit on the percent by weight of spirulina extract in coating formulations applied to dietary supplement and drug tablets and capsules (Ref. 1).

III. Safety Evaluation

A. Determination of Safety

Under section 721(b)(4) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 379e(b)(4)), a color additive may not be listed for a particular use unless the data and information available to FDA establish that the color additive is safe for that use. Our color additive regulations at 21 CFR 70.3(i) define ''safe'' to mean that there is convincing evidence that establishes with reasonable certainty that no harm will result from the intended use of the color additive. To establish with reasonable certainty that a color additive intended for use in food is not harmful under its intended conditions of use, we consider the projected human dietary exposure to the additive, the additive's toxicological data, and other relevant information (such as published literature) available to us. We compare an individual's estimated exposure, or estimated daily intake (EDI), of the additive from all food sources to an acceptable daily intake level established by toxicological data. The EDI is determined by projections based on the amount of the additive proposed for use in particular foods or drugs and on data regarding the amount consumed from all ingested sources of the additive. We commonly use the EDI for the 90th percentile consumer of a color additive as a measure of high chronic exposure.

B. Safety of Petitioned Use of the Color Additive

To support the safety of the petitioned use of spirulina extract as a color additive in coating formulations applied to dietary supplement and drug tablets and capsules, Colorcon submitted an exposure estimate for phycocyanins (the principal coloring component). Colorcon estimated that the petitioned use of spirulina extract in coating formulations applied to dietary supplement and drug tablets and capsules will result in an exposure to phycocyanins of 20.9 milligrams/person/day (mg/p/d) for the 90th percentile consumer (Ref. 2). We agree with Colorcon's exposure estimate for phycocyanins and conclude that it is sufficiently conservative (Ref. 2).[1]

Regarding cumulative exposure (cumulative EDI, or CEDI) to phycocyanins from spirulina and spirulina-derived substances, FDA discussed in the final rule for use of spirulina extract as a color additive in candy and chewing gum that spirulina and spirulina-derived substances have been the subject of four notices submitted by firms to FDA informing us of their determinations that certain uses of spirulina-derived substances are generally recognized as safe (GRAS) (78 FR 49117 at 49118). One of the GRAS notices (GRN 000424) pertains to the use of a spirulina-derived substance similar in chemical composition to the subject color additive but with a much higher phycocyanin content ranging from 42 to 47 percent, and included use in all foods (except infant formula and foods under U.S. Department of Agriculture's jurisdiction) at levels consistent with GMP. The upper bound CEDI for phycocyanins resulting from the notified uses of spirulina extract was estimated to be 1,140 mg/p/d in GRN 000424 based on conservative assumptions (Ref. 3). This exposure estimate does not appear to include exposure to phycocyanins from use of spirulina extract in dietary supplements. Colorcon estimated that the use of spirulina extract in coating formulations applied to dietary supplement and drug tablets and capsules would increase the previously estimated upper bound CEDI of phycocyanins by 1.8 percent. We agree that Colorcon's estimate is conservative, and that the petitioned use of spirulina

[1] The petition referred to both ''drug tablets and capsules'' and ''pharmaceutical tablets and capsules.'' The term ''pharmaceutical tablets and capsules'' was used regarding the exposure assessment (Ref. 2).

extract would not contribute significantly to the previously estimated upper bound CEDI of 1,140 mg/p/d for phycocyanins (Ref. 2).

In support of safety of the use of spirulina extract as a color additive in coating formulations applied to dietary supplement and drug tablets and capsules in the subject petition, Colorcon referenced the safety determinations made by FDA for CAP 2C0293 (78 FR 49117) and CAP 2C0297 (79 FR 20095). The petitioner also conducted a search of the peer-reviewed scientific literature for animal and human oral consumption studies that tested spirulina, spirulina-derived ingredients, and phycocyanins that have been published since 2011. The petitioner submitted the published animal and human studies that they had identified as being relevant to their petition. We reviewed the relevant studies and determined that these publications did not raise any safety concerns.

In our previous evaluations of the use of spirulina extract as a color additive in food, we had selected as the pivotal safety study a 21-month chronic feeding study that tested spirulina powder in rats at dietary concentrations of 10, 20, or 30 percent (equivalent to 5,000, 10,000, or 15,000 milligrams per kilogram bodyweight per day (mg/kg bw/d)). The results of this study showed that prolonged oral consumption of spirulina powder up to a dietary concentration of 15,000 mg/kg bw/d was without adverse effects. Therefore, we concluded that the no-observed-effect level (NOEL) for spirulina is 15,000 mg/kg bw/d (900,000 mg/p/d for a 60 kg person) based on the absence of treatment-related adverse effects at the highest concentration tested in this study. We had also determined the NOEL for phycocyanins for humans to be between 108,000 and 184,500 mg/p/d (78 FR 49117 at 49119). Taking into account all the available safety information, the estimated exposure to phycocyanins from the petitioned use of the spirulina extract, and the margin of safety between the CEDI for phycocyanin (1,140 mg/p/d) and the NOEL for phycocyanin (108,000 to 184,500 mg/p/d), we conclude that the petitioned use of spirulina extract as a color additive in coating formulations applied to dietary supplement and drug tablets and capsules is safe (Ref. 4).

The potential allergenicity of spirulina phycocyanins was discussed in the final rule for the use of spirulina extract as a color additive in candy and chewing gum (78 FR 49117 at 49119). Based on our review of a comparison of the known amino acid sequences of phycocyanins with the sequences of known protein allergens, we had determined that there is a low probability that phycocyanins are protein allergens. We therefore concluded that the spirulina phycocyanins present an insignificant allergy risk to consumers of the color additive. We are not aware of any new information that would cause us to change this conclusion.

IV. Conclusion

Based on the data and information in the petition and other relevant material, we conclude that the petitioned use of spirulina extract in coating formulations applied to dietary supplement and drug tablets and capsules is safe. We further conclude that the additive will achieve its intended technical effect and is suitable for the petitioned use. Consequently, we are amending the color additive regulations in part 73 as set forth in this document. In addition, based upon the factors listed in 21 CFR 71.20(b), we conclude that certification of spirulina extract is not necessary for the protection of the public health.

V. Public Disclosure

In accordance with § 71.15 (21 CFR 71.15), the petition and the documents that we considered and relied upon in reaching our decision to approve the petition will be made available for public disclosure (see **FOR FURTHER INFORMATION CONTACT**). As provided in § 71.15, we will delete from the documents any materials that are not available for public disclosure.

VI. Environmental Impact

We previously considered the environmental effects of this rule, as stated in the October 22, 2014, notice of filing for CAP 4C0300. We stated that we had determined, under 21 CFR 25.32(r), that this action ''is of a type that does not individually or cumulatively have a significant effect on the human environment'' such that neither an environmental assessment nor an environmental impact statement is required. We have not received any new information or comments that would affect our previous determination.

VII. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VIII. Section 301(*ll*) of the FD&C Act

Our review of this petition was limited to section 721 of the FD&C Act. This final rule is not a statement regarding compliance with other sections of the FD&C Act. For example, section 301(*ll*) of the FD&C Act (21 U.S.C. 331(*ll*) prohibits the introduction or delivery for introduction into interstate commerce of any food that contains a drug approved under section 505 of the FD&C Act (21 U.S.C. 355), a biological product licensed under section 351 of the Public Health Service Act (42 U.S.C. 262), or a drug or biological product for which substantial clinical investigations have been instituted and their existence has been made public, unless one of the exemptions in section 301(*ll*)(1) to (4) of the FD&C Act applies. In our review of this petition, we did not consider whether section 301(*ll*) of the FD&C Act or any of its exemptions apply to food containing this color additive. Accordingly, this final rule should not be construed to be a statement that a food containing this color additive, if introduced or delivered for introduction into interstate commerce, would not violate section 301(*ll*) of the FD&C Act. Furthermore, this language is included in all color additive final rules that pertain to food and therefore should not be construed to be a statement of the likelihood that section 301(*ll*) of the FD&C Act applies.

IX. Objections

This rule is effective as shown in the **DATES** section except as to any provisions that may be stayed by the filing of proper objections. If you will be adversely affected by one or more provisions of this regulation, you may file with the Division of Dockets Management (see **ADDRESSES**) either electronic or written objections. You must separately number each objection, and within each numbered objection you must specify with particularity the provision(s) of the regulation to which you object, and the grounds for your objection. Within each numbered objection, you must specifically state whether you are requesting a hearing on the particular provision that you specify in that numbered objection. If you do not request a hearing for any particular objection, you waive the right to a hearing on that objection. If you request a hearing, your objection must include a detailed description and analysis of the specific factual information you intend to present in support of the objection in the event that a hearing is held. If you do not include such a description and analysis for any particular objection, you waive the right to a hearing on the objection.

It is only necessary to send one set of documents. Identify documents with the

docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.* We will publish notice of the objections that we have received or lack thereof in the **Federal Register**.

X. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday, and are available electronically at *http://www.regulations.gov.* (FDA has verified the Web site address in this reference section, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**).

1. Memorandum from N. Belai, Color Technology Team, OCAC, CFSAN, FDA to M. Harry, Division of Petition Review, OFAS, CFSAN, FDA, March 19, 2015.
2. Memorandum from H. Lee, Division of Petition Review, OFAS, CFSAN, FDA to M. Harry, Division of Petition Review, OFAS, CFSAN, FDA, January 30, 2015.
3. Letter from D. Keefe, Office of Food Additive Safety, CFSAN, FDA to H. Newman, Desert Lake Technologies, LLC, Agency Response Letter GRAS Notice 000424, December 6, 2012, (*http://www.fda.gov/Food/IngredientsPackagingLabeling/GRAS/NoticeInventory/ucm335743.htm*).
4. Memorandum from T. Walker, Division of Petition Review, OFAS, CFSAN, FDA to M. Harry, Division of Petition Review, OFAS, CFSAN, FDA, April 2, 2015.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and re-delegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 73 is amended as follows:

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

■ 1. The authority citation for 21 CFR part 73 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e.

■ 2. Section 73.530 is amended by revising paragraph (c) to read as follows:

§ 73.530 Spirulina extract.

* * * * *

(c) *Uses and restrictions.* Spirulina extract may be safely used for coloring confections (including candy and chewing gum), frostings, ice cream and frozen desserts, dessert coatings and toppings, beverage mixes and powders, yogurts, custards, puddings, cottage cheese, gelatin, breadcrumbs, ready-to-eat cereals (excluding extruded cereals), and coating formulations applied to dietary supplement tablets and capsules, at levels consistent with good manufacturing practice, except that it may not be used to color foods for which standards of identity have been issued under section 401 of the Federal Food, Drug, and Cosmetic Act, unless the use of the added color is authorized by such standards.

* * * * *

■ 3. Section 73.1530 is added to subpart B to read as follows:

§ 73.1530 Spirulina extract.

(a) *Identity.* (1) The color additive spirulina extract is prepared by the filtered aqueous extraction of the dried biomass of *Arthrospira platensis.* The color additive contains phycocyanins as the principal coloring components.

(2) Color additive mixtures for drug use made with spirulina extract may contain only those diluents that are suitable and are listed in this subpart as safe for use in color additive mixtures for coloring ingested drugs.

(b) *Specifications.* Spirulina extract must conform to the following specifications and must be free from impurities, other than those named, to the extent that such other impurities may be avoided by good manufacturing practice:

(1) Lead, not more than 2 milligrams per kilogram (mg/kg) (2 parts per million (ppm));

(2) Arsenic, not more than 2 mg/kg (2 ppm);

(3) Mercury, not more than 1 mg/kg (1 ppm); and

(4) Negative for microcystin toxin.

(c) *Uses and restrictions.* Spirulina extract may be safely used for coloring coating formulations applied to drug tablets and capsules, at levels consistent with good manufacturing practice.

(d) *Labeling requirements.* The label of the color additive and any mixture prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of § 70.25 of this chapter.

(e) *Exemption from certification.* Certification of this color additive is not necessary for the protection of the public health, and therefore batches thereof are exempt from the certification requirements of section 721(c) of the Federal Food, Drug, and Cosmetic Act.

Dated: August 14, 2015.

Susan Bernard,

Director, Office of Regulations, Policy and Social Sciences, Center for Food Safety and Applied Nutrition.

[FR Doc. 2015–20676 Filed 8–20–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2015–0216]

RIN 1625–AA08

Special Local Regulation; Suncoast Super Boat Grand Prix; Gulf of Mexico, Sarasota, FL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending a special local regulation for the Suncoast Super Boat Grand Prix that occurs on the waters of the Gulf of Mexico near Sarasota, Florida. The event is scheduled to take place annually on the first Friday, Saturday, and Sunday of July from 10 a.m. to 5 p.m. The amendment is needed in order to protect the safety of race participants, participant vessels, spectators, and the general public on the navigable waters of the United States. The amended special local regulation will restrict vessel traffic on the waters near the event by establishing the following three areas: A race area, where all persons and vessels, except those persons and vessels participating in the high speed boat races, are prohibited from entering, transiting through, anchoring in, or remaining within; a spectator area, where all vessels must be anchored or operate at No Wake Speed; and an enforcement area where designated representatives may control vessel traffic as determined by prevailing conditions.

DATES: This rule is effective September 21, 2015.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2015–0216. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. 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 rule, call or email Lieutenant Junior Grade Brett S. Sillman, Sector St. Petersburg Prevention Department, Coast Guard; telephone (813) 228–2191, email *D07-SMB-Tampa-WWM@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is proposing to amend the Special Local Regulation on the waters of the Gulf of Mexico in the vicinity of Sarasota, Florida during the Suncoast Super Boat Grand Prix. The event is scheduled to take place the first Friday, Saturday, and Sunday in July from 10 a.m. to 5 p.m. This final rule is necessary to protect the safety of race participants, participant vessels, spectators, and the general public on the navigable waters of the United States during the event.

B. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish special local regulations: 33 U.S.C. 1233.

The purpose of the proposed rule is to provide for the safety of life on navigable waters of the United States during the Suncoast Super Boat Grand Prix.

C. Comments, Changes, and the Final Rule

There were no comments related to this event during the comment period and there was no request for a public meeting made during the comment period.

This special local regulation will be enforced annually during the first Friday, Saturday, and Sunday of July from 10 a.m. to 5 p.m. The special local regulations will establish the following three areas: (1) A race area, where all persons and vessels, except those persons and vessels participating in the high speed boat races, are prohibited from entering, transiting through, anchoring in, or remaining within; (2) a spectator area, where all vessels must be anchored or operate at No Wake Speed; and (3) an enforcement area where designated representatives may control vessel traffic as determined by the prevailing conditions.

Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the race area or enforcement area by contacting the Captain of the Port St. Petersburg by telephone at (727) 824–7506, or a designated representative via VHF radio on channel 16. If authorization to enter, transit through, anchor in, or remain within the race area or enforcement area is granted by the Captain of the Port St. Petersburg or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port St. Petersburg or a designated representative.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The economic impact of this final rule is not significant for the following reasons: (1) The special local regulations will be enforced for only seven hours a day for three days; (2) although persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the race area or enforcement area without authorization from the Captain of the Port St. Petersburg or a designated representative, they may operate in the surrounding area during the enforcement period; (3) persons and vessels may still enter, transit through, anchor in, or remain within the race area and enforcement area if authorized by the Captain of the Port St. Petersburg or a designated representative; and (4) the Coast Guard would provide advance notification of the special local regulations to the local maritime community by Local Notice to Mariners, Broadcast Notice to Mariners and/or on-scene designate representatives.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This final rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has 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. We have analyzed this proposed rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children From Environmental Health Risks

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This rule is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Revise § 100.720 to read as follows:

§ 100.720 Special Local Regulations; Suncoast Super Boat Grand Prix, Gulf of Mexico; Sarasota, FL.

(a) *Regulated areas.* The following regulated areas are established as special local regulations. All coordinates are North American Datum 1983.

(1) *Race area.* All waters of the Gulf of Mexico contained within the following points: 27°18.19′ N., 82°34.29′ W., thence to position 27°17.42′ N., 82°35.00′ W., thence to position 27°18.61′ N., 82°36.59′ W., thence to position 27°19.58′ N., 82°35.54′ W., thence back to the original position 27°18.19′ N., 82°34.29′ W.

(2) *Spectator area.* All waters of Gulf of Mexico no less than 500 yards from the race area and/or as agreed upon by the Coast Guard and race officials.

(3) *Enforcement area.* All waters of the Gulf of Mexico encompassed within the following points: 27°17.87′ N., 82°33.93′ W., thence to position 27°16.61′ N., 82°34.69′ W., thence to position 27°18.53′ N., 82°37.52′ W., thence to position 27°20.04′ N., 82°35.76′ W., thence back to the original position 27°17.87′ N., 82°33.93′ W.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port St. Petersburg in the enforcement of the regulated areas.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the race area unless an authorized race participant.

(2) Designated representatives may control vessel traffic throughout the enforcement area as determined by the prevailing conditions.

(3) All vessels are to be anchored and/or operate at a No Wake Speed in the spectator area. On-scene designated representatives will direct spectator vessels to the spectator area.

(4) All vessel traffic not involved with the event shall enter and exit Sarasota Bay via Big Sarasota Pass and stay well clear of the enforcement area.

(5) New Pass will be closed to all inbound and outbound vessel traffic at the COLREGS Demarcation Line. Vessels are allowed to utilize New Pass to access all areas inland of the Demarcation Line via Sarasota Bay. New Pass may be opened at the discretion of the Captain of the Port.

(6) Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the regulated areas by contacting the Captain of the Port St. Petersburg by telephone at (727) 824–7506, or a designated representative via VHF radio on channel 16. If authorization is granted by the Captain of the Port St. Petersburg or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port St. Petersburg or a designated representative.

(d) *Enforcement date.* This section will be enforced annually the first Friday, Saturday, and Sunday of July from 10 a.m. to 5 p.m. EDT daily.

Dated: June 15, 2015.

G.D. Case,

Captain, U.S. Coast Guard, Captain of the Port St. Petersburg.

[FR Doc. 2015–20741 Filed 8–20–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2015–0767]

Drawbridge Operation Regulation; Hood Canal, Port Gamble, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Hood Canal Floating Drawbridge across Hood Canal (Admiralty Inlet), mile 5.0, near Port Gamble, WA. This deviation allows the bridge to open the draw span half-way, 300 feet; as opposed to all the way, which is 600 feet. One half of the span will remain closed, allowing for the replacements of bridge anchors for this section of the bridge.

DATES: This deviation is effective from 6 a.m. on August 27, 2015, until 7 p.m. on September 30, 2015.

ADDRESSES: The docket for this deviation, [USCG–2015–0767] 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 Mr. Steven Fischer, Bridge Administrator, Thirteenth Coast Guard District; telephone 206–220–7282, email *d13-pf-d13bridges@uscg.mil.* If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: Washington Department of Transportation (WSDOT) has requested that the Hood Canal Floating Drawbridge only open half of the span to facilitate safe and uninterrupted bridge anchor replacements. The Hood Canal Floating Drawbridge crosses Hood Canal, mile 5.0, near Port Gamble, WA. The bridge has two fixed spans (East and West), and one draw span (Main). The East span provides 50 feet of vertical clearance, and the West span provides 35 feet of vertical clearance. The Main span provides zero feet of vertical clearance in the closed-to-navigation position, and unlimited vertical clearance in the open-to-navigation position. Vertical clearances are referenced to mean high-water elevation.

The deviation period allows the draw span of the Hood Canal Floating Drawbridge across Hood Canal, mile 5.0, to open half-way from 6 a.m. on August 27, 2015 until 7 p.m. on September 30, 2015.

During the time of the deviation, the drawbridge will not be able to operate according to the normal operating schedule. The normal operating schedule for the bridge is in accordance with 33 CFR 117.1045, which allows, with at least one hour's notice, on signal, for the draw to open horizontally for 300 feet unless the maximum opening of 600 feet is requested; and need not open for vessel traffic from 3 p.m. to 6:15 p.m. daily from 3 p.m. on May 22 to 6:16 p.m. on September 30. The bridge shall operate in accordance to 33 CFR 117.1045 at all other times. Waterway usage on this part of Hood Canal includes vessels ranging from commercial tug and barge to U.S. Navy vessels, and vessels attending the missions of the U.S. Navy to small pleasure craft.

Vessels able to pass through the East and West spans may do so at anytime. The Main span does not provide passage in the closed-to-navigation position. The bridge will be able to open half the Main span for Navy vessels during emergencies, when requested by the Department of the Navy. The Hood Canal Floating Drawbridge has two immediate alternate spans for vessels to pass (East span and West span). The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

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: August 11, 2015.

Steven M. Fischer,

Bridge Administrator, Thirteenth Coast Guard District.

[FR Doc. 2015–20671 Filed 8–20–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2015–0351]

Drawbridge Operation Regulation; Lewis and Clark River, Astoria, OR

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Oregon State (Lewis and Clark River) Highway Bridge across the Lewis and Clark River, mile 1.0, at Astoria, OR. The deviation is necessary to accommodate bridge maintenance activities. This deviation allows the bridge to remain in the closed-to-navigation position and need not open to maritime traffic.

DATES: This deviation is effective from 7 a.m. on August 20, 2015 to 5 p.m. on October 30, 2015.

ADDRESSES: The docket for this deviation, [USCG–2015–0351] 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 Steven M. Fischer, Thirteenth Coast Guard District Bridge Program Administrator, telephone 206–220–7282, email *d13-pf-d13bridgesuscg.mil.* If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Oregon Department of Transportation (ODOT) has requested that the Lewis and Clark River Bridge, mile 1.0, remain in the closed-to-navigation position, and need not open to vessel traffic Monday, Tuesday, Wednesday, Friday and Saturday. The bascule span will be available to open on Thursdays from 7 a.m. to 4 p.m., when given 3 hours advanced notice. The bridge will operate as normal on Sundays. The deviation is necessary to facilitate

bridge maintenance activities to include repairing and preserving the bascule drawbridge structural steel. The Lewis and Clark Bridge provides a vertical clearance of 17.3 feet above mean high water when in the closed-to-navigation position. The normal operating schedule of the Oregon State highway bridge can be found in 33 CFR 117.899(c). This deviation period is from 7 a.m. on August 20, 2015 to 5 p.m. on October 30, 2015. The deviation allows the bascule span of the Lewis and Clark River Bridge to remain in the closed-to-navigation position Monday, Tuesday, Wednesday, Friday and Saturday throughout the deviation period. In addition, the span will be in the closed-to-navigation position on Thursdays, but available to open from 7 a.m. to 4 p.m. when given 3 hours advanced notice. The bridge will operate as normal on Sundays in accordance with 33 CFR 117.899(c). Waterway usage on the Lewis and Clark River is primarily small recreational boaters and fishing vessels transiting to and from Astoria Marine Construction Company.

The bascule span of the bridge will have a containment system installed which will reduce the vertical clearance by 5 feet from 17.3 feet above mean high water to 12.3 feet above mean high water. Vessels able to pass through the bridge in the closed-to-navigation position may do so at any time. The bridge will be able to open for any emergency if a three-hour notice is given from 7 a.m. to 4 p.m. Monday through Saturday; on Sundays the bridge will be able to open in accordance with 33 CFR 117.899(c), and there is no immediate alternate route for vessels to pass. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

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: August 17, 2015.

Steven M. Fischer,

Bridge Administrator, Thirteenth Coast Guard District.

[FR Doc. 2015–20670 Filed 8–20–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2015–0718]

RIN 1625–AA00

Safety Zone; Cleveland National Air Show; Lake Erie and Cleveland Harbor, Cleveland, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Lake Erie and Cleveland Harbor, Cleveland, OH. This safety zone is intended to restrict vessels from a portion of Lake Erie and Cleveland Harbor during the Cleveland National Air Show. This temporary safety zone is necessary to protect participants, spectators, and vessels from the hazards associated with aerial insertions and aircraft maneuvers.

DATES: This rule is effective from 2:20 p.m. on September 3, 2015 until 6 p.m. on September 7, 2015.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2015–0718]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. 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 rule, call or email LT Stephanie Pitts, Chief of Waterways Management, U.S. Coast Guard Marine Safety Unit Cleveland; telephone 216–937–0128. If you have questions on viewing the docket, call Ms. Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826 or 1–800–647–5527.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
TFR Temporary Final Rule

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest. The final details for this event were not known to the Coast Guard until there was insufficient time remaining before the event to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be both impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect spectators and vessels from the hazards associated with a maritime fireworks display.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this temporary rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, waiting for a 30 day notice period to run would be impracticable.

B. Basis and Purpose

The legal basis and authorities for this rule are found in 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish and define regulatory safety zones.

The Cleveland National Air Show has been taking place annually since 1964. During the 2015 show, as with shows in the past, there will be various high speed aerial and military tactical demonstrations on and over Burke Lakefront to include various maneuvers by U. S. Air Force Thunderbirds and civilian aircraft and by personnel on the Burke Lakefront Airport grounds. Specifically, this year's aerial and military tactical demonstrations will take place between 2:20 p.m. to 4:30 p.m. on September 3, 2015, 10:00 a.m. to 4:30 p.m. on September 4, 2015, and 8:00 a.m. to 6:00 p.m. on September 5, 2015 through September 7, 2015. A heavy amount of recreational boating traffic is expected for these demonstrations. The Captain of the Port Buffalo has determined that the maneuvers combined with a high concentration of recreational vessels

will create significant risks for the boating public.

C. Discussion of the Final Rule

With the aforementioned hazards in mind, the Captain of the Port Buffalo has determined that this temporary safety zone is necessary to ensure the safety of participants and the boating public during the Cleveland National Air Show. This zone will be enforced from 2:20 p.m. until 4:30 p.m. on September 3, 2015, from 10 a.m. until 4:30 p.m. on September 4, 2015, from 8 a.m. until 6 p.m. on September 5, 2015, from 8 a.m. until 6 p.m. on September 6, 2015, and from 8 a.m. until 6 p.m. on September 7, 2015. This zone will encompass a portion of Lake Erie and Cleveland Harbor; Cleveland, OH starting at position 41°30′20″ N. and 081°42′20″ W. to 41°30′50″ N. and 081°42′49″ W., then to 41°32′09″ N. and 081°39′49″ W., then to 41°31′53″N. and 081°39′24″ W., then return to the point of origin (NAD 83).

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for a relatively short time. Also, the safety zone is designed to minimize its impact on navigable waters. Furthermore, the safety zone has been designed to allow vessels to transit around it. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of Lake Erie and Cleveland Harbor from 2:20 p.m. to 4:30 p.m. on September 3, 2015, 10:00 a.m. to 4:30 p.m. on September 4, 2015, and 8:00 a.m. to 6:00 p.m. on September 5, 2015 through September 7, 2015.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone would be effective, and thus subject to enforcement, for approximately ten hours each day in an area with low commercial vessel traffic. Traffic may be allowed to pass through the zone with the permission of the Captain of the Port. The Captain of the Port can be reached via VHF channel 16. Before the enforcement of the zone, we would issue local Broadcast Notice to Mariners.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has 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. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the ''For Further Information Contact'' section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to

minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone and, therefore it is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09–0718 to read as follows:

§ 165.T09–0718 Safety Zone; Cleveland National Air Show; Lake Erie and Cleveland Harbor, Cleveland, OH.

(a) *Location.* This zone will encompass a portion of Lake Erie and Cleveland Harbor; Cleveland, OH starting at position 41°30′20″ N. and 081°42′20″ W. to 41°30′50″ N. and 081°42′49″ W., then to 41°32′09″ N. and 081°39′49″ W., then to 41°31′53″N. and 081°39′24″ W., then return to the point of origin (NAD 83).

(b) *Enforcement period.* This regulation will be enforced from 2:20 p.m. until 4:30 p.m. on September 3, 2015, from 10 a.m. until 4:30 p.m. on September 4, 2015, from 8 a.m. until 6 p.m. on September 5, 2015, from 8 a.m. until 6 p.m. on September 6, 2015, and from 8 a.m. until 6 p.m. on September 7, 2015.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Buffalo or his designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port Buffalo is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Buffalo to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zone must contact the Captain of the Port Buffalo or his on-scene representative to obtain permission to do so. The Captain of the Port Buffalo or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Buffalo, or his on-scene representative.

Dated: August 7, 2015.

B. W. Roche,

Captain, U. S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. 2015–20739 Filed 8–20–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2015–0276]

RIN 1625–AA00

Safety Zone, Swim Around Charleston; Charleston, SC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary moving safety zone during the Swim Around Charleston, a swimming race occurring on waters of the Wando River, the Cooper River, Charleston Harbor, and the Ashley River, in Charleston, South Carolina. The Swim Around Charleston is scheduled to take place on September 26, 2015. The temporary safety zone is necessary for the safety of the swimmers, participant vessels, spectators, and the general public during the event. Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port Charleston or a designated representative.

DATES: This rule is effective from noon until 6 p.m. on September 26, 2015.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2015–0276. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. 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 rule, call or

email Chief Warrant Officer Christopher Ruleman, Sector Charleston Waterways Management, U.S. Coast Guard; telephone (843) 740–3184, email *christopher.l.ruleman@uscg.mil.* If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202)-366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking

A. Regulatory History and Information

On May 26, 2015, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone; Swim Around Charleston, Charleston, SC in the **Federal Register** (80 FR 30005). We received no comments on the proposed rule. No public meeting was requested, and none was held.

B. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and other limited access areas: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; and Department of Homeland Security Delegation No. 0170.1.

The purpose of the rule is to ensure the safety of the swimmers, participant vessels, spectators, and the general public during the Swim Around Charleston.

C. Discussion of Comments and This Temporary Final Rule

The Coast Guard did not receive any comments to the proposed rule, and no changes were made to the regulatory text.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. The economic impact of this rule is not significant for the following reasons: (1) The safety zone will only be enforced for a total of six hours; (2) the safety zone will move with the participant vessels so that once the swimmers clear a portion of the waterway, the safety zone will no longer be enforced in that portion of the waterway; (3) although persons and vessels may not enter, transit through, anchor in, or remain within the safety zone without authorization from the Captain of the Port Charleston or a designated representative, they may operate in the surrounding area during the enforcement period; (4) persons and vessels may still enter, transit through, anchor in, or remain within the safety zone if authorized by the Captain of the Port Charleston or a designated representative; and (5) the Coast Guard will provide advance notification of the safety zone to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received zero comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the Wando River, the Cooper River, Charleston Harbor, or the Ashley River in Charleston, South Carolina from noon until 6 p.m. on September 26, 2015. Due to the limited duration and geographical scope of this rule, it will not have a significant economic impact on a substantial number of small entities.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on 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. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist and Categorical Exclusion Determination was completed for 2015. The environmental analysis checklist and Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; and Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T07–0276 to read as follows:

§ 165.T07–0276 Safety Zone, Swim Around Charleston; Charleston, SC.

(a) *Regulated area.* The following regulated area is a moving safety zone: all waters within a 75-yard radius around Swim Around Charleston participant vessels that are officially associated with the swim. The Swim Around Charleston swimming race consists of a 10-mile course that starts at Remley's Point on the Wando River in approximate position 32°48′49″ N., 79°54′27″ W., crosses the main shipping channel of Charleston Harbor, and finishes at the General William B. Westmoreland Bridge on the Ashley River in approximate position 32°50′14″ N., 80°01′23″ W. All coordinates are North American Datum 1983.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Charleston in the enforcement of the regulated area.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Charleston or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Charleston by telephone at (843) 740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Effective date.* This rule is effective on September 26, 2015 and will be enforced from noon until 6 p.m.

Dated: August 3, 2015.

G. L. Tomasulo,

Captain, U.S. Coast Guard, Captain of the Port Charleston.

[FR Doc. 2015–20737 Filed 8–20–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Parts 200 and 300

RIN 1810–AB16

[Docket ID ED–2012–OESE–0018]

Improving the Academic Achievement of the Disadvantaged; Assistance to States for the Education of Children With Disabilities

AGENCY: Office of Elementary and Secondary Education, Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing title I, Part A of the Elementary and Secondary Education Act of 1965, as amended (ESEA) (the ''Title I regulations''), to no longer authorize a State to define modified academic achievement standards and develop alternate assessments based on those modified academic achievement standards for eligible students with disabilities. In order to make conforming changes to ensure coordinated administration of programs under title I of the ESEA and the Individuals with Disabilities Education Act (IDEA), the Secretary is also amending the regulations for Part B of the IDEA. Note: Nothing in these regulations changes the ability of States to develop and administer alternate assessments based on alternate

academic achievement standards for students with the most significant cognitive disabilities or alternate assessments based on grade-level academic achievement standards for other eligible students with disabilities in accordance with the ESEA and the IDEA, or changes the authority of IEP teams to select among these alternate assessments for eligible students.

DATES: These regulations are effective September 21, 2015.

FOR FURTHER INFORMATION CONTACT: For further information regarding the Title I regulations, contact Monique M. Chism, U.S. Department of Education, 400 Maryland Avenue SW., Room 3W224, Washington, DC 20202–6132. Telephone: (202) 260–0826.

For further information regarding the IDEA regulations, contact Mary Louise Dirrigl, U.S. Department of Education, 550 12th St. SW., Potomac Center Plaza, Room 5156, Washington, DC 20202–2641. Telephone: (202) 245–7324.

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:

Background

High standards and high expectations for all students and an accountability system that provides teachers, parents, students, and the public with information about students' academic progress are essential to ensure that students graduate from high school prepared for college and careers in the 21st century. In 2007, the Department amended the Title I regulations to permit States to define modified academic achievement standards for eligible students with disabilities and to assess those students with alternate assessments based on those modified academic achievement standards. The Department promulgated those regulations based on the understanding that (1) there was a small group of students whose disabilities precluded them from achieving grade-level proficiency and whose progress was such that they would not reach grade-level achievement standards in the same time frame as other students, and (2) the regular State assessment would be too difficult for this group of students and the assessment based on alternate academic achievement standards would be too easy for them. 72 FR 17748 (Apr. 9, 2007). In addition, at that time, the Department acknowledged that measuring the academic achievement of students with disabilities, particularly those eligible to be assessed based on modified academic achievement standards, was ''an area in which there is much to learn and improve'' and indicated that ''[a]s data and research on assessments for students with disabilities improve, the Department may decide to issue additional regulations or guidance.'' 72 FR 17748, 17763 (Apr. 9, 2007).

Since these regulations went into effect, additional research [1] has demonstrated that students with disabilities who struggle in reading and mathematics can successfully learn grade-level content and make significant academic progress when appropriate instruction, services, and supports are provided. For example, a research study conducted a meta-analysis of 70 independent studies investigating the effects of special education interventions on student achievement. The study found that children with disabilities made significant progress across different content areas and across different educational settings when they received systematic, explicit instruction; learning strategy instruction; and other evidence-based instructional strategies and supports.[2]

In addition, nearly all States have developed new college- and career-ready standards and new assessments aligned with those standards. These new assessments have been designed to facilitate the valid, reliable, and fair assessment of most students, including students with disabilities who previously took an alternate assessment based on modified academic achievement standards. For these reasons, we believe that the removal of the authority for States to define modified academic achievement standards and to administer assessments based on those standards is necessary to ensure that students with disabilities are held to the same high standards as their nondisabled peers, and that they benefit from high expectations, access to the general education curriculum based on a State's academic content standards, and instruction that will prepare them for success in college and careers.

Public Comment: On August 23, 2013, we published in the **Federal Register** (78 FR 52467) a notice of proposed rulemaking (NPRM) that would amend the Title I regulations to no longer authorize a State to define modified academic achievement standards and administer alternate assessments based on those modified academic achievement standards for eligible children with disabilities. The NPRM established an October 7, 2013, deadline for the submission of written comments. Although the Federal eRulemaking Portal was in operation during the government shutdown in October 2013, which included the final seven days of the original public comment period, we recognized that interested parties reasonably may have believed that the government shutdown resulted in a suspension of the public comment period. To ensure that all interested parties were provided the opportunity to submit comments, we reopened the public comment period for seven days. The final due date for comments was November 23, 2013.

In response to our invitation in the NPRM, 156 parties submitted comments. We group major issues according to subject. In some cases, comments addressed issues beyond the scope of the proposed regulations. Although we appreciate commenters' concerns for broader issues affecting the education of students with disabilities, because those comments are beyond the scope of this regulatory action, we do not discuss them here. Generally, we do not address technical and other minor revisions.

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

General Comments

Comments: Several commenters stated that general assessments that are accessible for all students are in the best interest of students with disabilities and provide better information about the achievement of those students for parents, educators, and the public. Several commenters pointed to developments in the field of assessment that are contributing to general assessments that are accessible for the vast majority of students. The commenters noted that using principles of ''universal design for learning'' and considering accessibility issues when designing assessments have resulted in more accessible general assessments and have eliminated the need for alternate assessments based on modified academic achievement standards. A few commenters urged the Department to promote the use of universal design for learning in developing assessments, as well as to support the development of accessible assessments and accommodations for students with disabilities.

[1] See discussion of this research in *Assessing Students with Disabilities Based on a State's Academic Achievement Standards.*

[2] See Scruggs, T., Mastropieri, M., Berkeley, S., & Graetz, J. (2010). Do Special Education Interventions Improve Learning of Secondary Content? A Meta-Analysis. *Remedial and Special Education, 31(6)*, 437–449.

Discussion: Nearly all States have developed and are administering new high-quality general assessments that are valid and reliable and measure students with disabilities' knowledge and skills against college- and career-ready standards. Including students with disabilities in more accessible general assessments aligned to college- and career-ready standards promotes high expectations for students with disabilities, ensures that they will have access to grade-level content, and supports high-quality instruction designed to enable students with disabilities to be involved in, and make progress in, the general education curriculum—that is, the same curriculum as for nondisabled students.

In response to those commenters who urged the Department to support the adoption of universal design principles for student assessments, we note that the Department has a history of supporting and promoting universal design for learning, assessments that are accessible for all students, and appropriate accommodations for students with disabilities. Most recently, we included ''universal design for learning'' in defining ''high-quality assessments'' required under the Race to the Top programs and the ESEA flexibility initiative.[3] We have also focused funding on improving the accessibility of assessments through the General Supervision Enhancement Grants (GSEG) and Enhanced Assessment Grants (EAG) programs.

Changes: None.

Comments: Some commenters from States that administered alternate assessments based on modified academic achievement standards discussed how these assessments were helpful in meeting the needs of students with disabilities. One commenter stated that the assessments improved instruction and student achievement while providing students with access to the general curriculum. A representative from a State educational agency (SEA) commented that five years of research and development went into developing their State's alternate assessments, which are based on grade-level content, are aligned with college- and career-ready standards, and do not compromise academic rigor and expectations. The SEA representative stated that the existing regulations provide the most flexibility for States and that, without access to the State's alternate assessments based on modified academic achievement standards, students who would otherwise take the alternate assessments would no longer have the opportunity to demonstrate their knowledge and skills.

Discussion: We recognize that some States expended considerable resources to develop alternate assessments based on modified academic achievement standards. As one commenter suggests, these States' research and development efforts generated valuable information on how best to teach and assess students with disabilities. States may still use this information to prepare and support students to take the new general assessments aligned with college- and career-ready standards that States have developed since the Department issued the regulations in April 2007. Those assessments are more accessible to students with disabilities than those in place at the time States began developing alternate assessments based on modified academic achievement standards. The new general assessments will facilitate the valid, reliable, and fair assessment of most students with disabilities, including those for whom alternate assessments based on modified academic achievement standards were intended. Moreover, we know the key to successful achievement of students with disabilities begins with appropriate instruction, services, and supports. More than six years of research spurred by the opportunity that States had to research, develop, and administer alternate assessments based on modified academic achievement standards have dramatically increased the knowledge base about students who are struggling in school. States that received funding from the Department through the GSEG and EAG programs to develop alternate assessments based on modified academic achievement standards focused on several topics, including the characteristics of students who were participating in such assessments, barriers to these students' learning and performance, and approaches to making assessments more accessible. For example, research in several States found that some students deemed eligible for taking alternate assessments based on modified academic achievement standards may not have had an opportunity to learn grade-level content, and that more effort was needed to support teachers in ensuring students have meaningful opportunities to learn grade-level content. Other research focused on the appropriateness of test items and identified various ways to improve the accessibility of test items, such as adjusting format characteristics or content, or carefully examining the difficulty of the test items and making items more accessible and understandable (*e.g.,* reducing unimportant or extraneous details) while still measuring grade-level content.[4] Therefore, we believe that alternate assessments based on modified academic achievement standards are no longer needed and, with high-quality instruction and appropriate accommodations, students with disabilities who took an alternate assessment based on modified academic achievement standards will be able to demonstrate their knowledge and skills by participating in the new general assessments.

Changes: None.

Comments: A parent whose child participated in an alternate assessment based on modified academic achievement standards expressed concern that, without the assessment, the child would not be able to graduate with a high school diploma. Another commenter asked that States be allowed to continue to administer alternate assessments based on modified academic achievement standards for State purposes, such as promotion decisions and graduation requirements. One commenter stated that the assessments allowed students with disabilities to be successful and meet State exit exam requirements.

Discussion: Under the final regulations, a State may no longer define modified academic achievement standards and administer alternate assessments based on modified academic achievement standards to meet ESEA requirements. Accordingly, these regulations do not affect State promotion decisions and graduation requirements because the Federal government does not set promotion or graduation standards for any students, including students with disabilities. Rather, States, and, in some cases, local educational agencies (LEAs), establish requirements for high school graduation and promotion.

However, we note that, regardless of State or local promotion or graduation requirements for a regular high school diploma, in order to ensure a free appropriate public education (FAPE) is made available to students with disabilities under the IDEA,

[3] ESEA flexibility refers to the Department's initiative to give a State flexibility regarding specific requirements of the No Child Left Behind Act of 2001 in exchange for developing a rigorous and comprehensive plan designed to improve educational outcomes for all students, close achievement gaps, increase equity, and improve the quality of instruction.

[4] For more information, see: Thurlow, M. L., Lazarus, S. S., & Bechard, S. (Eds.). (2013). *Lessons learned in federally funded projects that can improve the instruction and assessment of low performing students with disabilities.* Minneapolis, MN: University of Minnesota, National Center on Educational Outcomes.

individualized education programs (IEPs), including IEP goals, must be aligned with the State's academic content standards, and contain the content required by the IDEA to enable students with disabilities to be involved in, and make progress in, the general education curriculum based on the State's academic content standards. Therefore, in order to ensure that a State makes FAPE available to all eligible students with disabilities,[5] promotion or graduation requirements for such students may not be lowered if doing so means including goals, special education and related services, and supplementary aids and services and other supports in a student's IEP that are not designed to enable the student to be involved in, and make progress in, the general education curriculum based on the State's academic content standards. The general education curriculum is the curriculum that is applicable to all children and is based on the State's academic content standards that apply to all children within the State.

Changes: None.

Comments: Several commenters who expressed support for the proposed regulations noted that they are aligned with the requirements in several current Department programs, such as the requirement that assessments funded under the Race to the Top Assessment (RTTA) program be accessible to all students, including students with disabilities eligible to participate in an alternate assessment based on modified academic achievement standards; the requirement that State recipients of Race to the Top grants phase out alternate assessments based on modified academic achievement standards; and the requirement that SEAs phase out alternate assessments based on modified academic achievement standards as a condition of receiving ESEA flexibility.

One commenter who opposed the proposed regulations expressed an understanding that they are based on the premise that States have adopted Common Core State Standards, joined an RTTA consortium, or received waivers under ESEA flexibility. The commenter stated that aligning the proposed regulations with these initiatives would set policy for all States based on those participating in voluntary Department initiatives and would send a message to States not participating in these initiatives that they are disadvantaged for not doing so. Another commenter expressed concern that the proposed regulations would result in permanent regulatory changes predicated on temporary ESEA flexibility waivers.

Discussion: The purpose of the these regulatory changes is to promote high expectations for students with disabilities by encouraging teaching and learning to high academic achievement standards for the grade in which a student is enrolled, measured by a State's general assessments. These regulations are driven by research and advances in the development of general assessments aligned with college- and career-ready standards that are more accessible to students with disabilities than those in place at the time States began developing alternate assessments based on modified academic achievement standards. The purpose of the regulations is not, as suggested by some commenters, to align them with voluntary Department initiatives. To clarify, State recipients of Race to the Top grants were not required to phase out alternate assessments based on modified academic achievement standards as a condition of the grants. States approved for ESEA flexibility did agree to phase out those assessments by school year 2014–2015; however, these final regulations are not predicated on that agreement. Rather, the ESEA flexibility requirement is consistent with the purpose of the regulations to promote high expectations for students with disabilities by encouraging teaching and learning to high academic achievement standards for the grade in which a student is enrolled measured by a State's general assessments. Therefore, we disagree with the commenters who claimed that the regulations would set policy based on the Department's voluntary initiatives. Likewise, the regulations do not place any State at a disadvantage as a result of its decision not to participate in voluntary Department initiatives.

Changes: None.

Comments: One commenter expressed concern that the assessments being developed by the Partnership for Assessment of Readiness for College and Careers (PARCC), although based on universal design features to make them more accessible, will not eliminate the need for alternate assessments.

Discussion: The assessments being developed by States based on college- and career-ready standards, including those developed by PARCC and the Smarter Balanced Assessment Consortium, do not eliminate the authority or need for States to administer alternate assessments based on alternate academic achievement standards for students with the most significant cognitive disabilities. States may also continue to administer alternate assessments based on grade-level academic achievement standards, consistent with 34 CFR 200.6(a)(2)(ii)(A). We note that the Department is supporting, through the GSEG program, the development of alternate assessments based on alternate academic achievement standards that will serve as companion assessments to the general assessments that States are developing and implementing.

Changes: None.

Comments: One commenter questioned the Department's authority to amend the Title I regulations in light of the negotiated rulemaking requirements in section 1901(b) of the ESEA, including the requirement that the rulemaking process be conducted in a timely manner to ensure that final regulations are issued by the Secretary not later than one year after the date of enactment of the No Child Left Behind Act of 2001 (NCLB). Similarly, the commenter questioned whether the proposed regulations meet the requirement in section 1908 of the ESEA that the Secretary issue regulations for sections 1111 and 1116 of the ESEA not later than six months after the date of enactment of NCLB.

Discussion: The statutory requirements for negotiated rulemaking in section 1901(b) of the ESEA apply to title I standards and assessment regulations required to be implemented within one year of enactment of NCLB, not to subsequent regulatory amendments such as those included in these regulations. Similarly, with respect to the timeline for issuing regulations implementing title I, the requirements in sections 1901 and 1908 of the ESEA apply only to the issuance of initial regulations following enactment of NCLB, not to subsequent amendments such as these final regulations.

Changes: None.

Assessing Students With Disabilities Based on a State's Academic Achievement Standards

Comments: We received many comments on the standards to which students with disabilities should be held. Several commenters stated that all students should be held and taught to the same standards and that modified academic achievement standards and

[5] The IDEA prescribes certain requirements for IEPs for students who take alternate assessments aligned to alternate academic achievement standards. 34 CFR 300.160(c)(2)(iii), 300.320(a)(2)(ii), and 300.320(a)(6)(ii). This approach addresses the educational and assessment needs of a relatively small percentage of students with the most significant cognitive disabilities, estimated at approximately 1% of all students in a State (approximately 10% of students with disabilities), who cannot be held to the same academic achievement standards as students without the most significant cognitive disabilities.

alternate assessments based on those standards inappropriately lower expectations for students with disabilities and result in instruction that is less challenging than the instruction provided to their nondisabled peers. Other commenters stated that students with disabilities have the ability to learn grade-level content and can achieve at the same levels as their nondisabled peers when provided with appropriate instruction, services, and supports. One commenter stated that, when students receive instruction based on modified academic achievement standards, a negative cycle begins in which the students never learn what they need to succeed. One commenter stated that a State's standards and assessments should be designed to be appropriate for the vast majority of students with disabilities, with the exception of students with the most significant cognitive disabilities. Other commenters stated that a large number of students with disabilities taking alternate assessments based on modified academic achievement standards creates a separate education system for students with disabilities and focuses on students' limitations, rather than strengths.

On the other hand, some commenters stated that holding students with disabilities to the same standards as nondisabled students is unfair because students who qualify for special education services have a disability that affects their academic functioning. They noted that what may be a high standard for one student may not necessarily be the same for another student, and that students with disabilities should take assessments that reflect realistic expectations for them.

Discussion: The importance of holding all students, including students with disabilities, to high standards cannot be over-emphasized. Low expectations can lead to students with disabilities receiving less challenging instruction that reflects below grade-level achievement standards, and thereby not learning what they need to succeed at the grade in which they are enrolled.

Although the Department agrees that some students may have a disability that affects their academic functioning, we disagree that students with disabilities, except for those with the most significant cognitive disabilities, should be held to different academic achievement standards than their nondisabled peers. Research demonstrates that low-achieving students with disabilities who struggle in reading [6] and low-achieving students with disabilities who struggle in mathematics [7] can successfully learn grade-level content when they have access to high-quality instruction. The inclusion of students with disabilities in the new, more accessible general assessments will promote high expectations for students with disabilities, which research demonstrates is associated with improved educational outcomes.[8] Therefore, we disagree with commenters' statements that it is unfair to hold students with disabilities, other than those with the most significant cognitive disabilities, to the same academic achievement standards as their nondisabled peers.

Changes: None.

Comments: Many commenters, mostly teachers and parents, stated that modified academic achievement standards and assessments based on those standards meet the needs of certain students with disabilities for whom the general assessment is too difficult. The commenters stated that the general assessment does not provide meaningful data on these students and that alternate assessments based on modified academic achievement standards allow students to demonstrate their knowledge, show progress, and experience success.

Several commenters expressed concern about providing assessments to students when they know the students will struggle to complete the general assessment because, without more supports, it would be too challenging for the students. The commenters expressed concern that this experience would affect their self-esteem and result in higher drop-out rates for students with disabilities.

Discussion: Since the regulations permitting States to define modified academic achievement standards and develop alternate assessments based on those standards were promulgated in 2007, there has been significant research and progress in developing assessments that are appropriate and accessible for most students, including students with disabilities for whom alternate assessments based on modified academic achievement standards were intended. As discussed in the NPRM, the application of universal design principles, new technologies, and new research on accommodations has led to the development of general assessments that are not only more accessible to students with disabilities, but also improve the validity of their scores. As a number of commenters noted, the developers of the new generation of assessments considered the needs of students with disabilities to ensure that the assessments are designed to allow those students to demonstrate their knowledge.[9]

The Department shares the goal that students with disabilities experience success. Removing the authority for modified academic achievement standards and an alternate assessment based on those standards furthers this goal because students with disabilities who are assessed based on grade-level academic achievement standards will receive instruction aligned with such an assessment.

Changes: None.

Comments: Some commenters stated that it is unfair for students with

[6] For example, see: Allor, J. H., Mathes, P. G., Roberts, J. K., Cheatham, J.P., & Champlin, T. M. (2010). Comprehensive reading instruction for students with intellectual disabilities. *Psychology in the Schools, 47,* 445–466; Kamps, D., Abbott, M., Greenwood, C., Wills, H., Veerkamp, M., & Kaufman, J. (2008); Mautone, J. A., DuPaul, G. J., Jitendra, A. K., Tresco, K. E., Junod, R. V., & Volpe, R. J. (2009). The relationship between treatment integrity and acceptability of reading interventions for children with attention-deficit/hyperactivity disorder. *Psychology in the Schools, 46,* 919–931; and Scammacca, N., Vaughn, S., Roberts, G., Wanzek, J., & Torgesen, J. K. (2007). Extensive reading interventions in grades K–3: From research to practice. Portsmouth, N.H.: RMC Research Corporation, Center on Instruction; and Vaughn, S., Denton, C. A., & Fletcher, J. M. (2010). Why intensive interventions are necessary for students with severe reading difficulties. *Psychology in the Schools, 47,* 32–444; Wanzek, J. & Vaughn, S. (2010). Tier 3 interventions for students with significant reading problems. *Theory Into Practice, 49,* 305–314.

[7] For example, see: Fuchs, L. S. & Fuchs, D., Powell, S. R., Seethaler, P. M., Cirino, P. T., & Fletcher, J. M. (2008). Intensive intervention for students with mathematics disabilities: Seven principles of effective practice. *Learning Disabilities Quarterly, 31,* 79–92; and Gersten, R., Beckmann, S., Clarke, B., Foegen, A., Marsh, L., Star, J. R., & Witzel, B. (2009). *Assisting students struggling with mathematics: Response to Intervention (RtI) for elementary and middle schools* (NCEE 2009–4060). Washington, DC: National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences, U.S. Department of Education. Retrieved November 1, 2010 from *http://ies.ed.gov/ncee/wwc/publications/practiceguides/.*

[8] For example, see Archamboult, I., Janosz, M., & Chouindard, R. (2012). Teacher beliefs as predictors of adolescent cognitive engagement and achievement in mathematics. *The Journal of Educational Research, 105,* 319–328; Hinnant, J., O'Brien, M., & Ghazarian, S. (2009). The longitudinal relations of teacher expectations to achievement in the early school years. *Journal of Educational Psychology, 101*(3), 662–670; and Hornstra, L., Denessen, E., Bakker, J., von den Bergh, L., & Voeten, M. (2010). Teacher attitudes toward dyslexia: Effects on teacher expectations and the academic achievement of students with dyslexia. *Journal of Learning Disabilities, 43*(6), 515–529.

[9] For additional information on assessment accommodations, see: PARCC Accessibility Features and Accommodations Manual (Nov. 2014) at *http://www.parcconline.org/sites/parcc/files/parcc-accessibility-features-accommodations-manual-11-14_final.pdf.*

disabilities to have modifications in instruction during the school year and then be assessed with a test that is not modified.

Discussion: For purposes of this response, we assume ''modifications in instruction'' means accommodations authorized under the IDEA. While the IDEA does authorize adaptations in the content, methodology, or delivery of instruction (34 CFR 300.39(b)(3)), it also requires appropriate accommodations during testing (34 CFR 300.160(a) and 300.320(a)(6)(i)). These accommodations, as agreed upon by a child's IEP team, which includes the child's parents along with school officials, may include, among other things, small group testing, frequent breaks, a separate or alternate location, a specified area or seating, and adaptive and specialized equipment or furniture. As permitted under the IDEA and determined appropriate by a student's IEP team, the Department believes that students with disabilities who take a general assessment based on a State's challenging academic achievement standards should be provided with accommodations during the assessment that are similar to the IEP accommodations they receive for instructional purposes and for other academic tests or assessments so that the students can be involved in, and make progress in, the general education curriculum. These regulations will not prevent the provision of needed supports to students with disabilities during general assessments or for other instructional purposes.

Changes: None.

Comments: One commenter expressed support for the proposed regulations, stating that alternate assessments based on modified academic achievement standards do not take into account a student's disability and the content of the instruction he or she is provided, and do not provide meaningful information to school districts or accurately measure the student's progress. However, the commenter maintained that the new general assessments, although more accessible, may be too difficult for students who currently participate in an alternate assessment based on modified academic achievement standards. Instead, the commenter recommended allowing States to base participation in the general assessment on a student's instructional level, rather than chronological age, with a cap of counting no more than two percent of proficient scores for ESEA accountability purposes.

Discussion: The commenter's recommendation to allow States to base participation in the general assessment on a student's instructional level is often referred to as ''out-of-level'' or ''off-grade level'' testing and generally refers to the practice of assessing a student enrolled in one grade using a measure that was developed for students in a lower grade. By definition, an out-of-level assessment cannot meet the requirements of a grade-level assessment because it does not measure mastery of grade-level content or academic achievement standards. In addition, out-of-level testing is often associated with lower expectations for students with disabilities, tracking such students into lower-level curricula with limited opportunities to succeed in the general education curriculum.

The Department disagrees with the commenter's statement that the new general assessments may be too difficult for students who currently participate in an alternate assessment based on modified academic achievement standards. We learned through States that received funding from the Department through the GSEG and EAG programs that some students with disabilities who might be candidates for an alternate assessment based on modified academic achievement standards may not have had an opportunity to learn grade-level content, and more effort was needed to support teachers in ensuring students have meaningful opportunities to learn grade-level content. Six of the projects found that students who might be candidates for an alternate assessment based on modified academic achievement standards had difficulty using printed materials in certain formats or demonstrated other specific challenges related to some components of reading. Other projects focused on the appropriateness of test items and identified various ways to improve the accessibility of test items, while still measuring grade-level content.[10]

Changes: None.

Comments: Some commenters stated that preparing students to be ''college ready'' should not be a goal for all public school students.

Discussion: We understand that not all students will enter a four-year college upon graduating from high school. However, we strongly believe that public schools should prepare all children to be ready for college or the workforce. According to research from the American Diploma Project, nearly two-thirds of new jobs require some form of postsecondary education.[11] Therefore, in order to compete in the 21st century, regardless of whether a student has a disability, some form of postsecondary training or education is increasingly important for the student to become a productive and contributing adult.

Changes: None.

Responsibilities of IEP Teams and Students' Participation in Assessments

Comments: Many commenters expressed concern that no longer permitting the use of alternate assessments based on modified academic achievement standards and requiring students to take the general State assessments conflict with IDEA requirements. The commenters argued that the IDEA requires a student's education to be individualized in an IEP and not standardized with an assessment designed for the general student population. A few commenters stated that a student's IEP team is responsible for making educational decisions for the student and should decide whether an alternate assessment based on modified academic achievement standards or a new more accessible general assessment is the more appropriate assessment for the student.

Discussion: The commenters are correct that the IDEA assigns the IEP team the responsibility for determining how a student with a disability participates in a State or district-wide assessment, including assessments required under title I of the ESEA (34 CFR 300.320(a)(6) and 300.160(a)). This IEP team responsibility is essential, given the importance of including all children with disabilities in a State's accountability system. These final regulations do not contravene this IEP team responsibility.

The IDEA, Part B regulations at 34 CFR 300.320(a)(6) address what each student's IEP must contain regarding participation in State and district-wide assessments. Each child's IEP must include, among other things: (1) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district-wide assessments and (2) if the IEP team determines that a student with a disability must take an alternate assessment, a statement of why

[10] For more information, see: Thurlow, M. L., Lazarus, S. S., & Bechard, S. (Eds.). (2013). *Lessons learned in federally funded projects that can improve the instruction and assessment of low performing students with disabilities.* Minneapolis, MN: University of Minnesota, National Center on Educational Outcomes.

[11] Achieve. (2012). *The Future of the U.S. Workforce: Middle Skills Jobs and the Growing Importance of Post Secondary Education.* American Diploma Project, *www.achieve.org.*

the child cannot participate in the regular assessment, and why the particular alternate assessment selected is appropriate for the child.

Under these final regulations, to ensure that students with disabilities are appropriately included in assessments conducted under title I, an IEP team will continue to have the authority and responsibility to determine whether students with disabilities should take the regular assessment with or without appropriate accommodations, an alternate assessment based on grade-level academic achievement standards, if any, or, for students with the most significant cognitive disabilities, an alternate assessment based on alternate academic achievement standards.

Although an IEP team determines how a student with a disability participates in general State and district-wide assessments, States are responsible for adopting general and alternate assessments, consistent with applicable Title I regulations. Accordingly, IEP teams will continue to determine which assessment a student with a disability will take in accordance with 34 CFR 300.320(a)(6), and the final regulations in 34 CFR 300.160(c) and 200.6(a)(2). However, under these final regulations, an IEP team may no longer select an alternate assessment based on modified academic achievement standards to assess students with disabilities under title I of the ESEA.

Changes: None.

Comments: Many commenters opposed the proposed amendments because they oppose standardized tests for students with disabilities. Some commenters stated that standardized tests cannot measure the achievement and progress of a student with a disability, particularly a student who is far behind academically. The commenters offered several alternatives to standardized assessments for students with disabilities including assessments that are specialized and personalized for each student; assessments that are based on each student's daily class work and cognitive level, rather than their age; assessments that use standards for passing that are developed by a student's IEP team; and individualized assessments that measure growth. Other commenters suggested allowing States to use a number of assessments to measure achievement for students with disabilities, rather than a single general assessment. A few commenters recommended using measures other than assessments to document the achievement of students with disabilities such as data on classroom performance collected by teachers and a student's progress toward meeting his or her IEP goals.

Finally, some commenters recommended that States, districts, and schools use measures other than performance on standardized assessments as evidence of success in educating students with disabilities. For example, commenters recommended using the number of students passing workforce certification tests, the number of students employed in a skilled job after high school, or the number of students who effectively use a college's disability assistance center.

Discussion: The assessment and accountability provisions of title I require that all students, including students with disabilities, be included in Statewide standardized assessments. 20 U.S.C. 6311(b)(3)(C)(ix); 34 CFR 200.6. Section 612(a)(16)(A) of the IDEA and 34 CFR 300.160(a) also provide that all children with disabilities must be included in all general State and district-wide assessments, including assessments described under section 1111 of the ESEA, with appropriate accommodations and alternate assessments where necessary and as indicated in their respective IEPs. Parents and teachers have the right and need to know how much progress all students, including students with disabilities, are making each year toward college and career readiness. That means all students, including students with disabilities, need to take annual Statewide assessments. Accordingly, the commenters' proposals of alternative methods to measure the achievement of students with disabilities are inconsistent with title I and IDEA.

Changes: None.

Comments: Some commenters who supported the proposed regulations stated that not holding all students to the same standards has resulted in excusing districts from their responsibility to educate students with disabilities based on the general curriculum. For example, one parent whose child participated in an alternate assessment based on modified academic achievement standards commented that the child received instruction that was not based on the general education curriculum, contrary to the requirements of the IDEA.

Discussion: Current IDEA regulations (34 CFR 300.320(a)(1)(i) and (4)(ii)) require that each child with a disability must receive instruction designed to enable the child to be involved in, and make progress in, the general education curriculum—*i.e.,* the same curriculum as for nondisabled students. The importance of this requirement cannot be overemphasized. As the Department stated in the Analysis of Comments to the 2006 IDEA, Part B regulations, ''[w]ith regard to the alignment of the IEP with the State's content standards, § 300.320(a)(1)(i) clarifies that the general education curriculum means the same curriculum as all other children. Therefore, an IEP that focuses on ensuring that a child is involved in the general education curriculum will necessarily be aligned with the State's content standards.'' 71 FR 46540, 46662 (Aug. 14, 2006).

Under section 1111(b)(1)(B) of the ESEA, a State must apply its challenging academic content standards to all children in the State, including all children with disabilities. Section § 200.1(a)–(b) of the current title I regulations defines State academic content standards as grade-level standards. The Title I regulations permitting a State to define modified academic achievement standards and to administer alternate assessments based on those standards in assessing the academic progress of students with disabilities were not intended to change the requirement that those standards be based on challenging academic content standards. In fact, § 200.1(f)(2)(iii) of the current title I regulations provides that, if the IEPs of students assessed against modified academic achievement standards include goals for the subjects to be assessed, the IEPs of such students assessed based on modified academic achievement standards must include ''goals based on the academic content standards for the grade in which a student is enrolled.'' This provision has been removed because the authority to define modified academic achievement standards and administer alternate assessments based on those standards, has been removed. However, IEPs for all students with disabilities must continue to be aligned with a State's academic content standards and include annual goals, special education and related services, and supplementary aids and services and other supports that are designed to enable the student to be involved in, and make progress in, the general education curriculum based on the State's academic content standards.

As explained in the Senate Report accompanying the 2004 reauthorization of the IDEA, ''[f]or most students with disabilities, many of their IEP goals would likely conform to State and district wide academic content standards and progress indicators consistent with standards based reform within education and the new requirements of NCLB. IEPs would also include other goals that the IEP Team deemed appropriate for the student,

such as life skills, self-advocacy, social skills, and desired post-school activities. Moreover, since parents will receive individual student reports on their child with a disability's achievement on assessments under NCLB, they will have additional information to evaluate how well their children are doing against grade-level standards.'' S. Rep. No. 108–185, 105th Cong., 1st Sess. 29 (Nov. 3, 2003). Reading the IDEA and ESEA requirements together, it is incumbent upon States and school districts to ensure that the IEPs of students with disabilities who are being assessed against grade-level academic achievement standards include content and instruction that gives these students the opportunity to gain the knowledge and skills necessary for them to meet those challenging standards. We strongly urge States and school districts to provide IEP Teams with technical assistance on ways to accomplish this, consistent with the purposes of the IDEA and the ESEA. Technical assistance is available from the following resources: National Center on Educational Outcomes *http://www.cehd.umn.edu/nceo/default.html* and The Center on Standards and Assessments Implementation *http://csai-online.org/.*

Changes: None.

Timeline To Discontinue Alternate Assessments Based on Modified Academic Achievement Standards

Comments: A number of commenters stated that eliminating the authority of a State to use alternate assessments based on modified academic achievement standards beginning in the 2014–2015 school year is premature. Some commenters stated that a more appropriate time to discontinue use of alternate assessments based on modified academic achievement standards would be after the 2014–2015 school year when many States would have completed their field tests and implemented new assessments aligned with college- and career-ready standards. One commenter referenced a report that stated that 10 to 15 percent of students with disabilities have disabilities that would preclude them from meeting new college- and career-ready standards. The commenter concluded that these estimates raise questions as to whether the new general assessments will be appropriate for all students with disabilities (with the exception of students with the most significant cognitive disabilities who are eligible to take an alternate assessment based on alternate academic achievement standards). The commenters asserted that a State should retain the authority to administer alternate assessments based on modified academic achievement standards until there is information about how adequately the new general assessments include students with disabilities who currently take an alternate assessment based on modified academic achievement standards.

Another commenter raised concerns about phasing out alternate assessments based on modified academic achievement standards at the same time that States are implementing new general assessments. The commenter stated that, at such a time of change, more flexibility rather than less flexibility should be provided to States. One commenter stated that there are indications that implementation of the new assessments will be delayed and that these delays would negatively affect students with disabilities who currently take an alternate assessment based on modified academic achievement standards.

Discussion: With respect to the commenters who stated that eliminating the authority of a State to use alternate assessments based on modified academic achievement standards beginning in the 2014–2015 school year is premature, we disagree. We continue to believe that eliminating the authority for alternate assessments based on modified academic achievement standards to assess the academic progress of students with disabilities under title I of the ESEA at the same time those students are included in new general assessments is in the best interest of the students. All States that had implemented alternate assessments based on modified academic achievement standards have now adopted college- and career-ready standards. These States are all administering general assessments aligned to college- and career-ready standards in 2014–2015. To the extent those are RTTA assessments, they will not be delayed. Moreover, the RTTA assessments were field tested in 2013–2014 and those field tests included students assessed with an alternate assessment based on modified academic achievement standards. As a result, students with disabilities who previously participated in an alternate assessment based on modified academic achievement standards are making the transition to new general assessments along with their peers and have had the same benefit as their peers of instruction designed to meet new college- and career-ready standards. Therefore, it is appropriate that students with disabilities be assessed in 2014–2015 with the new general assessments that are aligned with their instruction.

Changes: None.

Comments: None.

Discussion: When the proposed regulations were published on August 23, 2013 (78 FR 52467), we anticipated finalizing the regulations prior to the end of the 2013–2014 school year. Therefore, we proposed regulations to allow States that administered alternate assessments based on modified academic achievement standards during the 2013–2014 school year to continue to administer those assessments and to use the results for accountability purposes through the 2013–2014 school year. Given that the final regulations were not published prior to the end of the 2013–2014 school year, several of the proposed regulations are no longer necessary. We are, therefore, removing proposed regulations that refer to the conditions under which a State could continue to use modified academic achievement standards and to administer alternate assessments based on those standards until the end of the 2013–2014 school year.

We also are amending current Title I regulations and making conforming changes to current IDEA regulations to remove provisions related to alternate assessments based on modified academic achievement standards and references to ''modified academic achievement standards.'' We did not include these changes in the NPRM because these provisions were still necessary during the 2013–2014 transition year provided for in the proposed regulations. Now that the transition year has passed, there is no longer a need to retain references to ''modified academic achievement standards'' or alternate assessments aligned with those standards, except for the provisions regarding reporting on the number of students with disabilities taking alternate assessments based on modified academic achievement standards in years prior to 2015–2016. In assessing the academic progress of students with disabilities under title I of the ESEA, a State retains its authority to continue to administer alternate assessments based on grade-level academic achievement standards, consistent with 34 CFR 200.6(a)(2)(ii)(A) and revised 300.160(c)(1). Additionally, a State retains its authority to adopt alternate academic achievement standards, as permitted in 34 CFR 200.1(d), and to measure the achievement of students with the most significant cognitive disabilities against those standards, as permitted in 34 CFR 200.6(a)(2)(ii)(B) and 300.160(c)(2)(iii) (new 300.160(c)(2)(ii)). As described

below, we are making changes to §§ 200.1, 200.6, 200.13, and 200.20 in the Title I regulations and § 300.160 in the IDEA regulations.

Changes: Changes to § 200.1: We are removing proposed paragraphs (e)(2) and (e)(4) (both of which refer to conditions under which a State could continue to administer alternate assessments based on modified academic achievement standards until the end of the 2013–2014 school year) and revising proposed paragraph (e)(1) (now paragraph (e)) to state that a State may not define modified academic achievement standards for any students with disabilities. We are removing as no longer necessary current paragraph (e)(2) (proposed redesignated paragraph (e)(3)), which sets out the criteria a State must establish for IEP teams to use to identify students with disabilities who were eligible to be assessed based on modified academic achievement standards. In addition, we are revising current paragraph (f) regarding State guidelines to remove all references to ''modified academic achievement standards.'' The requirements in current paragraph (f) applicable to alternate academic achievement standards remain unchanged and fully applicable to a State that has adopted such standards.

Changes to § 200.6: We are removing proposed paragraph (a)(3) so that a State may no longer measure the achievement of students with disabilities based on modified academic achievement standards, redesignating current paragraph (a)(4) as new paragraph (a)(3), and revising new paragraph (a)(3)(iv) (current paragraph (a)(4)(iv)) to require a State to report to the Secretary the number and percentage of children with disabilities, if any, participating in alternate assessments based on modified academic achievement standards in school years prior to 2015–2016.

Changes to current § 200.13: We are revising current paragraph (c) to remove references to ''modified academic achievement standards,'' references to the 2.0 percent cap on proficient and advanced scores of students taking alternate assessments based on modified academic achievement standards, and the Appendix.

The requirements in current paragraph (c) applicable to alternate academic achievement standards remain unchanged and fully applicable to a State that has adopted such standards.

Changes to current § 200.20: We are revising current paragraph (c)(3) to remove the reference to ''modified academic achievement standards.'' The requirements in current paragraph (c)(3) applicable to alternate academic achievement standards remain unchanged and fully applicable to a State that has adopted such standards. We also are removing current paragraph (g) (which describes a transition provision related to modified academic achievement standards) and redesignating current paragraph (h) as new paragraph (g).

Changes to current § 300.160: We are revising § 300.160 of the IDEA regulations, which addresses participation of students with disabilities in assessments, to make conforming changes with those made in the Title I regulations. We are removing current paragraph (c)(2)(ii), which authorizes alternate assessments based on modified academic achievement standards, as permitted in 34 CFR 200.1(e), in assessing the academic progress of students with disabilities under title I of the ESEA; and redesignating current paragraph (c)(2)(iii) as paragraph (c)(2)(ii). We are adding a new paragraph (c)(2)(iii) to make clear that, except as provided in paragraph (c)(2)(ii), a State's alternate assessments, if any, must measure the achievement of children with disabilities against the State's grade-level academic achievement standards, consistent with 34 CFR 200.6(a)(2)(ii)(A).

Consistent with 34 CFR 200.1(e), we are adding paragraph (c)(3) to make clear that a State may no longer adopt modified academic achievement standards for any students with disabilities under section 602(3) of the IDEA. We are revising current paragraphs (d) and (e) to remove references to ''modified academic achievement standards''. Finally, we are revising current paragraphs (f)(3) and (f)(5) to require a State to report to the Secretary the number and performance results, respectively, of children with disabilities, if any, participating in alternate assessments based on modified academic achievement standards in school years prior to 2015–2016.

The requirements in current paragraphs (c), (d), (e), and (f) applicable to alternate academic achievement standards for students with the most significant cognitive disabilities remain unchanged and fully applicable to a State that has adopted such standards.

Technical Assistance and Monitoring

Comments: Several commenters offered suggestions regarding the technical assistance needed to help States, teachers, and students transition from alternate assessments based on modified academic achievement standards to new, more accessible general assessments. Some commenters recommended providing technical assistance to help States develop plans to phase out alternate assessments based on modified academic achievement standards, including support for technical issues such as measuring student growth when data on two years of performance on the same assessment are not available. Other commenters stated that technical assistance is needed to ensure that students with disabilities receive appropriate instruction and supports to allow them to successfully participate in the general assessment. Commenters also emphasized the need to provide training and professional development to all educators to ensure that students with disabilities have meaningful access to the general curriculum, and to emphasize the importance of educating IEP teams, including parents, on determining the appropriate assessments for students with disabilities.

Other commenters stated that States that implemented alternate assessments based on modified academic achievement standards learned important lessons, as did States that elected not to administer these alternate assessments and focus on improving student outcomes. The commenters recommended that the Department gather this information and use it to promote best practices for including students with disabilities in assessments required for accountability measures under the ESEA.

Some commenters encouraged the Department to monitor schools and States to ensure that supports are provided to students with disabilities who previously participated in alternate assessments based on modified academic achievement standards.

Discussion: The Department is supporting States in their transition to more accessible general assessment systems. In February 2014, the Department's Office of Elementary and Secondary Education (OESE) and Office of Special Education and Rehabilitative Services (OSERS) sponsored a meeting, ''Successfully Transitioning Away from the 2% Assessment,'' for State teams to jointly learn from and plan for discontinuing the implementation of alternate assessments based on modified academic achievement standards. Materials from this meeting are posted at *www.cehd.umn.edu/nceo/AAMAStransition/default.html.* The Department currently funds several technical assistance centers that provide resources on students with disabilities and the instructional supports they need to access the general curriculum and participate in the general assessment (*e.g.,* the Center for Standards and

Assessment Implementation; see *http://csai-online.org/*). Moreover, several technical assistance centers provide resources that specifically address the needs of students who have persistent academic and behavioral needs that require intensive intervention to succeed in school and prepare them to be college and career ready (*e.g.,* the National Center on Intensive Intervention; see *http://www.intensiveintervention.org/*). In addition, the federally funded Parent Training and Information Centers (*http://www.parentcenterhub.org/*) focus on ensuring that parents of children with disabilities have the information they need to participate effectively in their child's education, including making decisions about the assessments that are appropriate for their child. OESE and OSERS will continue to work collaboratively with the Department's federally funded technical assistance and dissemination partners to ensure that all students, including students with disabilities, have the supports and instruction they need to meet college- and career-ready standards.

With regard to commenters who recommended the Department compile information learned by States that implemented alternate assessments based on modified academic achievement standards, we note that the work funded by the Department through the GSEG and EAG programs has contributed to the knowledge base about students who are struggling in school. Projects funded by these programs focused on a number of topics, including the characteristics of students who participated in alternate assessments based on modified academic achievement standards, barriers to their learning and performance, and approaches to making assessments more accessible. Several State projects that focused on instructional matters found that more effort was needed to support teachers in ensuring students with disabilities have meaningful opportunities to learn grade-level content. Other projects focused on the appropriateness of test items and identified various ways to improve the accessibility of test items, such as examining the difficulty of test items and making items more accessible and understandable without changing the knowledge or skill that is being measured (*e.g.,* reducing unimportant or extraneous details from test items). The lessons learned from these projects are in ''Lessons Learned in Federally Funded Projects that Can Improve the Instruction and Assessment of Low Performing Students with Disabilities,'' available at: *http://www.cehd.umn.edu/nceo/onlinepubs/lessonslearned.pdf.*

With respect to commenters who urged the Department to monitor to ensure that supports are provided to students with disabilities who previously participated in alternate assessments based on modified academic achievement standards, pursuant to 34 CFR 300.149(b) and 300.600, an SEA must monitor public agencies' implementation of the Act and Part B regulations and ensure timely correction of any identified noncompliance. We expect, therefore, that SEAs will monitor compliance with the provisions in 34 CFR 300.160.

Changes: None.

Comments: A few commenters advised the Department to monitor data on the percentage of students participating in alternate assessments based on alternate academic achievement standards following the phase out of alternate assessments based on modified academic achievement standards. One commenter stated that the Department should publish the assessment data from the 2012–2013 school year as part of the final regulations, including the number and percentage of students with disabilities who took the general assessment and the number and percentage of students who took an alternate assessment based on modified academic achievement standards, and the proficiency rates for each group.

Discussion: Pursuant to the authority of section 618(a)(3) of the IDEA, the Secretary requires States to report the number of students with disabilities who took (1) the general assessment, with and without accommodations; (2) the alternate assessment based on modified academic achievement standards; (3) the alternate assessment based on grade-level academic achievement standards; and (4) the alternate assessment based on alternate academic achievement standards. These data will help SEAs monitor whether the number of students who take an alternate assessment based on alternate academic achievement standards increases significantly with the elimination of alternate assessments based on modified academic achievement standards.

Under title I and IDEA, States also are required to report the number of students with disabilities who scored at each academic achievement (performance) level (*e.g.,* basic, proficient, above proficient). These numbers can be aggregated to derive the number of students with disabilities who scored at or above proficient on each assessment. However, States are not required to report the percentages of students with disabilities who scored at or above proficient on each assessment. The most recent year for which data are available is 2011–2012. For additional information on these data and links to the data files see: *https://inventory.data.gov/dataset/95ca1187-69f5-4e70-9f8c-6bbbb3d6d94a/resource/446d130d-5160-4c27-a428-317c6333b38f.* In addition, the Department routinely publishes on its Web site States' Consolidated State Performance Reports (CSPR), which include data on the number and percentage of students with disabilities who participate in the general assessment and each type of alternate assessment (*i.e.,* an alternate assessment based on alternate academic achievement standards, an alternate assessment based on modified academic achievement standards, and an alternate assessment based on grade-level academic achievement standards). The percentage of students with disabilities who score at or above proficient is also reported, but is not disaggregated by type of assessment (general versus alternate assessment). These data are posted at: *www2.ed.gov/admins/lead/account/consolidated/index.html.* Therefore, we decline to include the assessment data from the 2012–2013 school year in the final regulations, as requested by one commenter.

Changes: None.

Alternate Assessments Based on Alternate Academic Achievement Standards

Comments: Several commenters wrote about the need for alternate assessments for students with the most significant cognitive disabilities. One commenter asked how the proposed regulations would affect students with the most significant cognitive disabilities who take alternate assessments based on alternate academic achievement standards.

Discussion: The proposed regulations do *not* affect the assessment of students with the most significant cognitive disabilities. A State continues to have the authority under 34 CFR 200.1(d) and 200.6(a)(2)(ii)(B) to define alternate academic achievement standards, administer alternate assessments based on those alternate academic achievement standards, and, subject to the one percent limitation on the number of proficient scores that may be counted for accountability purposes, include the results in accountability determinations.

Changes: None.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This final regulatory action is a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

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

We also have determined that this regulatory action does not unduly interfere with State, local, or tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs associated with this regulatory action are those resulting from statutory requirements and those we have determined are necessary for administering the Department's programs and activities.

Potential Costs and Benefits: Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action and have determined that these regulations would not impose additional costs to States and LEAs or to the Federal government. For example, forty-two States, the District of Columbia, and Puerto Rico agreed, in order to receive ESEA flexibility, to phase out their use of alternate assessments based on modified academic achievement standards, if they had those assessments, by the 2014–2015 school year. Only two States have an alternate assessment based on modified academic achievement standards but have not received ESEA flexibility. Moreover, these regulations do not impose additional costs or administrative burdens because States, including the two discussed in the preceding sentence, are already developing and implementing general assessments aligned with college- and career-ready standards that will be more accessible to students with disabilities than those in place at the time States began developing alternate assessments based on modified academic achievement standards. These new assessments must be valid, reliable, and fair for all student subgroups, including students with disabilities, with the exception of students with the most significant cognitive disabilities who are eligible to participate in alternate assessments based on alternate academic achievement standards consistent with 34 CFR 200.6(a)(2)(ii)(B) (see 75 FR 18171, 18173 (Apr. 9, 2010)).

In this context, these regulations largely reflect already planned and funded changes in assessment practices and do not impose additional costs on States or LEAs or the Federal government. On the contrary, to the extent that these regulations reinforce the transition to State assessment systems with fewer components, the Department believes these regulations ultimately will reduce the costs of complying with ESEA assessment requirements, because States would no longer develop and implement separate alternate assessments based on modified academic achievement standards based on the new college- and career-ready standards.

Further, to the extent that States must transition students with disabilities who took an alternate assessment based on modified academic achievement standards to new general assessments, funding to support such a transition is available through existing ESEA programs, such as the Grants for State Assessments program, which made available $378 million in State formula grant assistance in fiscal year 2015.

In sum, any additional costs imposed on States by these final regulations are estimated to be negligible, primarily because they reflect changes already under way in State assessment systems under the ESEA. Moreover, we believe any costs will be significantly outweighed by the potential educational benefits of increasing the access of students with disabilities to the general assessments as States develop new, more accessible assessments, including assessments aligned with college- and career-ready standards.

Regulatory Alternatives Considered

An alternative to these final regulations would be for the Secretary to leave in place the existing regulations permitting a State to define modified academic achievement standards and to develop and administer alternate assessments based on those standards.

However, the Secretary believes that these amended regulations are needed to help refocus assessment efforts and resources on the development of new general assessments that are accessible to a broader range of students with disabilities. Such new general assessments will eliminate the usefulness of separate alternate assessments based on modified academic achievement standards for eligible students with disabilities.

Paperwork Reduction Act of 1995

These regulations do not contain any information collection requirements.

Assessment of Educational Impact

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

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to either of the program contact persons listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

List of Subjects

34 CFR Part 200

Education of disadvantaged, Elementary and secondary education, Grant programs—education, Indians—education, Infants and children, Juvenile delinquency, Migrant labor, Private schools, Reporting and recordkeeping requirements.

34 CFR Part 300

Administrative practice and procedure, Education of individuals with disabilities, Elementary and secondary education, Equal educational opportunity, Grant programs—education, Privacy, Private schools, Reporting and recordkeeping requirements.

Dated: August 18, 2015.

Arne Duncan,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary amends parts 200 and 300 of title 34 of the Code of Federal Regulations as follows:

PART 200—TITLE I—IMPROVING THE ACADEMIC ACHIEVEMENT OF THE DISADVANTAGED

■ 1. The authority citation for part 200 continues to read as follows:

Authority: 20 U.S.C. 6301 through 6578, unless otherwise noted.

■ 2. Section 200.1 is amended by:

■ A. In paragraph (a)(1), removing the words ''paragraphs (d) and (e) of this section, which apply'' and adding, in their place, the words ''paragraph (d) of this section, which applies''.

■ B. In paragraph (a)(2), removing the words ''paragraphs (d) and (e)'' and adding, in their place, the words ''paragraph (d)''.

■ C. Revising paragraphs (e) and (f).

The revisions read as follows:

§ 200.1 State responsibilities for developing challenging academic standards.

* * * * *

(e) *Modified academic achievement standards.* A State may not define modified academic achievement standards for any students with disabilities under section 602(3) of the Individuals with Disabilities Education Act (IDEA).

(f) *State guidelines.* If a State defines alternate academic achievement standards under paragraph (d) of this section, the State must do the following:

(1) Establish and monitor implementation of clear and appropriate guidelines for IEP teams to apply in determining students with the most significant cognitive disabilities who will be assessed based on alternate academic achievement standards.

(2) Inform IEP teams that students eligible to be assessed based on alternate academic achievement standards may be from any of the disability categories listed in the IDEA.

(3) Provide to IEP teams a clear explanation of the differences between assessments based on grade-level academic achievement standards and those based on alternate academic achievement standards, including any effects of State and local policies on the student's education resulting from taking an alternate assessment based on alternate academic achievement standards (such as whether only satisfactory performance on a regular assessment would qualify a student for a regular high school diploma).

(4) Ensure that parents of students selected to be assessed based on alternate academic achievement standards under the State's guidelines in this paragraph are informed that their child's achievement will be measured based on alternate academic achievement standards.

* * * * *

■ 3. Section 200.6 is amended by:

■ A. Removing paragraph (a)(3).

■ B. Redesignating paragraph (a)(4) as (a)(3).

■ C. Revising newly redesignated paragraph (a)(3)(iv).

The revision reads as follows:

§ 200.6 Inclusion of all students.

* * * * *

(a) * * *

(3) * * *

(iv) Alternate assessments based on modified academic achievement standards in school years prior to 2015–2016; and

* * * * *

■ 4. Section 200.13 is amended by:

■ A. Revising paragraph (c).

■ B. Removing the Appendix.

The revision reads as follows:

§ 200.13 Adequate yearly progress in general.

* * * * *

(c)(1) In calculating AYP for schools, LEAs, and the State, a State must, consistent with § 200.7(a), include the scores of all students with disabilities.

(2) A State may include the proficient and advanced scores of students with the most significant cognitive disabilities based on the alternate academic achievement standards described in § 200.1(d), provided that the number of those scores at the LEA and at the State levels, separately, does not exceed 1.0 percent of all students in the grades assessed in reading/language arts and in mathematics.

(3) A State may not request from the Secretary an exception permitting it to exceed the cap on proficient and advanced scores based on alternate academic achievement standards under paragraph (c)(2) of this section.

(4)(i) A State may grant an exception to an LEA permitting it to exceed the 1.0 percent cap on proficient and advanced scores based on the alternate academic achievement standards described in paragraph (c)(2) of this section only if—

(A) The LEA demonstrates that the incidence of students with the most significant cognitive disabilities exceeds 1.0 percent of all students in the combined grades assessed;

(B) The LEA explains why the incidence of such students exceeds 1.0 percent of all students in the combined grades assessed, such as school, community, or health programs in the LEA that have drawn large numbers of families of students with the most significant cognitive disabilities, or that the LEA has such a small overall student population that it would take only a few students with such disabilities to exceed the 1.0 percent cap; and

(C) The LEA documents that it is implementing the State's guidelines under § 200.1(f).

(ii) The State must review regularly whether an LEA's exception to the 1.0 percent cap is still warranted.

(5) In calculating AYP, if the percentage of proficient and advanced scores based on alternate academic achievement standards under § 200.1(d) exceeds the cap in paragraph (c)(2) of this section at the State or LEA level, the State must do the following:

(i) Consistent with § 200.7(a), include all scores based on alternate academic achievement standards.

(ii) Count as non-proficient the proficient and advanced scores that exceed the cap in paragraph (c)(2) of this section.

(iii) Determine which proficient and advanced scores to count as non-proficient in schools and LEAs responsible for students who are assessed based on alternate academic achievement standards.

(iv) Include non-proficient scores that exceed the cap in paragraph (c)(2) of this section in each applicable subgroup at the school, LEA, and State level.

(v) Ensure that parents of a child who is assessed based on alternate academic achievement standards are informed of the actual academic achievement levels of their child.

* * * * *

■ 5. Section 200.20 is amended by:
■ A. Revising paragraph (c)(3).
■ B. Removing paragraph (g).
■ C. Redesignating paragraph (h) as paragraph (g).

The revision reads as follows:

§ 200.20 Making adequate yearly progress.

* * * * *

(c) * * *

(3) To count a student who is assessed based on alternate academic achievement standards described in § 200.1(d) as a participant for purposes of meeting the requirements of this paragraph, the State must have, and ensure that its LEAs adhere to, guidelines that meet the requirements of § 200.1(f).

* * * * *

PART 300—ASSISTANCE TO STATES FOR THE EDUCATION OF CHILDREN WITH DISABILITIES

■ 6. The authority citation for part 300 continues to read as follows:

Authority: 20 U.S.C. 1221e–3, 1406, 1411–1419, 3474, unless otherwise noted.

■ 7. Section 300.160 is amended by:
■ A. Removing paragraph (c)(2)(ii).
■ B. Redesignating paragraph (c)(2)(iii) as (c)(2)(ii).
■ C. In newly redesignated paragraph (c)(2)(ii), removing the final punctuation ''.'' and adding, in its place, ''; and''.
■ D. Adding a new paragraph (c)(2)(iii).
■ E. Adding a new paragraph (c)(3).
■ F. Revising paragraphs (d), (e), (f)(3), and (f)(5) introductory text.

The revisions and additions read as follows:

§ 300.160 Participation in assessments.

* * * * *

(c) * * *

(2) * * *

(iii) Except as provided in paragraph (c)(2)(ii) of this section, a State's alternate assessments, if any, must measure the achievement of children with disabilities against the State's grade-level academic achievement standards, consistent with 34 CFR 200.6(a)(2)(ii)(A).

(3) Consistent with 34 CFR 200.1(e), a State may not adopt modified academic achievement standards for any students with disabilities under section 602(3) of the Act.

(d) *Explanation to IEP teams.* A State (or in the case of a district-wide assessment, an LEA) must provide IEP teams with a clear explanation of the differences between assessments based on grade-level academic achievement standards and those based on alternate academic achievement standards, including any effects of State or local policies on the student's education resulting from taking an alternate assessment based on alternate academic achievement standards (such as whether only satisfactory performance on a regular assessment would qualify a student for a regular high school diploma).

(e) *Inform parents.* A State (or in the case of a district-wide assessment, an LEA) must ensure that parents of students selected to be assessed based on alternate academic achievement standards are informed that their child's achievement will be measured based on alternate academic achievement standards.

(f) * * *

(3) The number of children with disabilities, if any, participating in alternate assessments based on modified academic achievement standards in school years prior to 2015–2016.

* * * * *

(5) Compared with the achievement of all children, including children with disabilities, the performance results of children with disabilities on regular assessments, alternate assessments based on grade-level academic achievement standards, alternate assessments based on modified academic achievement standards (prior to 2015–2016), and alternate assessments based on alternate academic achievement standards if—

* * * * *

[FR Doc. 2015–20736 Filed 8–20–15; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2015–0537; FRL–9932–55–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Interstate Pollution Transport Requirements for the 2006 24-Hour Fine Particulate Matter Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve a revision to the District of Columbia State Implementation Plan (SIP). The revision addresses the infrastructure requirements for interstate transport pollution with respect to the 2006 24-hour fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS). EPA is approving this revision in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on October 20, 2015 without further notice, unless EPA receives adverse written comment by September 21, 2015. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2015–0537 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Email: Fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2015–0537, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2015–0537. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the 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 during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the District of Columbia Department of the Environment, Air Quality Division, 1200 1st Street NE., 5th Floor, Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Emlyn Vélez-Rosa, (215) 814–2038, or by email at *velez-rosa.emlyn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On July 16, 2015, the District of Columbia (the District), through the District Department of the Environment (DDOE), submitted a formal revision to its SIP. The SIP revision addresses the infrastructure requirements for interstate transport of pollution under section 110(a)(2)(D)(i)(I) of the CAA with respect to the 2006 24-hour $PM_{2.5}$ NAAQS.

A. General

Whenever new or revised NAAQS are promulgated, the CAA requires states to submit a plan for the implementation, maintenance, and enforcement of such NAAQS. The plan is required to address basic program elements, including, but not limited to, regulatory structure, monitoring, modeling, legal authority, and adequate resources necessary to assure attainment and maintenance of the standards. These elements are referred to as infrastructure requirements.

On September 21, 2006, EPA promulgated a new 24-hour $PM_{2.5}$ standard of 35 micrograms per cubic meter ($\mu g/m^3$), based on a 3-year average of the 98th percentile of 24-hour concentrations. *See* 71 FR 61144 (October 17, 2006). The 2006 24-hour $PM_{2.5}$ NAAQS became effective on December 18, 2006. *See* 40 CFR 50.13.

This rulemaking action pertains to the District's July 16, 2015 infrastructure SIP revision addressing the interstate transport pollution requirements under section 110(a)(2)(D)(i)(I) of the CAA with respect to the 2006 24-hour $PM_{2.5}$ NAAQS. EPA has taken previous rulemaking actions on the District's SIP revision addressing infrastructure elements in section 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M) with respect to the 2006 24-hour $PM_{2.5}$ NAAQS. *See* 76 FR 20237 (April 12, 2011) (final approval of the District's September 21, 2009 SIP revision addressing several section 110(a)(2) requirements for the 2006 24-hour $PM_{2.5}$ NAAQS) and 77 FR 5191 (February 2, 2012) (final approval of the District's SIP revision addressing section 110(a)(2)(i)(II) for visibility protection).

B. EPA's Infrastructure Requirements

Pursuant to section 110(a)(1), states must make infrastructure SIP submissions ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof).'' Infrastructure SIP submissions should provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must address.

Historically, EPA has elected to use guidance documents to make recommendations to states for infrastructure SIPs, in some cases conveying needed interpretations on newly arising issues and in some cases conveying interpretations that have already been developed and applied to individual SIP submissions for particular elements. EPA most recently issued guidance for infrastructure SIPs on September 13, 2013 (2013 Infrastructure Guidance).[1] EPA developed this document to provide states with up-to-date guidance for infrastructure SIPs for any new or revised NAAQS. Within this guidance, EPA describes the duty of states to make infrastructure SIP submissions to meet basic structural SIP requirements within three years of promulgation of a new or revised NAAQS. EPA also made recommendations about many specific subsections of section 110(a)(2) that are relevant in the context of infrastructure SIP submissions. The guidance also discusses the substantively important issues that are germane to certain subsections of section 110(a)(2).[2] EPA

[1] ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2),'' Memorandum from Stephen D. Page, September 13, 2013. This guidance is available online at *http://www.epa.gov/oar/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf.*

[2] On September 25, 2009, EPA issued ''Guidance on SIP Elements Required Under Sections 110(a)(l)

interprets section 110(a)(1) and (2) such that infrastructure SIP submissions need to address certain issues and need not address others. Accordingly, EPA reviews each infrastructure SIP submission for compliance with the applicable statutory provisions of section 110(a)(2), as appropriate.

Additionally, EPA has provided in previous rulemaking actions a detailed discussion of the Agency's approach in reviewing infrastructure SIPs, including the Agency's longstanding interpretation of requirements for section 110(a)(1) and (2), the interpretation that the CAA allows states to make multiple SIP submissions separately addressing infrastructure SIP elements in section 110(a)(2) for a specific NAAQS, and the interpretation that EPA has the ability to act on separate elements of 110(a)(2) for a NAAQS in separate rulemaking actions. For example, see EPA's proposed rulemaking action approving portions of the District's infrastructure SIP submissions for the 2008 ozone NAAQS and the 2010 nitrogen dioxide (NO_2) and sulfur dioxide (SO_2) NAAQS. *See* 80 FR 2865 (January 21, 2015).

In particular, section 110(a)(2)(D)(i)(I) requires state SIPs to address any emissions activity in one state that contributes significantly to nonattainment, or interferes with maintenance, of the NAAQS in any downwind state. EPA sometimes refers to these requirements as prong 1 (significant contribution to nonattainment) and prong 2 (interference with maintenance), or conjointly, the interstate pollution transport requirements. EPA also commonly refers to these provisions conjointly as the ''good neighbor'' provision of the CAA. Specifically, section 110(a)(2)(D)(i)(I) of the CAA requires the elimination of upwind state emissions that significantly contribute to nonattainment or interference with maintenance of the NAAQS in another state.

A combination of local emissions and emissions from upwind sources impacts air quality in any given location. Emissions of SO_2 and nitrogen oxides (NO_X) can react in the atmosphere to form $PM_{2.5}$ pollution. Similarly, NO_X emissions can react in the atmosphere to create ground-level ozone pollution. These pollutants can travel great distances affecting air quality and public health locally and regionally. The transport of these pollutants across state borders makes it difficult for downwind states to meet health-based air quality standards for $PM_{2.5}$ and ozone. EPA has taken actions to facilitate implementing the ''good neighbor'' provision, including the promulgation and administration of various rules, such as the NO_X Budget Trading Program, the Clean Air Interstate Rule (CAIR), and most recently, the Cross-State Air Pollution Rule (CSAPR).

C. Background on CSAPR Rule

On August 8, 2011, EPA promulgated CSAPR to address SO_2 and NO_X emissions from electric generating units (EGUs) in several states in the Eastern United States that significantly contribute to nonattainment or interfere with maintenance in one or more downwind states with respect to one or more of the 1997 annual $PM_{2.5}$ and ozone NAAQS and 2006 24-hour $PM_{2.5}$ NAAQS. *See* 76 FR 48208 (August 8, 2011).[3]

In CSAPR, EPA defined what portion of an upwind state's emissions ''significantly contributed'' to ozone or $PM_{2.5}$ nonattainment or interference with maintenance areas in downwind states with respect to the 1997 annual $PM_{2.5}$ and ozone NAAQS and 2006 24-hour $PM_{2.5}$ NAAQS. CSAPR requires states to eliminate their ''significant contribution'' emissions by setting a pollution limit (or budget). EPA used a state-specific methodology to identify necessary emission reductions required by CAA section 110(a)(2)(D)(i)(I) and used a detailed air quality analysis to determine whether a state's contribution to downwind air quality problems was at or above specific thresholds. EPA defined ''significant contribution'' using a multi-factor analysis that took into account both air quality and cost considerations.

In promulgating CSAPR, EPA concluded that the District's SIP satisfied the requirements of section 110(a)(2)(D)(i)(I) with respect to the 1997 ozone and the 1997 and 2006 $PM_{2.5}$ NAAQS and concluded no emission sources in the District were subject to CSAPR. As discussed in the preamble of the CSAPR rulemaking, EPA had combined emission contributions projected in the air quality modeling from the State of Maryland and the District to determine whether those jurisdictions collectively contribute to any downwind nonattainment or maintenance receptor in amounts equal to or greater than the one percent thresholds which EPA used to identify ''significant contribution'' for CAA section 110(a)(2)(D)(i) for the ozone and $PM_{2.5}$ NAAQS. EPA's modeling confirmed that the combined contributions exceeded the air quality threshold at downwind receptors for the 1997 ozone and 1997 and 2006 $PM_{2.5}$ NAAQS. However, the District was not included in CSAPR because in the second step of EPA's significant contribution analysis, EPA concluded that there are no emission reductions available from EGUs in the District of Columbia at the cost thresholds deemed sufficient to eliminate significant contribution to nonattainment and interference with maintenance of the NAAQS considered at the linked receptors. *See* 76 FR 48208.

In 2011, EPA found only one facility, Benning Road Generating Station, with units meeting CSAPR applicability requirements in the District, and EPA's projections did not show any generation from this facility to be economic under any scenario analyzed and the facility had also announced plans to retire its units in early 2012. Subsequently, Benning Road permanently retired as an air pollution source in 2012. Because EPA projected Benning Road to have zero emissions in 2012, EPA also projected zero emissions of SO_2 and NO_X in the District for EGUs that would

and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS),'' Memorandum from William T. Hartnet, Director, Air Quality Policy Division. This guidance provided that each state's SIP submission for the 2006 24-hour $PM_{2.5}$ NAAQS must discuss whether emissions from the state significantly contribute to nonattainment of the NAAQS or interference with maintenance of the NAAQS in any other state and must address any such impact. This guidance is available online at *http://www.epa.gov/ttn/caaa/t1/memoranda/20090925_harnett_pm25_sip_110a12.pdf.*

[3] The U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) initially issued a decision in 2012 vacating CSAPR. *EME Homer City Generation, L.P.* v. *EPA,* 696 F.3d 7 (D.C. Cir. 2012); however, on April 29, 2014, the United States Supreme Court reversed the D.C. Circuit's decision and remanded the matter, including CSAPR, to the D.C. Circuit for further proceedings in accordance with its ruling. *EPA* v. *EME Homer City Generation, L.P.,* 134 S. Ct. 1584 (2014). On October 23, 2014, the D.C. Circuit lifted the stay on CSAPR, and EPA began implementation of CSAPR on January 1, 2015. *EME Homer City Generation, L.P.* v. EPA, No. 11–1302 (D.C. Cir. Oct. 23, 2014), Order at 3. *See also* 79 FR 71663 (December 3, 2014) (interim final rulemaking clarifying how EPA will implement CSAPR to address the requirements of section 110(a)(2)(D)(i)(I) with respect the 1997 annual $PM_{2.5}$ and ozone NAAQS and 2006 24-hour $PM_{2.5}$ NAAQS). On July 28, 2015, in a subsequent decision on certain ''as applied'' challenges to CSAPR, the D.C. Circuit remanded to EPA for reconsideration specific emission allowances for ozone season NO_X and SO_2 for specific states, not including the District. *EME Homer City Generation, L.P.* v. *EPA,* 2015 U.S. App. LEXIS 13039 (D.C. Cir. July 28, 2015). Because the District has no emission sources subject to CSAPR and is not one of the states whose ozone season NO_X or SO_2 allowances were remanded by the D.C. Circuit's July 28, 2015 decision, EPA asserts this recent July 28, 2015 decision in *EME Homer City* by the D.C. Circuit has no impact on our conclusion in this rulemaking that the District has satisfied its obligation for section 110(a)(2)(D)(i)(I) for the 2006 $PM_{2.5}$ NAAQS as explained in detail in the CSAPR rulemaking. *See* 76 FR 48208 (August 8, 2011).

meet the CSAPR applicability requirements. Therefore, EPA did not identify any emission reductions available at any of the cost thresholds considered in CSAPR's multi-factor analysis to identify significant contribution to nonattainment and interference with maintenance. For that reason, EPA concluded that no additional limits or reductions were necessary, at that time, in the District to satisfy the requirements of section 110(a)(2)(D)(i)(I) with respect to the 1997 ozone and the 1997 and 2006 $PM_{2.5}$ NAAQS. *Id.*[4]

II. Summary of SIP Revision and EPA's Evaluation

The July 16, 2015 SIP revision consists of a letter from the DDOE affirming that the District has already satisfied the transport requirements under section 110(a)(2)(D)(i)(I) with respect to the 2006 24-hour $PM_{2.5}$ NAAQS. As explained in this letter, the District's determination is based on two aspects: (1) EPA's conclusion in the preamble for CSAPR that the District had no emission reductions at cost thresholds determined by EPA as necessary to address the District's transport requirements for the 1997 and 2006 $PM_{2.5}$ and 1997 ozone NAAQS; and (2) the District's declaration provided in the SIP submittal that it currently has no EGUs within the District and the District's prior EGU, the Benning Road Generating Station, permanently shut down in 2012.

As discussed in the preamble of the final CSAPR rulemaking and explained in the District's July 16, 2015 SIP submittal, EPA had concluded that there are no emission reductions available from EGUs in the District at the cost thresholds deemed sufficient to eliminate significant contribution to nonattainment and interference with maintenance of the NAAQS considered at the linked receptors. Therefore, EPA had concluded that the District satisfied the requirements of section 110(a)(2)(D)(i)(I) with respect to the 2006 24-hour $PM_{2.5}$ NAAQS. *See* 78 FR at 48262.

The District's July 16, 2015 SIP submission also certifies that the District currently has no EGUs that could significantly contribute to nonattainment or interfere with maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS. The District confirms that Benning Road Generating Station, an EGU which was operational at the time of the promulgation of CSAPR in 2011, permanently retired as expected in 2012. The District's negative declaration further supports EPA's determination in the CSAPR preamble that the District's SIP needs no further measures or revisions to satisfy section 110(a)(2)(D)(i)(I) for the 2006 24-hour $PM_{2.5}$ NAAQS.

III. Final Action

EPA is approving the District's SIP revision submitted on July 16, 2015 addressing the requirements for the District under section 110(a)(2)(D)(i)(I) regarding interstate transport pollution for the 2006 24-hour $PM_{2.5}$ NAAQS. EPA concurs with the District's determination that it has no EGUs and no emissions reductions are needed for the SIP to address significant contribution to nonattainment or interference with maintenance for section 110(a)(2)(D)(i)(I) of the CAA for the 2006 24-hour $PM_{2.5}$ NAAQS. EPA is publishing this rule without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on *October 20, 2015* without further notice unless EPA receives adverse comment by *September 21, 2015.* If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Statutory and Executive Order Reviews

A. General Requirements

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the 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, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General

[4] EPA's determination that the District's SIP satisfied requirements of section 110(a)(2)(D)(i)(I) for the 1997 ozone NAAQS and 1997 and 2006 $PM_{2.5}$ NAAQS and its determination that no emission sources in the District were subject to CSAPR are not affected by the recent decision of the D.C. Circuit to remand specific portions of CSAPR to EPA for further consideration. *EME Homer City Generation, L.P.* v. *EPA,* 2015 U.S. App. LEXIS 13039 (D.C. Cir. July 28, 2015) (remanding portions of CSAPR to EPA to reconsider specific state emission allowances for ozone season NO_X and SO_2 for specific states, not including the District).

of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 20, 2015. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking action. This rulemaking action, addressing the interstate pollution transport requirements for the District of Columbia with respect to the 2006 24-hour $PM_{2.5}$ NAAQS, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

Dated: August 7, 2015.

William C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart J—District of Columbia

■ 2. In § 52.470, the table in paragraph (e) is amended by adding an entry for ''Section 110(a)(2) Infrastructure Requirements for the 2006 $PM_{2.5}$ NAAQS'' to the end of the table to read as follows:

§ 52.470 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
Section 110(a)(2) Infrastructure Requirements for the 2006 $PM_{2.5}$ NAAQS.	District of Columbia	07/16/15	8/21/2015 [Insert **Federal Register** citation].	This action addresses the following CAA elements, or portions thereof: 110(a)(2)(D)(i)(I).

[FR Doc. 2015–20527 Filed 8–20–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2015–0564; FRL–9932–83–Region 7]

Approval and Promulgation of Air Quality Implementation Plans; State of Kansas; Cross-State Air Pollution Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the State Implementation Plan (SIP) submitted by the State of Kansas in a letter dated March 30, 2015. This SIP revision provides Kansas' state-determined allowance allocations for existing electric generating units (EGUs) in the State for the 2016 control periods and replaces certain allowance allocations for the 2016 control periods established by EPA under the Cross-State Air Pollution Rule (CSAPR). The CSAPR addresses the ''good neighbor'' provision of the Clean Air Act (CAA or Act) that requires states to reduce the transport of pollution that significantly affects downwind air quality. In this final action EPA is approving Kansas' SIP revision, incorporating the state-determined allocations for the 2016 control periods into the SIP, and amending the regulatory text of the CSAPR Federal Implementation Plan (FIP) to reflect this approval and inclusion of the state-determined allocations. EPA is taking direct final action to approve Kansas' SIP revision because it meets the requirements of the CAA and the CSAPR requirements to replace EPA's allowance allocations for the 2016 control periods. This action is being taken pursuant to the CAA and its implementing regulations. EPA's allocations of CSAPR trading program allowances for Kansas for control periods in 2017 and beyond remain in place until the State submits and EPA approves state-determined allowance allocations for those control periods through another SIP revision. The CSAPR FIPs for Kansas remain in place until such time as the State decides to replace the FIPs with a SIP revision.

DATES: This direct final rule will be effective September 30, 2015, without further notice, unless EPA receives adverse comment by September 21, 2015. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2015–0564, by one of the following methods:

1. *www.regulations.gov.* Follow the on-line instructions for submitting comments.
2. *Email: Kemp.lachala@epa.gov.*
3. *Mail or Hand Delivery:* Lachala Kemp, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219.

Instructions: Direct your comments to Docket ID No. EPA–R07–OAR–2015–0564. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other

information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.* The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219. The Regional Office's official hours of business are Monday through Friday, 8:00 to 4:30 excluding legal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

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

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

I. What is being addressed in this document?
II. 2016 CSAPR SIPs
III. What is EPA's analysis of Kansas' submission?
IV. Final Action

I. What is being addressed in this document?

EPA is taking direct final action to approve revisions to the SIP submitted by the State of Kansas in a letter dated March 30, 2015, that modifies the allocations of annual NO_X allowances established by EPA under the CSAPR FIPs for existing EGUs for the 2016 control periods.[1] The CSAPR allows a subject state, instead of EPA, to allocate allowances under the SO_2 annual, NO_X annual, and NO_X ozone season trading programs to existing EGUs in the State for the 2016 control periods provided that the state meets certain regulatory requirements.[2] EPA issued the CSAPR on August 8, 2011, to address CAA section 110(a)(2)(D)(i)(I) requirements concerning the interstate transport of air pollution and to replace the Clean Air Interstate Rule[3] (CAIR), which the United States Court of Appeals for the District of Columbia Circuit (DC Circuit) remanded to EPA for replacement.[4] EPA found that emissions of SO_2 and NO_X in 28 eastern, midwestern, and southern states[5] contribute significantly to nonattainment or interfere with maintenance in one or more downwind states with respect to one or more of three air quality standards—the annual $PM_{2.5}$ NAAQS promulgated in 1997[6] (15 micrograms per cubic meter (μg/m³)), the 24-hour $PM_{2.5}$ NAAQS promulgated in 2006[7] (35 μg/m³), and the 8-hour ozone NAAQS promulgated in 1997[8] (0.08 parts per million). The CSAPR identified emission reduction responsibilities of upwind states, and also promulgated enforceable FIPs to achieve the required emission reductions in each of these states through cost effective and flexible requirements for power plants.

Kansas is subject to the FIPs that implement the CSAPR and require certain EGUs to participate in the EPA-administered Federal SO_2 annual and NO_X annual cap-and trade programs.[9] Kansas' March 30, 2015, SIP revision allocates allowances under the CSAPR to existing EGUs in the State for the 2016 control periods only. Kansas' SIP revision includes state-determined allocations for the CSAPR NO_X annual trading program, and complies with the 2016 NO_X allowance allocation SIP requirements set forth at 40 CFR 52.38. Pursuant to these regulations, a state may replace EPA's CSAPR NO_X allowance allocations for existing EGUs for the 2016 control periods provided that the state submits a timely SIP revision containing those allocations to EPA that meets the requirements in 40 CFR 52.38.

Through this action, EPA is approving Kansas' March 30, 2015, SIP revision, incorporating the allocations into the SIP, and amending the CSAPR FIP's regulatory text for Kansas at 40 CFR 52.882 to reflect this approval and inclusion of the state-determined allowance allocation for the 2016 control periods. EPA's allocations of CSAPR trading program allowances for Kansas for control periods in 2017 and beyond remain in place until the State submits and EPA approves state-determined allocations for those control periods through another SIP revision. EPA is not making any other changes to the CSAPR FIPs for Kansas in this action. The CSAPR FIPs for Kansas remain in place until such time the

[1] Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals; August 8, 2011 (76 FR 48208).

[2] The CSAPR is implemented in two Phases (I and II) with Phase I referring to 2015 and 2016 control periods, and Phase II consisting of 2017 and beyond control periods.

[3] Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call; May 12, 2005 (70 FR 25162).

[4] *North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008), *modified on reh'g,* 550 F.3d 1176 (D.C. Cir. 2008).

[5] The CSAPR obligations related to ozone-season NO_X emissions for five states were established in a separate rule referred to as the Supplemental Rule. Federal Implementation Plans for Iowa, Michigan, Missouri, Oklahoma, and Wisconsin and Determination for Kansas Regarding Interstate Transport of Ozone; December 27, 2011 (76 FR 80760).

[6] National Ambient Air Quality Standards for Particulate Matter; July 18, 1997 (62 FR 36852).

[7] National Ambient Air Quality Standards for Particulate Matter; October 17, 2006 (71 FR 61144).

[8] National Ambient Air Quality Standards for Ozone; July 18, 1997 (62 FR 38856).

[9] On July 28, 2015, the DC Circuit, issued an opinion upholding CSAPR, but remanding without vacatur certain state emissions budgets to EPA for reconsideration. *EME Homer City Generation, L.P.* v. *EPA,* No. 11–1302, slip op. CSAPR implementation at this time remains unaffected by the court decision, and EPA will address the remanded emissions budgets in a separate rulemaking. Moreover, Kansas's emissions budgets were not among those remanded to EPA for reconsideration.

State decides to replace the FIPs with a SIP revision. EPA is taking direct final action to approve Kansas' March 30, 2015, SIP submission because it complies with the CAA and the CSAPR regulations. Below is a summary of the provisions allowing a state to submit SIP revisions to EPA to modify the 2016 allowance allocations. For more detailed information on the CSAPR, refer to the August 8, 2011, preamble and other subsequent related rulemakings referenced throughout this rulemaking.

II. 2016 CSAPR SIPs

The CSAPR allows states to determine allowance allocations for 2016 control periods through submittal of a complete SIP revision that is narrower in scope than an abbreviated or full SIP submission that states may use to replace the FIPs and/or to determine allocations for control periods in 2017 and beyond. Pursuant to the CSAPR, a state may adopt and include in a SIP revision for the 2016 control period a list of units and the amount of allowances allocated to each unit on the list, provided the list of units and the allocations meet specific requirements set forth in 40 CFR 52.38(a)(3) and (b)(3) for NO_X and 52.39(d) and (g) for SO_2. If these requirements are met, the Administrator will approve the SIP allowance allocation provisions as replacing the comparable provisions in 40 CFR part 97 for the State. SIP revisions under this expedited process may only allocate the amount of each state budget minus the new unit set-aside and the Indian country new unit set-aside. For states subject to multiple trading programs, options are available to submit 2016 state-determined allocations for one or more of the applicable trading programs while leaving unchanged the EPA-determined allocations for 2016 in the remaining applicable trading programs.[10]

In developing this procedure, EPA set deadlines for submitting the SIP revisions for 2016 allocations and for recordation of the allocations that balanced the need to record allowances sufficiently ahead of the control periods with the desire to allow state flexibility for 2016 control periods. These deadlines allow sufficient time for EPA to review and approve these SIP revisions, taking into account that EPA approval must be final and effective before the 2016 allocations can be recorded and the allowances are available for trading. The CSAPR, as revised, set a deadline of October 17, 2011, or March 6, 2015, (in the case of allocations of ozone season allowances for states covered by the Supplemental Rule) for states to notify EPA of their intent to submit these SIP revisions.[11] *See* 40 CFR 52.38 and 52.39.

Twelve states, including Kansas, notified EPA by the applicable deadlines of their intentions to submit SIP revisions affecting 2016 allocations.[12] Pursuant to EPA's December 3, 2014, Interim Final Rule,[13] the deadlines to submit these SIPs were delayed by three years, making the deadline for these twelve states to submit a 2016 allocation SIP revision April 1, 2015, or October 1, 2015 (in the case of allocations of ozone season NO_X allowances for states covered by the Supplemental Rule). Each state may submit a SIP to allocate allowances for the 2016 control periods provided it meets the following requirements pursuant to 40 CFR 52.38 and 52.39:

- Notify the EPA Administrator by October 17, 2011 or March 6, 2015, (in the case of allocations of ozone season NO_X allowances for states covered by the Supplemental Rule) of intent to submit state allocations for the 2016 control periods in a format specified by the Administrator. *See* 40 CFR 52.38(a)(3)(v)(A), 52.38(b)(3)(v)(A), 52.39(d)(5)(i), and 52.39(g)(5)(i).
- Submit to EPA the SIP revision modifying allowance allocations for the 2016 control periods no later than April 1, 2015, or October 1, 2015 (in the case of allocations of ozone season NO_X allowances for states covered by the Supplemental Rule). *See* 40 CFR 52.38(a)(3)(v)(B), 52.38(b)(3)(v)(B), 52.39(d)(5)(ii), and 52.39(g)(5)(ii).
- Provide 2016 state-determined allocations only for units within the State that commenced commercial operation before January 1, 2010. *See* 40 CFR 52.38(a)(3)(i), 52.38(b)(3)(i), 52.39(d)(1), and 52.39(g)(1).
- Ensure that the sum of the state-determined allocations is equal to or less than the amount of the total state budget for 2016 minus the sum of the new unit set-aside and the Indian country new unit set-aside. *See* 40 CFR 52.38(a)(3)(ii), 52.38(b)(3)(ii), 52.39(d)(2), and 52.39(g)(2).
- Submit the list of units and the 2016 state-determined allowance allocations as a SIP revision electronically to EPA in the format specified by the Administrator. *See* 40 CFR 52.38(a)(3)(iii), 52.38(b)(3)(iii), 52.39(d)(3), and 52.39(g)(3).
- Confirm that the SIP revision does not provide for any changes to the listed units or allocations after approval of the SIP revision by EPA and does not provide for any change to any allocation determined and recorded by the Administrator under subpart AAAAA, BBBBB, CCCCC, or DDDDD of 40 CFR part 97. *See* 40 CFR 52.38(a)(3)(iv), 52.38(b)(3)(iv), 52.39(d)(4), and 52.39(g)(4).

Additionally, these limited SIP revisions for the 2016 state-determined allocations are required to comply with SIP completeness elements set forth in 40 CFR part 51, appendix V (*i.e.,* conduct adequate public notice of the submission, provide evidence of legal authority to adopt SIP revisions, and ensure that the SIP is submitted to EPA by the State's Governor or his/her designee). If a state submits to EPA a 2016 CSAPR SIP revision meeting all the above-described requirements, including compliance with the applicable notification and submission deadlines, and EPA approves the SIP submission by October 1, 2015 (or April 1, 2016, in the case of allocations of ozone season NO_X allowances for states covered by the Supplemental Rule), EPA will record state-determined allocations for 2016 by October 1, 2015, (or April 1, 2016) into the Allowance Management System (AMS). Kansas' March 30, 2015 SIP submission addresses the aforementioned requirements allowing a state to allocate 2016 CSAPR allowances for the annual NO_X trading program. EPA's analysis of Kansas's SIP submission is explained below.

III. What is EPA's analysis of Kansas' SIP submission?

On March 30, 2015, Kansas submitted a SIP revision intended to replace the CSAPR FIP allocations of the CSAPR NO_X annual allowances for the 2016 control periods. For approval, this SIP revision must meet the applicable requirements found in 40 CFR 52.38(a)(3) described in section II of this document. The following is a list of criteria under 40 CFR 52.38(a)(3) and (b)(3) and 52.39(d) and (g), described above in this document, and the results

[10] States can also submit SIP revisions to replace EPA-determined, existing-unit allocations with state-determined allocations for control periods after 2016 via a separate process described at 40 CFR 52.38(a)(4), (a)(5), (b)(4), and (b)(5) and 52.39(e), (f), (h), and (i).

[11] For the five states (Iowa, Michigan, Missouri, Oklahoma, and Wisconsin) covered in the Supplemental Rule in the case of ozone season NO_X, March 6, 2012, was originally the date by which notifications of intentions to submit state allocations were due to the Administrator, but the date was later delayed to March 6, 2015. *See* 76 FR 80760 and 79 FR 71671.

[12] The docket for this action contains Kansas' October 14, 2011 letter notifying EPA of its intention to submit a SIP revision.

[13] Rulemaking to Amend Dates in Federal Implementation Plans Addressing Interstate Transport of Ozone and Fine Particulate Matter; December 3, 2014 (79 FR 71663).

of EPA's analysis of Kansas' SIP revision:

A. Notification from a State to EPA must be received by October 17, 2011, or March 6, 2015, in the case of ozone season NO_X SIP revisions for states covered by the December 27, 2011 Supplemental Rule (76 FR 80760), of its intent to submit a complete SIP revision for 2016 existing unit allocations (40 CFR 52.38(a)(3)(v)(A), 52.38(b)(3)(v)(A), 52.39(d)(5)(i), and 52.39(g)(5)(i)).

On October 14, 2011, Kansas notified EPA via a letter of the State's intent to submit complete SIP revisions for allocating TR NO_X Annual allowances [14] to existing units (*i.e.,* units that commenced commercial operation before January 1, 2010) for the second implementation year of the CSAPR trading programs.[15]

B. A complete SIP revision must be submitted to EPA no later than April 1, 2015, or October 1, 2015, in the case of ozone season NO_X SIP revisions for states covered by the December 27, 2011 Supplemental Rule (76 FR 80760) (40 CFR 52.38(a)(3)(v)(B), 52.38(b)(3)(v)(B), 52.39(d)(5)(ii), and 52.39(g)(5)(ii)).

EPA has reviewed the March 30, 2015 submittal from Kansas and found it to be complete. This submittal satisfies the applicable elements of SIP completeness set forth in appendix V to 40 CFR part 51.

C. The SIP revision should include a list of TR NO_X Annual, TR NO_X Ozone Season, TR SO_2 Group 1 or Group 2 units, whichever is applicable, that are in the State and commenced commercial operation before January 1, 2010 (40 CFR 52.38(a)(3)(i), 52.38(b)(3)(i), 52.39(d)(1), and 52.39(g)(1)).

As part of Kansas' SIP revision, the State submitted a list of units to be allocated TR NO_X Annual allowances for the 2016 control period. The list identifies the same units as were identified in the notice of data availability (NODA) published by EPA on December 3, 2014 (79 FR 71674). Hence, EPA has determined that each unit on the list submitted by Kansas as part of the SIP revision is located in the State of Kansas and had commenced commercial operation before January 1, 2010.

D. The total amount of TR NO_X Annual, TR NO_X Ozone Season, or TR SO_2 Group 1 or Group 2 allowance allocations, whichever is applicable, must not exceed the amount, under 40 CFR 97.410(a), 97.510(a), 97.610(a), or 97.710(a), whichever is applicable, for the State and the control periods in 2016, of the TR NO_X Annual, TR NO_X Ozone Season, TR SO_2 Group 1 or Group 2 trading budget minus the sum of the new unit set-aside and Indian country new unit set-aside (40 CFR 52.38(a)(3)(ii), 52.38(b)(3)(ii), 52.39(d)(2), and 52.39(g)(2)).

As amended, the CSAPR established the NO_X Annual budget, new unit set-aside, and Indian country new unit set-aside for Kansas for the 2016 control period as 31,354 tons, 596 tons, and 31 tons, respectively. Kansas' SIP revision, for approval in this action, does not affect this budget, which is a total amount of allowances available for allocation for the 2016 control period under the EPA-administered cap-and-trade program under the CSAPR FIPs. In short, the abbreviated SIP revision only affects allocations of allowances under the established state budget.

The Kansas SIP revision allocating TR NO_X Annual allowances for the 2016 control period does not establish allocations exceeding the amount of the budget under § 97.410(a) minus the sum of the new unit set-aside and the Indian County new unit set aside (31,354 tons − (596 tons + 31 tons) = 30,727 tons). The Kansas SIP revision allocates 30,727 TR NO_X Annual allowances to existing units in the State.

E. The list should be submitted electronically in the format specified by the EPA (40 CFR 52.38(a)(3)(iii), 52.38(b)(3)(iii), 52.39(d)(3), and 52.39(g)(3)).

On March 30, 2015, EPA received an email submittal from Kansas in the EPA-approved format.

F. The SIP revision should not provide for any changes to the listed units or allocations after approval of the SIP revision and should not provide for any change to any allocation determined and recorded by the Administrator under subpart AAAAA, BBBBB, CCCCC, or DDDDD of 40 CFR part 97 (40 CFR 52.38(a)(3)(iv), 52.38(b)(3)(iv), 52.39(d)(4), and 52.39(g)(4)).

The Kansas SIP revision does not provide for any changes to the listed units or allocations after approval of the SIP revision and does not provide for any change to any allocation determined and recorded by the Administrator under subpart AAAAA, BBBBB, CCCCC, or DDDDD of 40 CFR part 97.

For the reasons discussed above, Kansas' SIP revision complies with the 2016 allowance allocation SIP requirements established in the CSAPR FIPs as codified at 40 CFR 52.38. Through this action, EPA is approving Kansas' March 30, 2015, SIP revision, incorporating the allocations into the SIP, and amending the CSAPR FIPs' regulatory text for Kansas at 40 CFR 52.882 to reflect this approval and inclusion of the state-determined allowance allocations for the 2016 control periods. EPA is not making any other changes to the CSAPR FIPs for Kansas in this action. EPA is taking final action to approve Kansas' March 30, 2015 SIP revision because it is in accordance with the CAA and its implementing regulations.

IV. Final Action

EPA is taking final action to approve Kansas' March 30, 2015, CSAPR SIP revisions that provide Kansas' state-determined allowance allocations for existing EGUs in the State for the 2016 control periods to replace certain allowance allocations for the 2016 control periods established by EPA under the CSAPR. Consistent with the flexibility given to states in the CSAPR FIPs at 40 CFR 52.38, Kansas' SIP revision allocates allowances to existing EGUs in the State under the CSAPR's NO_X annual trading program. Kansas' SIP revision meets the applicable requirements in 40 CFR 52.38 for NO_X annual allowance allocations for the 2016 control periods. EPA is approving Kansas' SIP revision because it is in accordance with the CAA and its implementing regulations.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective September 30, 2015 without further notice unless the Agency receives adverse comments by September 21, 2015.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so

[14] The abbreviation ''TR'' in certain legal terms used in the CSAPR trading programs, including the legal terms for the trading program allowances, stands for ''Transport Rule,'' an earlier name for the CSAPR.

[15] The October 14, 2011 letter submitted to EPA by Kansas also indicates that the State intended to submit a SIP revision for allocating TR NO_X Ozone Season allowances (if EPA's proposal to include Kansas in that program was finalized) and TR SO_2 Group 2 allowances. After that letter was submitted EPA did not finalize the proposal to include Kansas in the TR NO_X Ozone Season Trading Program and the State decided not to submit a SIP revision for the TR SO_2 Group 2 allocations for the 2016 control period.

at this time. If no such comments are received, the public is advised that this rule will be effective on September 30, 2015 and no further action will be taken on the proposed rule.

Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 20, 2015. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: August 12, 2015.

Mark Hague,

Acting Regional Administrator, Region 7.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart R—Kansas

■ 2. In § 52.870(e), the table is amended by adding a new entry (40) at the end of the table to read as follows:

§ 52.870 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED KANSAS NONREGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA Approval date	Explanation
*	*	*	*	*
(40) Cross State Air Pollution Rule—State-Determined Allowance Allocations for the 2016 control periods.	Statewide	3/30/15	8/21/2015 [Insert **Federal Register** citation].	

■ 3. Section 52.882 is amended by adding paragraph (a)(3) to read as follows:

§ 52.882 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

(a) * * *

(3) Pursuant to § 52.38(a)(3), Kansas' state-determined TR NO_X Annual allowance allocations established in the March 30, 2015, SIP revision replace the unit-level TR NO_X Annual allowance allocation provisions of the TR NO_X Annual Trading Program at 40 CFR 97.411(a) for the State for the 2016 control period with a list of TR NO_X

Annual units that commenced operation prior to January 1, 2010, in the State and the state-determined amount of TR NO_X Annual allowances allocated to each unit on such list for the 2016 control period, as approved by EPA on August 21, 2015, [Insert **Federal Register** citation].

* * * * *

[FR Doc. 2015–20629 Filed 8–20–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R10–RCRA–2015–0307; FRL–9932–87–Region 10]

Idaho: Final Authorization of State Hazardous Waste Management Program; Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Idaho applied to the Environmental Protection Agency (EPA) for final authorization of certain changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA), as amended. On June 2, 2015, the EPA published a proposed rule to authorize the changes and opened a public comment period under Docket ID No. EPA–R10–RCRA–2015–0307. The comment period closed on July 2, 2015. The EPA received no comments on the proposed rule. The EPA has determined that the revisions to the Idaho hazardous waste management program satisfy all the requirements necessary to qualify for final authorization. The EPA is approving these revisions to Idaho's authorized hazardous waste management program in this final rule.

DATES: Final authorization for the revisions to the hazardous waste management program in Idaho shall be effective at 1 p.m. EST on September 21, 2015.

ADDRESSES: *Docket:* All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the EPA Region 10 Library, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101. The EPA Region 10 Library is open from 9:00 a.m. to noon, and 1:00 to 4:00 p.m. pst Monday through Friday, excluding legal holidays. The EPA Region 10 Library telephone number is (206) 553–1289.

FOR FURTHER INFORMATION CONTACT: Barbara McCullough, U.S. EPA, Region 10, 1200 Sixth Avenue, Suite 900, Mail Stop: AWT–150, Seattle, Washington 98101, email: *mccullough.barbara@epa.gov,* phone number (206) 553–2416.

SUPPLEMENTARY INFORMATION:

A. Why are revisions to state programs necessary?

States which have received final authorization from the EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, states must change their programs and ask the EPA to authorize their changes. Changes to state programs may be necessary when Federal or state statutory or regulatory authority is modified or when certain other changes occur. Most commonly, states must change their programs because of changes to the EPA's regulations codified in Title 40 of the Code of Federal Regulations (CFR) parts 124, 260 through 268, 270, 273, and 279.

Idaho's hazardous waste management program received final authorization effective on April 9, 1990 (55 FR 11015, March 29, 1990). Subsequently, the EPA authorized revisions to the State's program effective June 5, 1992 (57 FR 11580, April 6, 1992), August 10, 1992 (57 FR 24757, June 11, 1992), June 11, 1995 (60 FR 18549, April 12, 1995), January 19, 1999 (63 FR 56086, October 21, 1998), July 1, 2002 (67 FR 44069, July 1, 2002), March 10, 2004 (69 FR 11322, March 10, 2004), July 22, 2005 (70 FR 42273, July 22, 2005), February 26, 2007 (72 FR 8283, February 26, 2007), December 23, 2008 (73 FR 78647, December 23, 2008), and July 11, 2012 (77 FR 34229, June 11, 2012).

This final rule addresses a program revision application that Idaho submitted to the EPA in February 2015, in accordance with 40 CFR 271.21, seeking authorization of changes to the State program. On June 2, 2015, the EPA published a proposed rule (80 FR 31338) stating the Agency's intent to grant final authorization for revisions to Idaho's hazardous waste management program. The public comment period on this proposed rule ended on July 2, 2015, with no comments received.

B. What decisions have we made in this final rule concerning authorization?

The EPA has made a final determination that Idaho's revisions to its authorized hazardous waste management program meet all the statutory and regulatory requirements established by RCRA for authorization. Therefore, the EPA is authorizing the revised State of Idaho hazardous waste management program for all delegable Federal hazardous waste regulations codified by Idaho as of July 1, 2013, as described in the Attorney General's Statement in the February 2015 program revision application, and as discussed in Section E of this rule. Idaho's authorized program will be responsible for carrying out the aspects of the RCRA program described in its program revision application subject to the limitations of RCRA, including the Hazardous and Solid Waste Amendments (HSWA) 42 U.S.C. 6924, *et seq.* (1984). New Federal requirements and prohibitions imposed by Federal regulations that the EPA promulgates under the authority of HSWA, and which are not less stringent than existing requirements, take effect in authorized states before the states are authorized for the requirements. Thus, the EPA will implement those requirements and prohibitions in Idaho, including issuing permits, until the State is granted authorization to do so.

C. What will be the effect of this action?

The effect of this action is that a facility in Idaho subject to RCRA must comply with the authorized state program requirements in lieu of the corresponding Federal requirements to comply with RCRA. Additionally, such persons must comply with any applicable Federal requirements, such as, for example, HSWA regulations issued by the EPA for which the State has not received authorization, and RCRA requirements that are not supplanted by authorized state requirements. Idaho continues to have enforcement responsibilities under its state hazardous waste management program for violations of this program, but the EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, 42 U.S.C. 6927, 6928, 6934 and 6973, and any other applicable statutory and regulatory provisions, which includes, among others, the authority to:

- Conduct inspections;
- Require monitoring, tests, analyses, or reports;
- Enforce RCRA requirements;
- Suspend, terminate, modify or revoke permits; and

• Take enforcement actions regardless of whether the State has taken its own actions.

This final action authorizing these revisions will not impose additional requirements on the regulated community because the regulations for which Idaho will be authorized are already effective under state law and are not changed by the act of authorization.

D. What rules are we authorizing with this action?

On February 11, 2015, Idaho submitted a program revision application to the EPA requesting authorization for all delegable Federal hazardous waste regulations codified as of July 1, 2012, incorporated by reference in IDAPA 58.01.05.000, *et seq,* which were adopted and effective in the State of Idaho on April 4, 2013. This authorization revision request includes the following federal rules for which Idaho is being authorized for the first time: Removal of Saccharin and its Salts from the Lists of Hazardous Constituents, Hazardous Wastes, and Hazardous Substances, 75 FR 78918, December 17, 2010; Technical Corrections to the Academics Lab Rule, 75 FR 79304, December 20, 2010; Revisions to the Treatment Standards for Carbamate Wastes, 76 FR 34147, June, 13, 2011; Hazardous Waste Manifest Printing Specifications Corrections, 76 FR 36363, June 22, 2011; and Hazardous Waste Technical Corrections and Clarifications Rule, 77 FR 22229, April 13, 2012. The EPA is authorizing the state's hazardous waste program in its entirety through July 1, 2013. There were no final federal RCRA hazardous waste regulations promulgated by the EPA from July 1, 2012 to July 1, 2013.

E. Where are the revised state rules different from the Federal rules?

Under RCRA Section 3009, the EPA may not authorize state law that is less stringent than the Federal program. Any state law that is less stringent does not supplant the Federal regulations. State law that is broader in scope than the Federal program requirements is not authorized. State law that is equivalent to, and state law that is more stringent than, the Federal program may be authorized, in which case those provisions are enforceable by the EPA. This section discusses certain rules where the EPA has made the finding that Idaho's program is more stringent and will be authorized, and discusses certain portions of the Federal program that are not delegable to the State because of the Federal government's special role in foreign policy matters and because of national concerns that arise with certain decisions.

The EPA does not authorize states to administer Federal import and export functions in any section of the RCRA hazardous waste regulations. Even though states do not receive authorization to administer the Federal government's import and export functions, found in 40 CFR part 262, subparts E, F and H, state programs are required to adopt the Federal import and export provisions to maintain their equivalency with the Federal program. Idaho amended its import and export laws to include the Federal rule on Organization for Economic Cooperation and Development (OECD) Requirements; Export Shipments of Spend Lead-Acid Batteries (75 FR 1236, January 8, 2010). The State's rule is found at IDAPA 58.01.05.006. The EPA will continue to implement those requirements directly through the RCRA regulations.

The EPA has found that Idaho's Emergency Notification Requirements (IDAPA 58.01.05.006.02), are more stringent than the Federal program. This is because the State's regulations require that the State Communications Center be contacted along with the Federal Center. The EPA has found the State's statutory requirement requiring hazardous waste generators and commercial hazardous waste disposal facilities to file annual hazardous waste generation reports, Idaho Code § 39–4411(4) and 39–4411(5), to be more stringent than the Federal program. As the EPA can authorize rules that are determined to be more stringent than the Federal program, these requirements are authorized.

F. Who handles permits after the authorization takes effect?

Idaho will continue to issue permits for all the provisions for which it is authorized and administer the permits it issues. If the EPA issued permits prior to authorizing Idaho for these revisions, these permits would continue in force until the effective date of the State's issuance or denial of a state hazardous waste permit, at which time the EPA would modify the existing EPA permit to expire at an earlier date, terminate the existing EPA permit for cause, or allow the existing EPA permit to otherwise expire by its terms, except for those facilities located in Indian Country. The EPA will not issue new permits or new portions of permits for provisions for which Idaho is authorized after the effective date of this authorization. The EPA will continue to implement and issue permits for HSWA requirements for which Idaho is not yet authorized.

G. How does this action affect Indian country (18 U.S.C. 1151) in Idaho?

Idaho is not authorized to carry out its hazardous waste program in Indian country, as defined in 18 U.S.C. 1151. Indian country includes:

1. All lands within the exterior boundaries of Indian reservations within or abutting the State of Idaho;
2. Any land held in trust by the U.S. for an Indian tribe; and
3. Any other land, whether on or off an Indian reservation, that qualifies as Indian country.

Therefore, this action has no effect on Indian country. The EPA will continue to implement and administer the RCRA program on these lands.

H. Statutory and Executive Order Reviews

This final rule revises the State of Idaho's authorized hazardous waste management program pursuant to Section 3006 of RCRA and imposes no requirements other than those currently imposed by state law. This final rule complies with applicable executive orders and statutory provisions as follows:

1. Executive Order 12866 and 13563

This action authorizes revisions to the federally approved hazardous waste program in Idaho. This type of action is exempt from review under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), and Executive Order 13563 (76 FR 3821, January 21, 2011).

2. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). This final rule does not establish or modify any information or recordkeeping requirements for the regulated community.

3. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), 5 U.S.C. 601 *et seq.,* generally requires Federal agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this

final rule on small entities, small entity is defined as: (1) A small business, as codified in the Small Business Size Regulations at 13 CFR part 121; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. The EPA has determined that this action will not have a significant impact on small entities because the final rule will only have the effect of authorizing existing requirements under state law and imposes no additional requirements beyond those imposed by state law. After considering the economic impacts of this action, I certify that this action will not have a significant economic impact on a substantial number of small entities.

4. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local, or tribal governments or the private sector. This action imposes no new enforceable duty on any state, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of Section 203 of the UMRA because it contains no regulatory requirements that might significantly or uniquely affect small government entities.

5. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This final rule authorizes existing state rules. Thus, Executive Order 13132 does not apply to this action. In the spirit of Executive Order 13132, and consistent with the EPA policy to promote communications between the EPA and state and local governments, the EPA specifically solicited comment on the proposed action from state and local officials but did not receive any comments.

6. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive order 13175, because the EPA retains its authority over Indian Country and does not authorize the state to implement its authorized program in Indian Country within the state's boundaries. Thus, the EPA has determined that Executive Order 13175 does not apply to this final rule. The EPA specifically solicited comment on the proposed rule from tribal officials and received no comments.

7. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to EO 13045 because it approves a state program and is authorizing existing state rules.

8. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a ''significant regulatory action'' as defined under Executive Order 12866.

9. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, Section 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs the EPA to provide Congress, through the OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards. Therefore, the EPA did not consider the use of any voluntary consensus standards.

10. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This action authorizes existing state rules which are equivalent to, and no less stringent than existing federal requirements.

11. Congressional Review Act

Congressional Review Act (CRA), 5 U.S.C. 801, *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the US Senate, the US House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective September 15, 2015.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: August 11, 2015.

Dennis J. McLerran,

Regional Administrator, EPA Region 10.

[FR Doc. 2015–20726 Filed 8–20–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1994–0009; FRL–9932–77–Region 4]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the National Southwire Aluminum (NSA) Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) Region 4 is publishing a direct final Notice of Deletion of the National Southwire Aluminum (NSA) Superfund Site (Site), located in Hawesville, Hancock County, Kentucky, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final deletion is being published by the EPA with the concurrence of the State of Kentucky, through the Kentucky Division of Waste Management (KDWM), because the EPA has determined that all appropriate response actions under CERCLA, other than operation, maintenance, monitoring and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: This direct final deletion is effective October 5, 2015 unless the EPA receives adverse comments by September 21, 2015. If adverse comments are received, the EPA will publish a timely withdrawal of the direct final deletion in the **Federal Register** informing the public that the deletion will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–1994–0009, by one of the following methods:

- *http://www.regulations.gov*. Follow online instructions for submitting comments.
- Email: *townsend.michael@epa.gov*.
- Fax: 404 562–8788.
- Mail: Michael Townsend, Remedial Project Manager—Superfund Division, U.S. Environmental Protection Agency Region 4, Atlanta Federal Center, 61 Forsyth Street SW., Atlanta, GA 30303.
- Hand Delivery: U.S. Environmental Protection Agency Region 4, Atlanta Federal Center, 61 Forsyth Street SW., Atlanta, GA 30303. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID no. EPA–HQ–SFUND–1994–0009. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statue. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at:

Hancock County Public Library

1210 Madison Street, Hawesville, KY 42351. Hours: MTWF 8:30 to 4:30, Thursday 8:30 to 7:00, Saturday 8:30 to 12:00.

FOR FURTHER INFORMATION CONTACT: Michael Townsend, Remedial Project Manager, U.S. Environmental Protection Agency, Region 4, Atlanta Federal Center, 61 Forsyth Street SW., Atlanta, GA 30303; *townsend.michael@epa.gov* or (404) 562–8813.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Site Deletion
V. Deletion Action

I. Introduction

The EPA Region 4 is publishing this direct final Notice of Deletion of the National Southwire Aluminum (Site), from the National Priorities List (NPL). The NPL constitutes Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which the EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. The EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare or the environment. Sites on the NPL may be the subject of remedial act ions financed by the Hazardous Substance Superfund (Fund). As described in § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions if future conditions warrant such actions.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that the EPA is using for this action. Section IV discusses the National Southwire Aluminum Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses the EPA's action to delete the Site from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

The NCP establishes the criteria that the EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), the EPA will consider, in consultation with the state, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. all appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. the remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Pursuant to CERCLA section 121(c) and the NCP, the EPA conducts five-year reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. The EPA conducts such five-year reviews even if a site is deleted from the NPL. The EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) The EPA consulted with the state of Kentucky prior to developing this direct final Notice of Deletion and the Notice of Intent to Delete co-published today in the ''Proposed Rules'' section of the **Federal Register**.

(2) The EPA has provided the state 30 working days for review of this notice and the parallel Notice of Intent to Delete prior to their publication today, and the state, through the Kentucky Division of Waste Management (KDWM), has concurred on the deletion of the Site from the NPL.

(3) Concurrently with the publication of this direct final Notice of Deletion, a notice of the availability of the parallel Notice of Intent to Delete is being published in the Hancock County Clarion. The newspaper notice announces the 30-day public comment period concerning the Notice of Intent to Delete the Site from the NPL.

(4) The EPA placed copies of documents supporting the proposed deletion in the deletion docket and made these items available for public inspection and copying at the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this deletion action, the EPA will publish a timely notice of withdrawal of this direct final Notice of Deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter the EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist the EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The following information provides the EPA's rationale for deleting the Site from the NPL:

1. Site Background and History

The Comprehensive Environmental Response, Compensation and Liability Information System (CERCLIS) EPA ID Number of the NSA Site is KYD049062375. The Site is an active aluminum reduction facility located in Hancock County, Kentucky, a sparsely populated area on the south bank of the Ohio River. The Site is located 4 miles northwest of the town of Hawesville and across the Ohio River from the Indiana cities of Cannelton and Tell City. The land surface is characterized by low relief and lies approximately 40 feet above the local normal water level of the Ohio River.

The facility area, including adjacent agricultural land, is 1,100 acres. The aluminum reduction activities take place in a 475-acre area located to the east of State Route 334 and to the north of State Route 3543. Public access to the Site is restricted by a chain-link fence. In addition, access to and from the plant area is controlled by a guardhouse located at the State Route 3543 entrance. Southwire operated the facility from 1969 to 2001. In April 2001, Southwire transferred ownership of the facility and the majority of the former NSA property to Century Aluminum of Kentucky, LLC (Century). Century continues to operate the aluminum reduction facility. Southwire retained responsibility for completion of the remedy and also maintains ownership of a small parcel on the northwestern part of the property (referred to as the Southwire Outlot).

There were two primary historic practices that contributed to the contamination at the Site. These included the removal, replacement and disposal of spent potliners in an uncontrolled manner and the use of polychlorinated biphenyl (PCB) heat transfer fluids as part of pitch operations. These activities adversely affected the Site soil and groundwater. In 1986, the KDWM performed a preliminary assessment at the Site and identified the presence of cyanide in groundwater. A Site Scoring Investigation was performed by the EPA and completed in 1991. The EPA proposed to add the Site to the NPL in the June 29, 1991 **Federal Register**. The Site was listed final on the NPL: 27989–27996 **Federal Register** Vol. 59, No. 103, on May 31, 1994.

A Non–Time Critical Removal Action (NTCRA) was completed in 1997 at the South Slurry Pond to reduce the migration of fluoride and cyanide to groundwater.

2. Remedial Investigation and Feasibility Study (RI/FS)

The Remedial Investigation (RI) was performed to further characterize the nature and extent of known areas of contamination, to ascertain the presence or absence of any additional areas of concern at the Site, and to describe the fate and transport of the contaminants present.

The analytical results of the RI/FS indicated the presence of two cyanide contaminated groundwater plumes. The north plume extended eastward from the Potliner Disposal Area to the Ohio River, and contained maximum concentrations of 21 milligrams per Liter (mg/L) total cyanide and 1.5 mg/L free cyanide. The total and free cyanide concentrations decreased at the river to 0.723 mg/L and 0.445 mg/L, respectively. The south plume extended bi-directionally from the area of the Spent Potliner Accumulation Building eastward to the river and southwestward to the plant's industrial water supply wells. Total cyanide levels were 0.142 mg/L or less, while free cyanide levels in groundwater sampled from wells near the river were 0.02 mg/L or less. The RI/FS also reported the presence of fluoride and heavy metals in groundwater. The RI/FS indicated that fluoride mobility was naturally limited by precipitation of calcium fluoride. The heavy metals identified in groundwater were addressed by the Record of Decision (ROD), and the EPA determined that it seemed unlikely that the expenditure of resources on an area-wide sampling and cleanup effort would bring a measurable improvement to ecological risk with regard to metals.

The analytical results of the RI/FS also indicated the presence of PCBs and polycyclic aromatic hydrocarbons (PAHs) in Site soils. These constituents were generally identified in carbon and/or pitch handling areas at the Site. Concentrations of PCBs were as high as 2,800 milligrams per kilogram (mg/Kg) in the subsurface soil at the Green Carbon pitch handling areas where spills occurred. Low concentrations of PCBs (<50 mg/Kg) were also identified in a few other isolated areas of the Site, such as the Refractory Brick Disposal Areas (RBDAs). Detailed information regarding the findings of the RI/FS activities can be found in the 1997 Remedial Investigation Report and the 1998 Feasibility Study Report.

3. Selected Remedy

The ROD identified seven (7) areas of concern based on the results of the RI/FS, the Baseline Risk Assessment (BRA) and the Ecological Risk Assessment (ERA). These focus areas included the following:

(1) Green Carbon PCB Spill Area
(2) RBDAs
(3) Taylors Wash Landfill
(4) Drum Storage Area
(5) PCB Soil Stockpile Area
(6) Site-wide Groundwater
(7) South Slurry Pond

The remedial action objectives (RAOs) presented in the ROD for the seven (7) focus areas, consisted of the following:

- Minimize direct contact by Site workers and the public with soil containing excessive levels of PCBs,
- Minimize direct contact by Site workers and the public with soil containing excessive levels of PAH compounds,
- Minimize transport of contaminated soil by erosion to water courses, including the Ohio River,
- Minimize potential leaching of total PCBs to Site groundwater from areas of high concentrations,
- Remediate groundwater contaminated with elevated levels of cyanide and fluoride, and
- Prevent deterioration of the Old South Slurry Pond containment system.

The NTCRA at the South Slurry Pond was conducted to reduce the migration of fluoride and cyanide to groundwater. Groundwater with elevated levels of fluoride is naturally limited by the precipitation of calcium fluoride. Groundwater with elevated levels of cyanide was treated at the OU1 Groundwater Extraction and Treatment System (GETS).

The ROD presented the selected remedy to achieve these RAOs at each of the seven (7) focus areas. These seven (7) focus areas and the selected remedy presented in the ROD for each area is as follows:

Green Carbon PCB Spill Area (Central Plant)

Land-use and groundwater-use deed restrictions; surface and subsurface ''hot spot'' removal to off-site secure landfill; rerouting utilities, where necessary; installation of a low-permeability multimedia cap; operational controls to limit physical contact; monitoring of groundwater for PCBs; material with lower-level PCB contamination disposed under the new Taylors Wash Landfill cap and cover.

RBDAs (West of State Route 334)

Land-use and groundwater-use deed restrictions; install soil erosion cap, establish a grass cover, and install fencing with warning signs; remove layer of sediment from lengths of the Drainage Ditch and Muddy Gut Tributary and dispose under the new Taylors Wash Landfill cap and cover or dispose off-site with other PCB soils.

Taylors Wash Landfill (Eastern Plant)

Deed restrictions; collection and treatment of leachate utilizing a new force main from the Landfill to the existing groundwater treatment plant; install RCRA Subtitle D multi-media cap and cover; install fencing with warning signs.

Drum Storage Area (Southern Plant)

Determine PCB and other contaminant of concern (COC) concentrations of 'hotspots'; excavate 'hot spots' and dispose of contaminated material under the new Taylors Wash Landfill cap; cover excavations with clean fill and appropriate surface treatment.

PCB Soil Stockpile Area (Eastern Plant)

Excavate one foot of existing surface soils over the entire Area and dispose under the Taylors Wash Landfill cap after confirming PCB concentrations; install erosion cap over Area and establish grass cover.

Site-Wide Groundwater

Impose deed restrictions for groundwater use where not already imposed; continue groundwater extraction and treatment as required by April 14, 1994 Remedial Design/Remedial Action (RD/RA) Consent Decree (operate and maintain Groundwater Extraction and Treatment System); monitor Site-wide groundwater and Groundwater Treatment System Kentucky Pollution Discharge Elimination System (KPDES) discharge; investigate soils under Spent Potliner Accumulation Building.

South Slurry Pond (Northern Plant)

Maintain existing cap and cover; impose land-use deed restrictions for all four (4) ponds; monitor groundwater as a part of the Site-wide groundwater monitoring.

The ROD was completed in July 2000, the SOW was completed in November 2000 and the Consent Decree (CD) was entered in U.S. District Court on March 8, 2004. The initial response activities associated with OU1 and the NTCRA were completed in 1997 before issuance of the ROD. The remedial design activities associated with OU2 commenced following execution of the CD. There are no Amendments or Explanations of Significant Differences to the 2000 ROD.

4. Response Actions

Operable Unit No. 1

The Interim Record of Decision (IROD) was issued in 1993, and a CD for the interim remedial action activities was executed in 1994. The IROD focused on reducing cyanide in groundwater and is referred to as OU1. The Interim Remedial Action Groundwater Pumping and Treatment System Remedial Design (IRA RD) was completed in 1994. The GETS design included an extraction well network consisting of six total wells installed in the cores of the north and south plume to maximize the withdrawal of cyanide-contaminated groundwater. The groundwater treatment plant was designed to remove iron-complexed cyanide using ferrous precipitation and settling. The treatment process involved five basic steps: cyanide precipitation, cyanide solids removal, ferric iron precipitation, iron solids removal, and dewatering of the combined sludge from the two solids removal steps. The GETS was designed to discharge treated groundwater to the Ohio River under the terms of a KPDES Permit. In addition, the Performance Standards Verification Plan (PSVP) developed as part of the IRA RD included a system of thirty-seven (37) groundwater monitoring wells sampled on a quarterly or annual basis for total and free cyanide.

The remedial action activities associated with OU1 commenced in 1995, with the startup of the GETS. The GETS operated from 1995 through 2010, when the performance standards for OU1 were met. The GETS collected groundwater from up to six extraction wells operating in the north and/or south plumes at rates of up to 690,000

gallons per month under Kentucky Water Withdrawal Permit No. 1330. Groundwater was treated at the on-site groundwater treatment plant and discharged to the Ohio River in accordance with a KPDES Permit. Effluent from the groundwater treatment plant was monitored bi-weekly in accordance with the permit. The extraction wells were monitored on a monthly basis, and monitoring wells associated with OU1 were monitored on a quarterly or annual basis during GETS operation. The GETS operation and monitoring results have been documented in the Monthly Progress Reports required by the CD. Detailed information regarding the OU1 cleanup activities can primarily be found in the 2011 Remedial Action Report, which includes the 2011 OU1 Performance Standards Verification Report as an attachment.

Operable Unit No. 2

The ROD was issued in 2000, and a CD for the remedial action activities was executed in 2004. With regard to OU2, the ROD primarily focused on the removal and management and/or containment of surface and subsurface soils from five specific focus areas contaminated with PCBs. The design criteria established in the ROD followed the self-implementing provisions of the Toxic Substances Control Act (TSCA) defined in 40 Code of Federal Regulations (CFR) 761.61(a)(4)(i). In summary, the design criteria under TSCA required:

- High-Occupancy Areas: The removal of PCB bulk remediation waste to a level less than 1.0 mg/Kg total PCBs, or removal to a level less than 10.0 mg/Kg total PCBs and covered with a protective soil cap.
- Low-Occupancy Areas: The removal of PCB bulk remediation waste to a level less than or equal to 25 mg/Kg total PCBs, to a level less than or equal to 50 mg/Kg total PCBs if the areas is secured by a fence and marked with signage, or to a level of less than or equal to 100 mg/Kg total PCBs if the area is appropriately capped.

The plans for meeting the criteria established in the ROD were developed in the Final RD/RA Submittal and approved by the EPA in 2006. The RD/RA was designed to meet the criteria defined above through a series of remedial actions that are further described below.

The remedial action activities associated with OU2 commenced in 2007, and were substantially complete in 2008, when the performance standards associated with this operable unit were achieved. The remedial action activities were specific to five focus areas and are summarized below:

- Green Carbon PCB Spill Area: The remedial action activities in the Green Carbon Area primarily required the excavation and removal of materials (mainly soils) potentially contaminated with PCBs from depths of 2 to 14 feet. During material removal activities, confirmatory/verification sampling and material characterization activities were conducted in accordance with the approved RD/RA. Following material characterization, the removed materials were staged in the Taylor's Wash Landfill Area and ultimately disposed of either at Taylor's Wash, at a RCRA Subtitle D Landfill or at a TSCA-equivalent disposal facility in accordance with the provisions of the ROD and RD/RA. A multi-layer cap was installed in the deep excavation areas (depths up to 14). Clean fill materials and, ultimately, pavements (concrete or asphalt) were installed above the multi-layer cap. In shallow excavation areas (depths up to 2 feet), the RD/RA included a layer of clean fill materials and/or concrete pavement. The activities were completed in December 2007.
- Drum Storage Area: The remedial action activities in the Drum Storage Area primarily required the excavation of soil materials potentially contaminated with PCBs or PAHs to depths of up to 2 feet. During material removal activities, confirmatory/verification sampling and material characterization activities were conducted in accordance with the approved RD/RA. Following material characterization, the removed materials were staged in the Taylor's Wash Landfill Area and ultimately disposed of either at Taylor's Wash, at a RCRA Subtitle D Landfill or at a TSCA-equivalent disposal facility in accordance with the provisions of the ROD and RD/RA. Clean fill materials were placed in the excavation areas. The activities were completed in September 2007.
- Refractory Brick Disposal Areas: The cleanup activities in the RBDAs primarily required the regrading of existing materials and the installation of a 2-foot soil cap with a minimum of one percent slope. In addition, the preliminary design activities conducted in 2005 identified wetlands in the vicinity of the RBDAs. The RD/RA included provisions to minimize disturbance to wetlands in the vicinity of the RBDAs and to restore the areas following wetlands mitigation principles. The activities were completed in November 2007.
- PCB Soil Stockpile Area: The cleanup activities at the PCB Soil Stockpile Area primarily required the installation of a 2-foot soil cap with a minimum of one percent slope. The activities were completed in September 2007.
- Taylor's Wash Landfill: The cleanup activities at the Taylor's Wash Landfill primarily consisted of the regrading of excavated soils from the Green Carbon and Drum Storage Areas with PCB concentrations of less than 25 mg/Kg. Following the regrading activities, the ROD required the installation of a multi-layer cap and vegetative cover system. These activities were completed in July 2008. In addition, as the ROD required, activities related to the collection and treatment of leachate from the landfill for a period of one year, or until other established criteria had been met, were implemented. Leachate from the landfill was pre-treated adjacent to the Taylor's Wash Landfill area and treated at the OU1 groundwater treatment plant. The leachate treatment activities were completed in August 2009.

In addition to the cleanup activities described above, the ROD also required the installation of fencing at the Taylor's Wash Landfill and the RBDAs, and the installation of warning signs to prevent digging or excavation at the Green Carbon Area, RBDAs, PCB Soil Stockpile Area and Taylor's Wash Landfill. These activities were completed by August 2008. Detailed information regarding the OU2 cleanup activities can be found in the 2011 Remedial Action Report.

The EPA and the KDWM have indicated that all remedial action construction activities, including the implementation of institutional controls, were performed in compliance with the ROD and in accordance with the Final Remedial Design (RD). In 2013, the EPA prepared a Final Close Out Report to document the completion of the remedial action activities.

5. Cleanup Goals

Demonstration of Cleanup Activity Quality Assurance and Quality Control (QA/QC)

The construction and operation and maintenance QA/QC requirements related to the Site are included as appendices to the 2006 RD/RA that encompassed all areas of concern and was approved by the EPA in June 2006. The RD/RA included the Construction Quality Assurance Project Plan (specific to OU2) and the Field Sampling Plan (inclusive of OU1 and OU2). These work controlling documents are

consistent with the requirements of the IROD and ROD. Southwire retained URS to serve in the role of the Quality Assurance firm and to document that the QA/QC protocol was followed.

A significant number of QA/QC reports were developed during implementation of cleanup activities at both OU1 and OU2. The reports consisted of, but were not limited to, material certifications, air monitoring data, groundwater monitoring and extraction well analytical data, treatment system discharge analytical data, soil confirmation data, liner testing results, waste characterization data, Site surveys and field observations. As demonstrated by the reports, the requirements and standards of performance for the various remedy components have been met and sampling and analysis protocol has been followed.

The QA/QC information and activities described above have been documented in the Monthly Progress Reports for the Site, the 2011 Remedial Action Report and the 2013 Final Close-Out Report.

6. Operation and Maintenance

Summary of Operation and Maintenance Required

A detailed description of the required Operations and Maintenance Manual (O&M) activities specific to the Site can be found in the 2008 Operations and Maintenance Manual for OU1, OU2 and South Slurry Pond Remedial Action Activities (O&M Manual). The manual was developed to be inclusive of all Superfund-related O&M activities required at the Site and will be updated as needed.

The O&M activities for OU1 were related to groundwater monitoring and operation of the GETS. The activities related to OU1 were completed in May 2010. The O&M activities for South Slurry Pond are related to groundwater monitoring and inspection of the cap/cover system. The South Slurry Pond activities are anticipated to continue for a total of thirty (30) years, or through 2027. The O&M activities for OU2 are primarily related to inspection of the installed cap and/or cover systems. These activities related to OU2 are anticipated to continue for a total of thirty (30) years, or through 2038.

The O&M activities for OU2 and the South Slurry Pond are ongoing and consist primarily of field inspection/observation activities and groundwater monitoring. The following list is a general overview of the O&M activities at the Site.

- Inspect vegetative/erosion/pavement caps for erosion, rutting, settlement, ponding or other significant damage.
- Inspect fencing, gates and locks for significant breaches and operability.
- Observe signage is in required locations and visible.
- Observe stormwater systems and confirm operating without restrictions, significant silt buildup, debris, etc.
- Observe monitoring well casings and locks for damage.
- Review groundwater monitoring records to confirm that the appropriate monitoring has been conducted.
- Continued groundwater monitoring associated with the south slurry pond.

The O&M activities will continue to be implemented by Southwire and an annual O&M Monitoring Report for the Site will be prepared in accordance with the O&M Manual. More detailed information related to the required O&M at the Site can be found in the O&M Manual.

Institutional Controls

The ROD required the development of Institutional Controls in the form of Environmental Covenants to restrict groundwater and land use at the Site. Two Environmental Covenants were prepared for the Site, one for Century's property and one for the Out lot containing the former waste impoundments owned by Southwire. These Environmental Covenants were developed, approved by the EPA and KDWM\ and recorded at the Hancock County Court in November 2010. The Environmental Covenants include the following provisions, as required by the ROD:

- No residential use of the Site,
- No potable water use of groundwater at the Site, and
- No soil disturbance, cap disturbance or construction is permitted within the identified focus areas without first obtaining approval from the EPA and KDWM.

The Institutional Controls are maintained and enforced by the current Site owners, Southwire and Century.

7. Five-Year Reviews

Pursuant to CERCLA section 121(c), 42 U.S.C. 9601 *et seq.,* and the EPA's Five-Year Review Guidance, and because this remedy will result in hazardous substances, pollutants or contaminants remaining on-site above levels that allow for unlimited use and unrestricted exposure, a statutory review must be conducted every five years after initiation of remedial activities at the Site. The objective of the Five-Year Review is to ensure that the remedy continues to be protective of human health and the environment. The First Five-Year Review was completed in 2001, and the Second Five-Year Review was completed in 2006. The Third-Five Year Review was signed on September 1, 2011.

The protectiveness statement from the Third Five-Year Review indicated that all remedial activities at the Site are complete, the cleanup requirements have been met and the remedial action is protective of human health and the environment. The Fourth Five-Year Review is required to be completed on or before September 1, 2016.

8. Community Involvement

- As part of preparation for the IROD, a public comment period was held from January 7, 1993 to February 7, 1993, and comment response was included in the IROD.
- As part of preparation for the ROD, a public comment period was held from July 28, 1999 to August 28, 1999 and comment response was included in the ROD.
- As part of the preparation for the Five-Year Review—a public notice was published in the *Hancock County Clarion* (local newspaper), on May 5, 2011, announcing the commencement of the Five-Year Review process for the National Southwire Aluminum Superfund Site inviting community participation. In addition, the Five-Year Review report will be made available to the public once it has been finalized.

9. Determination That the Site Meets the Criteria for Deletion in the NCP

The NSA Site meets all of the site completion requirements specified in 40 CFR 400.325(e) and the Office of Solid Waste and Emergency Response (OSWER) Directive 9320.2–22, Close Out Procedures for NPL Sites. Specifically, the QA/QC information for the Site indicates that the ROD specified performance standards and remedial action objectives have been achieved at all identified areas of concern. Therefore, the implemented remedy achieves the degree of cleanup and protection specified in the ROD, and no further Superfund response is needed at the Site to be protective of human health and the environment. The selected remedial and removal actions and associated cleanup goals are consistent with EPA policy and guidance. The O&M activities will be continued by Southwire to ensure continued protectiveness of the remedy.

V. Deletion Action

The EPA, with concurrence of the State of Kentucky through the Kentucky Division of Waste Management, has determined that all appropriate

response actions under CERCLA, other than operation, maintenance, monitoring and five-year reviews have been completed. Therefore, the EPA is deleting the Site from the NPL.

Because the EPA considers this action to be noncontroversial and routine, the EPA is taking it without prior publication. This action will be effective *October 5, 2015* unless the EPA receives adverse comments by *September 21, 2015*. If adverse comments are received within the 30-day public comment period, the EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion, and it will not take effect. The EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: August 6, 2015.

Heather McTeer Toney,

Regional Administrator, Region 4.

For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Appendix B to Part 300—[Amended]

■ 2. Table 1 of Appendix B to part 300 is amended by removing ''KY'', ''National Southwire Aluminum Co'', ''Hawesville''.

[FR Doc. 2015–20611 Filed 8–20–15; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 80, No. 162
Friday, August 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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

[Document Number AMS–FV–14–0087, FV–15–329]

United States Standards for Grades of Processed Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA) proposes to revise the United States Standards for Grades of Processed Raisins. AMS is proposing to remove five references to the term ''midget'' throughout the standards. These changes would modernize and clarify the standards by removing dual terminology for the same requirement.

DATES: Comments must be submitted on or before October 20, 2015.

ADDRESSES: Interested persons are invited to submit comments to the Standardization Branch, Specialty Crops Inspection Division, Fruit and Vegetable Program, Agricultural Marketing Service, U.S. Department of Agriculture, National Training and Development Center, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia 22406; fax: (540) 361–1199, or on the Web at: *www.regulations.gov.* Comments should reference the dates and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours. All comments submitted in response to this notice will be included in the public record and will be made available to the public and can be viewed as submitted, including any personal information that you provide, on the Internet via *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Lindsay H. Mitchell at the address above, or at phone (540) 361–1120; fax (540) 361–1199; or, email *lindsay.mitchell@ams.usda.gov.* Copies of the proposed U.S. Standards for Grades of Processed Raisins are available on the Internet at *http://www.regulations.gov.* Copies of the current U.S. Standards for Grades of Processed Raisins are available on the Specialty Crops Inspection Division Web site at *www.ams.usda.gov/scihome.*

SUPPLEMENTARY INFORMATION: The proposed changes remove the dual nomenclature terminology ''small or midget'' for the same requirement from the United States Standards for Grades of Processed Raisins. These revisions also affect the grade requirements under the marketing order, 7 CFR parts 989, issued under the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 601–674) and applicable imports.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Executive Order 13175

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

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act and Paperwork Reduction Act

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

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

There are approximately 3,000 California raisin producers and 28 handlers subject to regulation under the marketing order. The Small Business Administration defines small agricultural producers as those with annual receipts less than $750,000, and defines small agricultural service firms as those with annual receipts less than $7,000,000 (13 CFR 121.201).

Based on shipment data and other information provided by the Raisin Administrative Committee (RAC), which administers the federal marketing order for raisins produced from grapes grown in California, a majority of producers and approximately 18 handlers of California raisins may be classified as small entities. This action should not have any impact on handlers' or growers' benefits or costs.

The action would clarify AMS grade standards by eliminating the use of the term ''midget,'' while consistently using the term ''small'' for raisins graded in that category. The industry has used the two grade terms interchangeably for years. The proposed grade standards would be applied uniformly by all handlers.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this rule would not change the information collection and recordkeeping requirements previously approved, and would impose no additional reporting or recordkeeping burden on domestic producers, first handlers, and importers of processed raisins.

USDA has not identified any relevant Federal rules that duplicate, overlap, or

conflict with this rule. The rule will impact marketing programs that regulate the handling of processed raisins under 7 CFR part 989. Raisins under a marketing order have to meet certain requirements set forth in the grade standards. In addition, raisins are subject to section 8e import requirements under the Agricultural Marketing Act of 1937, as amended (7 U.S.C. 601–674), which requires imported raisins to meet grade, size, and quality under the applicable marketing order (7 CFR part 999).

Background

AMS continually reviews all fruit and vegetable grade standards to ensure their usefulness in the industry, and to modernize language and remove duplicative terminology. On May 13, 2013, AMS received a petition from the Little People of America stating that they ''are trying to raise awareness around and eliminate the use of the word midget.'' The petition further stated that, ''Though the use of the word midget by the USDA when classifying certain food products is benign, Little People of America, and the dwarfism community, hopes that the USDA would consider phasing out the term midget.''

AMS determined that the processed raisin grade standard contained ''small or midget'' terminology for the same requirement. Before developing these proposed revisions, AMS solicited comments and suggestions about the grade standards from the RAC. The RAC represents the entire California raisin industry; no other state produces raisins commercially. On August 14, 2014, the RAC approved the removal of the term midget from the standards.

AMS is proposing to remove five references to the term ''midget'' in the following sections: 52.1845(b) and (c), 52.1850(a)(2) and (a)(3), and Table I. The proposed revisions would modernize and help clarify the language of the standard by removing dual terminology for the same requirement.

The proposed rule provides a 60-day period during which interested parties may comment on the revisions to the standard.

List of Subjects in 7 CFR Part 52

Food grades and standards, Food labeling, Frozen foods, Fruit juices, Fruits, Reporting and recordkeeping requirements, Vegetables.

For reasons set forth in the preamble, 7 CFR part 52 is proposed to be amended as follows:

PART 52—[AMENDED]

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

Authority: 7 U.S.C. 1621–1627.

■ 2. In § 52.1845, paragraphs (b) and (c) are revised to read as follows:

§ 52.1845 [Amended]

* * * * *

(b) *Small* size raisins means that 95 percent, by weight, of all the raisins will pass through round perforations 24/64-inch in diameter, and not less than 70 percent, by weight, of all raisins will pass through round perforations 22/64-inch in diameter.

(c) *Mixed* size raisins means a mixture which does not meet either the requirements for ''select'' size; or for ''small'' size.

* * * * *

■ 3. In § 52.1846, Table I, is amended, under ''Substandard Development and Undeveloped'' by revising the entry for ''small size'' to read as follows:

§ 52.1846 Grades of seedless raisins.

* * * * *

TABLE I

Defects	U.S. Grade A	U.S. Grade B	U.S. Grade C
*	*	*	*
Substandard Development and Undeveloped	Total	Total	Total
*	*	*	*
Small size	2	3	5
*	*	*	*

■ 4. In § 52.1850, paragraphs (a)(2) and (3) are revised to read as follows:

§ 52.1850 [Amended]

* * * * *

(a) * * *

(2) *Small* size raisins means that all of the raisins will pass through round perforations 34/64-inch in diameter and not less than 90 percent, by weight, of all the raisins will pass through round perforations 22/64-inch in diameter.

(3) *Mixed* size raisins means a mixture does not meet either the requirements for ''select'' size or for ''small'' size.

* * * * *

Dated: August 13, 2015.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2015–20391 Filed 8–20–15; 8:45 am]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

[Docket Nos. PRM–20–28, PRM–20–29, and PRM–20–30; NRC–2015–0057]

Linear No-Threshold Model and Standards for Protection Against Radiation

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of docketing and request for comment; extension of comment period.

SUMMARY: On June 23, 2015, the U.S. Nuclear Regulatory Commission (NRC) requested public comment on three petitions for rulemaking (PRM) requesting that the NRC amend its ''Standards for Protection Against Radiation'' regulations and change the basis of those regulations from the linear no-threshold model of radiation protection to the radiation hormesis model. The public comment period was originally scheduled to close on September 8, 2015. The NRC is extending the public comment period to allow more time for members of the public to develop and submit their comments.

DATES: The comment period for the document published on June 23, 2015, at 80 FR 35870, is extended. Comments should be filed no later than November 19, 2015. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0057. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Email comments to: Rulemaking.Comments@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Solomon Sahle, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–3781, email: *Solomon.Sahle@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2015–0057 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0057.
- *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.*
- *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.

B. Submitting Comments

Please include Docket ID NRC–2015–0057 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Discussion

On June 23, 2015, the NRC requested public comment on three PRMs, PRM–20–28, PRM–20–29, and PRM–20–30, requesting that the NRC amend its ''Standards for Protection Against Radiation'' regulations and change the basis of those regulations from the linear no-threshold model of radiation protection to the radiation hormesis model. The NRC is examining the issues raised in these PRMs to determine whether they should be considered in rulemaking.

The public comment period was originally scheduled to close on September 8, 2015. The NRC is extending the public comment period on this document until November 19, 2015, to allow more time for members of the public to submit their comments.

Dated at Rockville, Maryland, this 17th day of August, 2015.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2015–20722 Filed 8–20–15; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1238

RIN 2590–AA74

Proposed Amendments to the Stress Test Rule

AGENCY: Federal Housing Finance Agency.

ACTION: Notice of proposed rulemaking with request for comment.

SUMMARY: The Federal Housing Finance Agency (FHFA) is proposing amendments to its stress testing rule adopted in 2013 to implement section 165(i) of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The amendments would modify the start date of the stress test cycles from October 1 of a calendar year to January 1 of the following calendar year. The amendments would also modify the dates for FHFA to issue scenarios for the upcoming cycle, the dates for the regulated entities to report the results of their stress tests to FHFA, and the dates for the regulated entities to publicly disclose a summary of their stress test results for the severely adverse scenario. These amendments would align FHFA's rule with rules adopted by other financial institution regulators that implement the Dodd-Frank stress testing requirements.

DATES: Comments on the proposed amendments must be received on or before September 21, 2015.

ADDRESSES: You may submit your comments, identified by regulatory identification number (RIN) 2590–AA74, by any of the following methods:

- *Agency Web site: www.fhfa.gov/open-for-comment-or-input.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by email to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by the agency. Please include ''RIN 2590–AA74'' in the subject line of the message.
- *Hand Delivered/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/

RIN 2590–AA74, Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20024. Deliver the package to the Seventh Street entrance Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.

• *U.S. Mail, United Parcel Service, Federal Express or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA74, Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20024.

See **SUPPLEMENTARY INFORMATION** for additional information on submission and posting of comments.

FOR FURTHER INFORMATION CONTACT: Naa Awaa Tagoe, Senior Associate Director, Office of Financial Analysis, Modeling and Simulations, (202) 649–3140, *naaawaa.tagoe@fhfa.gov;* Stefan Szilagyi, Examination Manager, FHLBank Modeling, FHLBank Risk Modeling Branch (202) 649–3515, *stefan.szilagy@fhfa.gov;* Karen Heidel, Senior Counsel, Office of General Counsel, (202) 649–3073, *karen.heidel@fhfa.gov;* or Mark D. Laponsky, Deputy General Counsel, Office of General Counsel, (202) 649–3054, *mark.laponsky@fhfa.gov.* The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Comments

FHFA invites comment on all aspects of the proposed amendments and will take all comments into consideration before adopting amendments through a final rule. Copies of all comments received will be posted without change on the FHFA Web site at *http://www.fhfa.gov,* and will include any personal information you provide, such as your name, address, email address, and telephone number. In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m. at the Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20024. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 649–3804.

II. Background

FHFA is an independent agency of the federal government established to regulate and oversee the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises), and the Federal Home Loan Banks (Bank(s)) (collectively, the regulated entities).[1] FHFA is the primary federal financial regulator of each regulated entity. FHFA's regulatory mission is to ensure, among other things, that each of the regulated entities ''operates in a safe and sound manner'' and that their ''operations and activities . . . foster liquid, efficient, competitive, and resilient national housing finance markets.'' [2]

On September 26, 2013, FHFA published a final rule implementing section 165(i)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act),[3] which requires certain financial companies with total consolidated assets of more than $10 billion to conduct annual stress tests to determine whether the companies have the capital necessary to absorb losses as a result of adverse economic conditions. Each regulated entity is covered by this Dodd-Frank Act requirement. FHFA's regulation, located at 12 CFR part 1238, requires each regulated entity to conduct an annual stress test based on scenarios provided by FHFA and consistent with FHFA prescribed methodologies and practices. The annual stress test period begins October 1 of one year and ends September 30 of the next year, which coincides with the testing period established by Federal Reserve Board (FRB) regulations for its Dodd-Frank Act stress testing.

FHFA's regulation requires that the agency issue to the regulated entities stress test scenarios that are generally consistent with and comparable to those developed by the FRB not later than 15 days after the FRB publishes its scenarios.[4] Each regulated entity is required to report the stress test results to FHFA and the FRB and publicly disclose a summary of the stress test results for the severely adverse scenario. The reporting date for the Enterprises is on or before February 5, and for the Banks it is on or before April 30.[5] Each Enterprise must publicly disclose a summary of its results from the severely adverse scenario of the stress test not earlier than April 15 and not later than April 30.[6] The Banks are required to disclose their summaries not earlier than July 15 and not later than July 30.[7] These dates were established by measuring forward from the corresponding dates in the FRB regulation, after accounting for differences in the business models of the regulated entities from those of the institutions regulated by the FRB.

On October 27, 2014, the FRB published a final rule amending several dates relevant to its rule and from which FHFA measured to determine appropriate dates for stress testing cycles, scenario issuance, test reporting, and summary test disclosures.[8] The FRB's new rule establishes January 1 of each year as the beginning of the stress testing cycle (changed from October 1) and the following December 31 as the date as of which the regulated entity is to identify and use data for testing.[9] The new FRB rule requires large bank holding companies with $50 billion or more in total consolidated assets to report their test results not later than April 5 [10] and publicly disclose their summary results by mid-July.[11] The new FRB rule also requires U.S. banking institutions with total consolidated assets over $10 billion and less than $50 billion to report their test results by July 31 and publicly disclose their results during the period beginning October 15 and ending October 31.[12] Since FHFA measured several of its regulatory dates from corresponding dates in the FRB regulation, FHFA now needs to amend its regulation to maintain consistency and comparability in stress testing regimes.

As a result of FHFA's experience through two stress test cycles, these amendments also propose to lengthen the time between FRB's issuance of its scenarios and FHFA's issuance. The existing 15 day period after FRB's issuance has proven to be too short to allow appropriate analysis, stakeholder input, and adjustment of the scenarios to account for the differences in business models between the Enterprises and Banks as compared with other regulated institutions conducting Dodd-Frank stress tests under their regulators' rules. Consequently, FHFA proposes to extend the time by which it is required to issue its scenarios to 30 calendar days following FRB's issuance of its final element of the supervisory scenarios.

[1] Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended by the Housing and Economic Recovery Act of 2008, 12 U.S.C. 4501, *et seq.*

[2] 12 U.S.C. 4513(a)(1)(B).

[3] 78 FR 59219 (September 26, 2013).

[4] 12 CFR 1238.3(b).

[5] 12 CFR 1238.5(a).

[6] 12 CFR 1238.7(a).

[7] 12 CFR 1238.7(a).

[8] 79 FR 64025 (October 27, 2014), codified at 12 CFR part 252.

[9] 12 CFR 252.12(t)(2), *See* 79 FR 64046.

[10] 12 CFR 252.57(a)(1), *See* 79 FR 64054.

[11] 12 CFR 252.58(a)(1)(i), requires companies to publicly disclose a summary of the stress test results within 15 calendar days after the FRB discloses the results of its supervisory stress test. The FRB will publicly disclose a summary of the supervisory stress test results by June 30 pursuant to 12 CFR 252.46(b)(1). *See* 79 FR 64054.

[12] 12 CFR 252.17(a)(3)(iii), *See* 79 FR 64049.

III. Analysis of Proposed Rule

The purpose of the proposed rule is to realign FHFA's stress testing rule with those of the FRB, Federal Deposit Insurance Corporation (FDIC) and the Office of the Comptroller of the Currency (OCC) by modifying: (1) The start date of the stress test cycles from October 1 of a calendar year to January 1 of the following calendar year; (2) the dates regulated entities are required to report stress test results to FHFA and the FRB; (3) the dates by which the regulated entities are required to publicly disclose summaries of the results for the severely adverse scenario; and (4) the date by which FHFA is required to issue stress testing scenarios to its regulated entities.

The proposed amendments would shift the start of the stress test cycles, as well as the related deadline for submission of results, by one calendar quarter. As a result of the proposed shift, the stress test cycles would begin on January 1, based on data as of December 31 of the preceding calendar year. This cycle matches the cycle recently adopted by the other Dodd-Frank stress testing regulators. Each Enterprise would be required to report the results of its stress test to FHFA and the FRB by May 20, and publicly disclose a summary of the stress test results not earlier than August 1 and not later than August 15 of each year. This change mirrors the FRB's new requirement for large bank holding companies with over $50 billion in total consolidated assets. The changes required to maintain alignment with the FRB also result in shifting the reporting deadline for the Banks by four months, requiring submission of results to FHFA and FRB on or before August 31 and public disclosure not earlier than November 15 and not later than November 30 of each year.

To maintain consistency with the other Dodd-Frank stress testing regulators, the stress testing cycle shift will take effect beginning on January 1, 2016, for all regulated entities.

Section 1238.3(b) of the current rule states that: ''[n]ot later than 15 days after the FRB publishes its scenarios, FHFA will issue to all regulated entities a description of the baseline, adverse, and severely adverse scenarios that each regulated entity shall use to conduct its annual stress tests under this part.'' On October 27, 2014, the FRB changed the publication date by which it must publish its scenarios for the upcoming cycle from November 15 to February 15, for the cycle beginning January 1, 2016 and thereafter.[13] The effect of the rule change shifts the date for scenario issuance by approximately three months. FHFA proposes to change § 1238.3(b) to provide additional time for it to analyze and adjust the scenarios it issues to the Enterprises and Banks. The proposed amendment will change the existing fifteen (15) day period in § 1238.3(b) to a thirty (30) day period. Thus, if the FRB issues its scenarios including all elements and assumptions on February 15, under the proposed amendment FHFA would issue its scenarios on or before March 17 (March 16 in a leap year).

IV. Coordination With the FRB and the Federal Insurance Office

In accordance with section 165(i)(2)(C) of the Dodd-Frank Act, (12 U.S.C. 5365(i)(2)(C)), FHFA has coordinated with both the FRB and the Federal Insurance Office (FIO). On October 27, 2014, the FRB published a final rule covering ''bank holding compan[ies] with total consolidated assets of greater than $10 billion but less than $50 billion and savings and loan holding companies and state member banks with total consolidated assets of greater than $10 billion,'' [14] and large bank holding companies and non-bank financial companies, also known as ''covered companies''; [15] the FDIC issued its final rule on November 21, 2014; [16] and the OCC issued its final rule on December 3, 2014.[17] Although FHFA's amended final rule would not be identical to those of the FRB, the FDIC, and the OCC, it is consistent and comparable with them. FHFA consulted with the FRB and FIO before proposing these amendments.

V. Differences Between the Banks and the Enterprises

Section 1313(f) of the Safety and Soundness Act requires the Director to consider the differences between the Banks and the Enterprises whenever promulgating regulations that affect the Banks. In developing this proposed rule, FHFA considered the differences between the Banks and the Enterprises, but also adhered to the statutory mandate that the regulation be ''consistent and comparable'' with the regulations of the other agencies. In implementing the regulation, FHFA will define scenarios for the regulated entities, bearing in mind the key risk exposures at each regulated entity.

In the proposed rule, FHFA requires different timeframes for reporting stress test results for the Enterprises versus the Banks. For the Enterprises, FHFA sets the dates for reporting stress test results to the regulator, the FRB, and the public in proximity to similar dates in the other agencies' rules for institutions with over $50 billion in assets. Reporting dates for all the Banks, regardless of size, are set in proximity to similar dates for institutions with less than $50 billion in assets. As a result, the Banks have over three additional months to report results to FHFA, the FRB, and the public.

VI. Paperwork Reduction Act

The proposed rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*). Therefore, FHFA has not submitted any information to the Office of Management and Budget for review.

VII. Regulatory Flexibility Act

The proposed rule applies only to the regulated entities, which do not come within the meaning of small entities as defined in the Regulatory Flexibility Act (see 5 U.S.C. 601(6)). Therefore, in accordance with section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the General Counsel of FHFA certifies that this proposed rule, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 1238

Administrative practice and procedure, Capital, Federal Home Loan Banks, Government-sponsored enterprises, Regulated entities, Reporting and recordkeeping requirements, Stress test.

Authority and Issuance

For the reasons stated in the **SUPPLEMENTARY INFORMATION**, and under the authority of 12 U.S.C. 4513, 4526, and 5365(i), FHFA proposes to amend part 1238 of Title 12 of the Code of Federal Regulations as follows:

PART 1238—STRESS TESTING OF REGULATED ENTITIES

■ 1. The authority citation for part 1238 continues to read as follows:

Authority: 12 U.S.C. 1426; 4513; 4526; 4612; 5365(i).

■ 2. Amend § 1238.3 by revising paragraphs (a)(1) and (b) to read as follows:

[13] 12 CFR 252.14(b)(1), *See* 79 FR 64047.

[14] 12 CFR part 252, subpart B, *See* 79 FR 64045.

[15] 12 CFR part 252, subpart F, *See* 79 FR 64051.

[16] 79 FR 69365 (November 21, 2014), codified at 12 CFR part 325.

[17] 79 FR 71630 (December 3, 2014), codified at 12 CFR part 46.

§ 1238.3 Annual stress test.

(a) * * *

(1) Shall complete an annual stress test of itself based on its data as of December 31 of the preceding calendar year;

* * * * *

(b) *Scenarios provided by FHFA.* In conducting its annual stress tests under this section, each regulated entity must use scenarios provided by FHFA, which shall be generally consistent with and comparable to those established by the FRB, that reflect a minimum of three sets of economic and financial conditions, including a baseline, adverse, and severely adverse scenario. Not later than 30 days after the FRB publishes its scenarios, FHFA will issue to all regulated entities a description of the baseline, adverse, and severely adverse scenarios that each regulated entity shall use to conduct its annual stress tests under this part.

* * * * *

■ 3. Amend § 1238.5 by revising paragraph (a) to read as follows:

§ 1238.5 Required report to FHFA and the FRB of stress test results and related information.

(a) *Report required for stress tests.* On or before May 20 of each year, the Enterprises must report the results of the stress tests required under § 1238.3 to FHFA, and to the FRB, in accordance with paragraph (b) of this section; and on or before August 31 of each year, the Banks must report the results of the stress tests required under § 1238.3 to FHFA, and to the FRB, in accordance with paragraph (b) of this section;

* * * * *

■ 4. Amend § 1238.7 by revising paragraph (a) to read as follows:

§ 1238.7 Publication of results by regulated entities.

(a) *Public disclosure of results required for stress tests of regulated entities.* The Enterprises must disclose publicly a summary of the stress test results for the severely adverse scenario not earlier than August 1 and not later than August 15 of each year. Each Bank must disclose publicly a summary of the stress test results for the severely adverse scenario not earlier than November 15 and not later than November 30 of each year. The summary may be published on the regulated entity's Web site or in any other form that is reasonably accessible to the public;

* * * * *

Dated: August 13, 2015.

Melvin L. Watt,

Director, Federal Housing Finance Agency.

[FR Doc. 2015–20613 Filed 8–20–15; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. FAA–2015–3464; Notice No. 23–15–04–SC]

Special Conditions: Cirrus Aircraft Corporation, SF50; Auto Throttle.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Cirrus Aircraft Corporation Model SF50 airplane. This airplane will have a novel or unusual design feature(s) associated with installation of an Auto Throttle System. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Send your comments on or before October 5, 2015.

ADDRESSES: Send comments identified by docket number FAA–2015–3464 using any of the following methods:

- *Federal eRegulations Portal*: Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail*: Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery of Courier*: Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m., and 5 p.m., Monday through Friday, except Federal holidays.
- Fax: Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://regulations.gov,* including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov*.

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m., and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jeff Pretz, FAA, Regulations and Policy Branch, ACE–111, Small Airplane Directorate, Aircraft Certification Service, 901 Locust; Kansas City, Missouri 64106; telephone (816) 329–3239; facsimile (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

Background

On September 9, 2008, Cirrus Aircraft Corporation applied for a type certificate for their new Model SF50. On December 11, 2012 Cirrus elected to adjust the certification basis of the SF50 to include 14 CFR part 23 through amendment 62. The SF50 is a low-wing, 7-seat (5 adults and 2 children), pressurized, retractable gear, carbon composite airplane with one turbofan engine mounted partially in the upper aft fuselage. It is constructed largely of carbon and fiberglass composite materials. Like other Cirrus products, the SF50 includes a ballistically deployed airframe parachute. The SF50 has a maximum operating altitude of 28,000 feet and the maximum takeoff weight will be at or below 6,000 pounds with a range at economy cruise of roughly 1,000 nautical miles.

Current part 23 airworthiness regulations do not contain appropriate safety standards for an Auto Throttle System (ATS) installation; therefore, special conditions are required to establish an acceptable level of safety. Part 25 regulations contain appropriate safety standards for these systems, making the intent for this project to apply the language in § 25.1329 for the auto throttle, while substituting § 23.1309 and § 23.143 in place of the similar part 25 regulations referenced in § 25.1329. In addition, malfunction of the ATS to perform its intended function shall be evaluated per the Loss of Thrust Control (LOTC) criteria established under part 33 for electronic engine controls. An analysis must show that no single failure or malfunction or probable combinations of failures of the ATS will permit the LOTC probability to exceed those established under part 33 for an electronic engine control.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Cirrus must show that the Model SF50 meets the applicable provisions of part 23, as amended by amendments 23–1 through 23–62 thereto.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 23) do not contain adequate or appropriate safety standards for the SF50 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the SF50 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36 and the FAA must issue a finding of regulatory adequacy under § 611 of Public Law 92–574, the Noise Control Act of 1972.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type-certification basis under § 21.17(a)(2).

Novel or Unusual Design Features

The SF50 will incorporate the following novel or unusual design features: An ATS as part of the automatic flight control system. The ATS utilizes a Garmin ''smart'' autopilot servo with a physical connection to the throttle quadrant control linkage. The auto throttle may be controlled by the pilot with an optional auto throttle control panel adjacent to the throttle lever. The auto throttle also provides an envelope protection function which does not require installation of the optional control panel.

Discussion

Part 23 currently does not sufficiently address auto throttle (also referred to as auto thrust) technology and safety concerns. Therefore, special conditions must be developed and applied to this project to ensure an acceptable level of safety has been obtained. For approval to use the ATS during flight, the SF50 must demonstrate compliance to the intent of the requirements of § 25.1329, applying the appropriate part 23 references to § 23.1309 (to include performing a functional hazard assessment or system safety assessment to determine the applicable Software and Airborne Electronic Hardware assurance levels, and compliance to DO–178C & DO–254, as required) and § 23.143.

In addition, a malfunction of the ATS to perform its intended function is an LOTC event, and may result in a total loss of thrust control, transients, or uncommanded thrust changes. The classification of the failure condition for an LOTC event on a Class II single-engine aircraft is hazardous for aircraft that stall at or below 61 knots. From publication AC 23.1309–1E, based upon failure probability values shown in Figure 2, an LOTC event would have to meet a probability of failure value not to exceed $1X10^{-6}$. In-service data for LOTC in single-engine turbine aircraft shows LOTC events exceed this probability; therefore, part 33 requirements for engine control probabilities will be accepted for the part 23 LOTC requirement.

The probabilities of failure for an LOTC event on a turbine engine shall not exceed the following (see AC33.28–1 and ANE–1993–33.28TLD–R1 for further guidance):

1. Average Events per Million Hours: 10 ($1X10^{-05}$ per hour).

2. Maximum Events per Million Hours: 100 ($1X10^{-04}$ per hour).

Note: The maximum events per flight hour are intended for Time Limited Dispatch (TLD) operation where the risk exposure is mitigated by limiting the time in which the aircraft is operated in the degraded condition.

Applicability

As discussed above, these special conditions are applicable to the Model SF50. Should Cirrus apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model of airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Cirrus Aircraft Corporation Model SF50 airplanes.

1. Certification of auto throttle system under part 23.

(a) Quick disengagement controls for the auto thrust functions must be provided for each pilot. The auto thrust quick disengagement controls must be located on the thrust control levers. Quick disengagement controls must be readily accessible to each pilot while operating the thrust control levers.

(b) The effects of a failure of the system to disengage the auto thrust functions when manually commanded by the pilot must be assessed in accordance with the requirements of § 23.1309.

(c) Engagement or switching of the flight guidance system, a mode, or a sensor may not cause the auto thrust system to affect a transient response that alters the airplane's flight path any greater than a minor transient, as defined in paragraph (l)(1) of this section.

(d) Under normal conditions, the disengagement of any automatic control function of a flight guidance system may not cause a transient response of the airplane's flight path any greater than a minor transient.

(e) Under rare normal and non-normal conditions, disengagement of any automatic control function of a flight guidance system may not result in a transient any greater than a significant transient, as defined in paragraph (l)(2) of this section.

(f) The function and direction of motion of each command reference

control, such as heading select or vertical speed, must be plainly indicated on, or adjacent to, each control if necessary to prevent inappropriate use or confusion.

(g) Under any condition of flight appropriate to its use, the flight guidance system may not produce hazardous loads on the airplane, nor create hazardous deviations in the flight path. This applies to both fault-free operation and in the event of a malfunction, and assumes that the pilot begins corrective action within a reasonable period of time.

(h) When the flight guidance system is in use, a means must be provided to avoid excursions beyond an acceptable margin from the speed range of the normal flight envelope. If the airplane experiences an excursion outside this range, a means must be provided to prevent the flight guidance system from providing guidance or control to an unsafe speed.

(i) The flight guidance system functions, controls, indications, and alerts must be designed to minimize flight crew errors and confusion concerning the behavior and operation of the flight guidance system. Means must be provided to indicate the current mode of operation, including any armed modes, transitions, and reversions. Selector switch position is not an acceptable means of indication. The controls and indications must be grouped and presented in a logical and consistent manner. The indications must be visible to each pilot under all expected lighting conditions.

(j) Following disengagement of the auto thrust function, a caution (visual and auditory) must be provided to each pilot.

(k) During auto thrust operation, it must be possible for the flight crew to move the thrust levers without requiring excessive force. The auto thrust may not create a potential hazard when the flight crew applies an override force to the thrust levers.

(l) For purposes of this section, a transient is a disturbance in the control or flight path of the airplane that is not consistent with response to flight crew inputs or environmental conditions.

(1) A minor transient would not significantly reduce safety margins and would involve flight crew actions that are well within their capabilities. A minor transient may involve a slight increase in flight crew workload or some physical discomfort to passengers or cabin crew.

(2) A significant transient may lead to a significant reduction in safety margins, an increase in flight crew workload, discomfort to the flight crew, or physical distress to the passengers or cabin crew, possibly including non-fatal injuries. Significant transients do not require, in order to remain within or recover to the normal flight envelope, any of the following:

i. Exceptional piloting skill, alertness, or strength.

ii. Forces applied by the pilot which are greater than those specified in § 23.143(c).

iii. Accelerations or attitudes in the airplane that might result in further hazard to secured or non-secured occupants.

Cirrus must also demonstrate, through tests and analysis, that no single failure or malfunction or probable combinations of failures of the auto thrust system components results in the probability for LOTC, or un-commanded thrust changes and transients that result in an LOTC event, to exceed the following:

1. Average Events per Million Hours: 10 ($1X10^{-05}$ per hour)

2. Maximum Events per Million Hours: 100 ($1X10^{-04}$ per hour)

Note: The term ''probable'' in the context of ''probable combination of failures'' does not have the same meaning as used for a safety assessment process. The term ''probable'' in ''probable combination of failures'' means ''foreseeable,'' or those failure conditions anticipated to occur one or more times during the operational life of each airplane.

Issued in Kansas City, Missouri, on August 13, 2015.

Earl Lawrence,

Manger, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–20756 Filed 8–20–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–3144; Directorate Identifier 2014–NM–110–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Dassault Aviation Model FALCON 900EX airplanes and FALCON 2000EX airplanes. This proposed AD was prompted by a report of significant fuel leakage at the middle position of the left outboard slat. This proposed AD would require modifying the assembly of the slat extension mechanical stop. We are proposing this AD to prevent failure of the assembly of the slat extension mechanical stop, which if not corrected, could lead to a significant fuel leak and result in an uncontained fire.

DATES: We must receive comments on this proposed AD by October 5, 2015.

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

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

For service information identified in this proposed AD, contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3144; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149.

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–2015–3144; Directorate Identifier 2014–NM–110–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2014–0115, dated May 13, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Dassault Aviation Model FALCON 900EX airplanes and FALCON 2000EX airplanes. The MCAI states:

> After landing, an aeroplane experienced a significant fuel leakage at the middle position of the left outboard slat. Investigations showed that the fuel spillage originated in a structural cap, which had been punctured by a broken locking pin of the slat extension mechanical stop.
>
> A design review revealed that the locking pin could become loose due to an incorrect installation combined with a non-fault-tolerant design.
>
> This condition, if not corrected, may lead to a significant fuel leak, possibly resulting in an uncontained fire.
>
> To address this potential unsafe condition, Dassault Aviation developed a modification of the slat extension mechanical stop assembly (Mod M3678 for F2000EX aeroplanes and Mod M5870 for F900EX aeroplanes) with the purpose to increase its robustness with regards to possible mishandling on production or during maintenance. Dassault Aviation also published Service Bulletin (SB) F2000EX–344 and SB F900EX–450, for embodiment in service of that modification.
>
> For the reasons described above, this [EASA AD] requires modification of the slat extension mechanical stop assembly.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3144.

Related Service Information Under 1 CFR Part 51

We reviewed Dassault Service Bulletin F900EX–450, dated March 10, 2014; and Service Bulletin F2000EX–344, dated March 10, 2014. This service information describes procedures for modifying the assembly of the slat extension mechanical stop. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this NPRM.

FAA's Determination and Requirements of This Proposed AD

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

Costs of Compliance

We estimate that this proposed AD affects 67 airplanes of U.S. registry.

We also estimate that it would take about 8 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $3,510 per product. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $280,730, or $4,190 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Dassault Aviation: Docket No. FAA–2015–3144; Directorate Identifier 2014–NM–110–AD.

(a) Comments Due Date

We must receive comments by October 5, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Dassault Aviation airplanes specified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category.

(1) Dassault Aviation Model FALCON 900EX airplanes, all serial numbers on which Dassault Aviation Modification M5281 has

been embodied, except those on which Dassault Aviation Modification M5870 has been embodied in production.

(2) Dassault Aviation Model FALCON 2000EX airplanes, all serial numbers on which Dassault Aviation Modification M2846 has been embodied, except those on which Dassault Aviation Modification M3678 has been embodied in production.

(d) Subject

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

(e) Reason

This AD was prompted by a report of significant fuel leakage at the middle position of the left outboard slat. We are issuing this AD to prevent failure of the assembly of the slat extension mechanical stop, which if not corrected, could lead to a significant fuel leak and result in an uncontained fire.

(f) Compliance

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

(g) Modification

Within 9 months or 440 flight hours, whichever occurs first after the effective date of this AD: Modify the assembly of the slat extension mechanical stop, in accordance with Accomplishment Instructions of Dassault Service Bulletin F900EX–450, dated March 10, 2014; or Dassault Service Bulletin F2000EX–344, dated March 10, 2014, as applicable.

(h) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

(i) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2014–0115, dated May 13, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3144.

(2) For service information identified in this AD, contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on August 11, 2015.

Suzanne Masterson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–20586 Filed 8–20–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–3143; Directorate Identifier 2015–NM–047–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (Embraer) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Empresa Brasileira de Aeronautica S.A. (Embraer) Model EMB–135 airplanes and Model EMB–145, –145ER, –145MR, –145LR, –145MP, and –145EP airplanes. This proposed AD was prompted by a report of chafing between the fuel pump electrical harness and the fuel pump tubing during scheduled maintenance. This proposed AD would require a detailed inspection for chafing on the electrical harness of each electrical fuel pump in the fuel tanks, replacing the affected electrical fuel pump with a new or serviceable pump if necessary, and installing clamps on the fuel pump electrical harnesses. We are proposing this AD to detect and correct chafing of the fuel pump harnesses with other parts inside the fuel tank, which could present a potential ignition source that could result in a fire or fuel tank explosion.

DATES: We must receive comments on this proposed AD by October 5, 2015.

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

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

For service information identified in this proposed AD, contact Empresa Brasileira de Aeronautica S.A. (Embraer), Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170–Putim–12227–901 São Jose dos Campos–SP–Brasil; telephone +55 12 3927–5852 or +55 12 3309–0732; fax +55 12 3927–7546; email *distrib@embraer.com.br;* Internet *http://www.flyembraer.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3143; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1175; fax 425–227–1149.

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–2015–3143; Directorate Identifier 2015–NM–047–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The Agência Nacional de Aviação Civil (ANAC), which is the aviation authority for Brazil, has issued Brazilian Airworthiness Directive 2015–03–01, effective March 23, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Empresa Brasileira de Aeronautica S.A. (Embraer) Model EMB–135 airplanes and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes. The MCAI states:

> Chafing between the fuel pump electrical harness and fuel pump tubing was detected during scheduled maintenance. We are issuing this [Brazilian] AD to protect the fuel pump harnesses against chafing with other parts inside the fuel tank, which could present a potential ignition source that could result in a fire or fuel tank explosion.

The required actions include a detailed inspection for chafing on the electrical harness of each electrical fuel pump in the fuel tanks, replacing the affected electrical fuel pump with a new or serviceable pump if necessary, and installing clamps on the fuel pump electrical harnesses. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3143.

Related Service Information Under 1 CFR Part 51

Embraer has issued Service Bulletin 145–28–0030, Revision 01, dated October 22, 2010; and Service Bulletin 145LEG–28–0032, Revision 01, dated November 20, 2012. The service information describes procedures for a detailed inspection for chafing on the electrical harness of each electrical fuel pump in the fuel tanks, replacing the affected electrical fuel pump with a new or serviceable pump if necessary, and installing clamps on the fuel pump electrical harnesses. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this NPRM.

FAA's Determination and Requirements of This Proposed AD

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

Costs of Compliance

We estimate that this proposed AD affects 731 airplanes of U.S. registry.

We also estimate that it would take about 11 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $683,485, or $935 per product.

In addition, we estimate that any necessary follow-on actions would take about 6 work-hours and require parts costing $11,242, for a cost of $11,752 per product. We have no way of determining the number of aircraft that might need these actions.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Empresa Brasileira de Aeronautica S.A. (Embraer): Docket No. FAA–2015–3143; Directorate Identifier 2015–NM–047–AD.

(a) Comments Due Date

We must receive comments by October 5, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the airplanes specified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Empresa Brasileira de Aeronautica S.A. (Embraer) Model EMB–135ER–135KE, –135KL, and –135LR airplanes; and Model EMB–145, –145ER, –145MR, –145LR, –145MP, and –145EP airplanes, certificated in any category, as identified in Embraer Service Bulletin 145–28–0030, Revision 01, dated October 22, 2010.

(2) Empresa Brasileira de Aeronautica S.A. (Embraer) Model EMB–135BJ airplanes, certificated in any category, as identified in Embraer Service Bulletin 145LEG–28–0032, Revision 01, dated November 20, 2012.

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel.

(e) Reason

This AD was prompted by a report of chafing between the fuel pump electrical harness and the fuel pump tubing during scheduled maintenance. We are issuing this AD to detect and correct chafing of the fuel pump harnesses with other parts inside the fuel tank, which could present a potential ignition source that could result in a fire or fuel tank explosion.

(f) Compliance

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

(g) Detailed Inspection and Corrective Action

Do the actions specified in paragraphs (g)(1) and (g)(2) of this AD at the applicable times specified in paragraph (h)(1) or (h)(2) of this AD.

(1) Do a detailed inspection for chafing on the electrical harness of each electrical fuel pump in the fuel tanks, in accordance with the Accomplishment Instructions of Embraer Service Bulletin 145–28–0030, Revision 01, dated October 22, 2010 (for Model EMB–135ER, –135KE, –135KL, and –135LR airplanes; and Model EMB–145, –145ER, –145MR, –145LR, –145MP, and –145EP airplanes); or Embraer Service Bulletin 145LEG–28–0032, Revision 01, dated November 20, 2012 (for Model EMB–135BJ airplanes). If any chafing is found, before further flight, replace the affected electrical fuel pump with a new or serviceable pump having the same part number, in accordance with the Accomplishment Instructions of Embraer Service Bulletin 145–28–0030, Revision 01, dated October 22, 2010; or Embraer Service Bulletin 145LEG–28–0032, Revision 01, dated November 20, 2012; as applicable.

(2) Install clamps on the fuel pump electrical harnesses, in accordance with the Accomplishment Instructions of Embraer Service Bulletin 145–28–0030, Revision 01, dated October 22, 2010 (for Model EMB–135ER, –135KE, –135KL, and –135LR airplanes; and Model EMB–145, –145ER, –145MR, –145LR, –145MP, and –145EP airplanes); or Embraer Service Bulletin 145LEG–28–0032, Revision 01, dated November 20, 2012 (for Model EMB–135BJ airplanes).

(h) Compliance Times

(1) For Model EMB–135ER, –135KE, –135KL, and –135LR airplanes; and Model EMB–145, –145ER, –145MR, –145LR, –145MP, and –145EP airplanes: Do the actions specified in paragraph (g) of this AD within 2,500 flight hours or 24 months after the effective date of this AD, whichever occurs first.

(2) For Model EMB–135BJ airplanes: Do the actions specified in paragraph (g) of this AD within 4,800 flight hours or 48 months after the effective date of this AD, whichever occurs first.

(i) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Embraer Service Bulletin 145–28–0030, dated September 1, 2010 (for Model EMB–135ER, –135KE, –135KL, and –135LR airplanes; and Model EMB–145, –145ER, –145MR, –145LR, –145MP, and –145EP airplanes); or Embraer Service Bulletin 145LEG–28–0032, dated September 15, 2012 (for Model EMB–135BJ airplanes). This service information is not incorporated by reference in this AD.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1175; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Agência Nacional de Aviação Civil (ANAC); or ANAC's authorized Designee. If approved by the ANAC Designee, the approval must include the Designee's authorized signature.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Brazilian Airworthiness Directive 2015–03–01, dated March 23, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3143.

(2) For service information identified in this AD, contact Empresa Brasileira de Aeronautica S.A. (Embraer), Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170–Putim–12227–901 São Jose dos Campos–SP–Brasil; telephone +55 12 3927–5852 or +55 12 3309–0732; fax +55 12 3927–7546; email *distrib@embraer.com.br;* Internet *http://www.flyembraer.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on August 12, 2015.

Suzanne Masterson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–20589 Filed 8–20–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–108214–15]

RIN 1545–BM69

Exception From Passive Income for Certain Foreign Insurance Companies; Hearing; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to a notice of a public hearing on a proposed rulemaking.

SUMMARY: This document corrects a notice of public hearing on proposed regulations that published in the **Federal Register** on Wednesday, August 19, 2015. The proposed regulations provide guidance regarding when a foreign insurance company's income is excluded from the definition of passive income under section 1297(b)(2)(B).

DATES: Outlines of topics to be discussed at the public hearing being held on Friday, September 18, 2015 (see the document published at 80 FR 50239, August 19, 2015), are still being accepted and must be received by August 26, 2015.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Josephine Firehock at (202) 317–4932; concerning submissions of comments, the hearing and/or to be placed on the building access list to attend the hearing Oluwafunmilayo Taylor at (202) 317–6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The notice of a public hearing on a proposed rulemaking that is the subject of this document is under section 1297(b)(2)(B) of the Internal Revenue Code.

Need for Correction

As published, the notice of a public hearing on a proposed rulemaking (REG–108214–15) contains an error that is misleading and is in need of clarification.

Correction to Publication

Accordingly, the notice of a public hearing on a proposed rulemaking, that is the subject of FR Doc. 2015–20468, is corrected as follows:

1. On page 50239, in the preamble, column 3, under the caption ''SUPPLEMENTARY INFORMATION'', the last line of the first full paragraph, the language ''topic by Wednesday, August 19, 2015'' is corrected to read ''topic by Wednesday, August 26, 2015''.

Martin V. Franks,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2015–20849 Filed 8–19–15; 4:15 pm]

BILLING CODE 4830–01–P

POSTAL REGULATORY COMMISSION

39 CFR part 3050

[Docket No. RM2015–19; Order No. 2666]

Periodic Reporting

AGENCY: Postal Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is noticing a recent Postal Service filing requesting that the Commission initiate an informal rulemaking proceeding to consider changes to analytical principles relating to periodic reports (Proposal Ten). This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* September 17, 2015. *Reply Comments are due:* September 28, 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:

Table of Contents

I. Introduction
II. Proposal Ten
III. Initial Commission Action
IV. Ordering Paragraphs

I. Introduction

On August 12, 2015, the Postal Service filed a petition pursuant to 39 CFR 3050.11 requesting that the Commission initiate an informal rulemaking proceeding in order to consider changes in analytical principles relating to periodic reports.[1] Proposal Ten is attached to the Petition and proposes an analytical method change related to the proposed merger of Cost Segments 3 and 4 for purposes of constructing the Cost and Revenue Analysis (CRA) Report. Petition at 1.

II. Proposal Ten

A. Background

As background, the Postal Service explains that the historical reason for separation of Cost Segment 4, which requires costs for small post offices to be isolated and transparent, occurred when decisions to close some small post offices were under consideration. *Id.* Proposal Ten at 1. However, where postmasters (whose costs are reflected in Cost Segment 1) in small post offices (identified by the Postal Service as ''CAG K'' and ''CAG L'' offices)[2] may be doing all of the tasks with no clerks, it is difficult to use Cost Segment 4 to adequately measure labor costs at these post offices. Proposal Ten at 1.

The In-Office Cost System (IOCS) maintains a separate panel for CAG K finance numbers that generally have one clerk. When the clerk is no longer there, no IOCS readings can be obtained and, as the number of IOCS reading of CAG K offices declines, the sampling variation increases until the sample is refreshed. Data suggest product costs in Cost Segment 4 are not statistically different from other small offices. *Id.* at 2.

The Postal Service further explains that the POStPlan had potentially confusing impacts in Cost Segments 3 and 4. The Postal Service indicates that Postmaster Reliefs working at POStPlan[3] post offices were subject to reductions in force as a result of a September 5, 2014, ruling on an American Postal Workers Union arbitration that required four-hour and six-hour post offices to be assigned to clerks. According to the Postal Service, the effect of the ruling is that clerk costs in Cost Segments 3 and 4 may complicate the analysis of the effects of POStPlan. Furthermore, the Postal Service explains that recent cost increases in Cost Segment 4 are the result of reclassifying postmaster positions and shifting these positions from Cost Segment 1 to clerks in Cost Segments 3 and 4. *Id.* at 3.

B. Proposal

Under the proposal, for Fiscal Year 2015, the IOCS would include data from CAG K and L post offices with data from CAG H and J post offices, and their trial balance amounts used as control totals for full-time and part-time clerks would be merged and treated as one stratum when refreshed. *Id.* at 3–4.

Cost Segment 4 Trial Balance Accounts would be merged into the corresponding 5-digit accounts in Cost Segment 3, creating a revised ''Cost Segment 3 & 4'' worksheet. The Cost Segment 3 account numbers and titles would be retained and the CRA Component would be expanded to ''253 & 42.'' Other conforming Trial Balance worksheet changes would be made, but the merger will not affect the ''Outputs to CRA'' and ''Product specific'' tabs in the Trial Balance. *Id.* at 4.

In the Cost Segment 3 B workpapers, CAG K and L clerk costs would be incorporated into the Trial Balance control for Cost Segment 3. These changes would combine former Cost Segment 4 with the non-MODS office group in Cost Segment 3, and subject the mail processing, window service, and administrative activities at CAG K and L offices to the accepted cost methodology for each component. *Id.* Cost Segment 3 output spreadsheets and other reports would be unchanged. *Id.* The only change to the CRA Cost Model is to remove lines in the control table on sheets ''Comp Master'' and ''DK Addends'' relating to Cost Segment 4. *Id.*

---

[1] Petition of the United States Postal Service for the Initiation of a Proceeding to Consider Proposed Changes in Analytical Principles (Proposal Ten), August 12, 2015 (Petition).

[2] ''CAG'' refers to ''cost ascertainment group'' and is a method used by the Postal Service that classifies post offices based on volume of revenue generated. CAG K offices have 36–189 revenue units, and CAG L offices have less than 36. *See* Glossary of Postal Terms available at *https://usps.com/publications/pub32.*

[3] The POStPlan is a Postal Service initiative to match post office retail hours with workload, and represents an alternative, namely reducing retail window hours, in lieu of closing a post office. *See* Docket No. N2012–2, Advisory Opinion on Post Office Structure Plan, August 23, 2012.

C. Rationale

The Postal Service's rationale for Proposal Ten is that clerk costs in Cost Segment 4 have increased recently as clerks are appointed or assigned to former postmaster positions. *Id.* at 5. Moreover, because the CAG criterion using revenue amount to define Cost Segment 4 is sufficiently different from the transaction volumes used in POStPlan to designate post offices for reduction in hours, CAG K costs are not a valid proxy for POStPlan office costs. *Id.* The Postal Service further says the cost classification rationale for Cost Segment 4 is similar to Cost Segment 3 cost components because CAG K and L clerks perform a corresponding mix of activities such as mail processing, window service, and administrative components. However, Cost Segment 4 has limited IOCS sample data and some products have no Cost Segment 4 tallies, which results in zero measured costs in a given year.

The Postal Service concludes that incorporating Cost Segment 4 costs with other post office costs would be a more reliable analysis for cost attribution and in line with Cost Segment 3 methodology. It would result in a better assessment of clerk costs and avoid distortions from analyzing Cost Segment 4 separately. *Id.*

Proposal Ten includes a table demonstrating the impact of merging Cost Segment 4 costs with Cost Segment 3 costs by product. It shows a cost difference from a merger of $1,412,000 out of $12,945,185,000 or a 0.01 percent difference.[4] *Id.* at 6.

III. Initial Commission Action

The Commission establishes Docket No. RM2015–19 for consideration of matters raised by the Petition. Additional information concerning the Petition may be accessed via the Commission's Web site at *http://www.prc.gov.* Interested persons may submit comments on the Petition and Proposal Ten no later than September 17, 2015. Reply comments are due no later than September 28, 2015. Pursuant to 39 U.S.C. 505, the Commission designates Kenneth R. Moeller to serve as an officer of the Commission (Public Representative) representing the interests of the general public in this proceeding.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. RM2015–19 for consideration of the matters raised by the Petition of the United States Postal Service Requesting Initiation of a Proceeding to Consider a Proposed Change in Analytical Principles (Proposal Ten), filed August 12, 2015.

2. Comments are due no later than September 17, 2015. Reply comments are due no later than September 28, 2015.

3. Pursuant to 39 U.S.C. 505, the Commission appoints Kenneth R. Moeller to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this docket.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2015–20633 Filed 8–20–15; 8:45 am]

BILLING CODE 7710–FW–P

[4] The Postal Service references files from FY 2014 Annual Compliance Report, USPS–FY14–32 and two additional files attached electronically.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2015–0564; FRL–9932–82–Region 7]

Approval and Promulgation of Air Quality Implementation Plans; State of Kansas; Cross State Air Pollution Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the State Implementation Plan (SIP) for the State of Kansas submitted on March 30, 2015. This SIP revision provides Kansas' state-determined allowance allocations for existing electric generating units (EGUs) in the State for the 2016 control periods and replaces the allowance allocations for the 2016 control periods established by EPA under the Cross-State Air Pollution Rule (CSAPR). The CSAPR addresses the ''good neighbor'' provision of the Clean Air Act (CAA or Act) that requires states to reduce the transport of pollution that significantly affects downwind nonattainment and maintenance areas. EPA is proposing to approve Kansas' SIP revision, incorporate the state-determined allocations for the 2016 control periods into the SIP, and amend the regulatory text of the CSAPR Federal Implementation Plan (FIP) to reflect approval and inclusion of the state-determined allocations. EPA is proposing to approve Kansas' SIP revision because it meets the requirements of the CAA and the CSAPR requirements to replace EPA's allowance allocations for the 2016 control periods. This action is being proposed pursuant to the CAA and its implementing regulations. EPA's allocations of CSAPR trading program allowances for Kansas for control periods in 2017 and beyond remain in place until the State submits and EPA approves state-determined allowance allocations for those control periods through another SIP revision. The CSAPR FIPs for Kansas remain in place until such time as the State decides to replace the FIPs with a SIP revision.

DATES: Comments on this proposed action must be received in writing by September 21, 2015.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2015–0564, by mail to Lachala Kemp, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

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

SUPPLEMENTARY INFORMATION: In the final rules section of this **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that

are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

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, Sulfur dioxides.

Dated: August 12, 2015.

Mark Hague,

Acting Regional Administrator, Region 7.

[FR Doc. 2015–20628 Filed 8–20–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2015–0537; FRL–9932–54-Region 3]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Interstate Pollution Transport Requirements for the 2006 24-Hour Fine Particulate Matter Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve the State Implementation Plan (SIP) revision submitted by the District of Columbia addressing the infrastructure requirements for interstate transport pollution with respect to the 2006 24-hour fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS). In the Final Rules section of this **Federal Register**, EPA is approving the District's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by September 21, 2015.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2015–0537 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Email: Fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2015–0537, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2015–0537. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the 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 during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the District of Columbia Department of the Environment, Air Quality Division, 1200 1st Street NE., 5th Floor, Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Emlyn Vélez-Rosa, (215) 814–2038, or by email at *velez-rosa.emlyn@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: August 7, 2015.

William C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2015–20526 Filed 8–20–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1994–0009; FRL—9932–76–Region 4]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the National Southwire Aluminum Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of intent.

SUMMARY: The Environmental Protection Agency (EPA) Region 4 is issuing a Notice of Intent to Delete the National Southwire Aluminum Superfund Site (Site) located in Hawesville in Hancock County, Kentucky, from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Kentucky, through the Kentucky Division of Waste Management (KDWM), have determined

that all appropriate response actions under CERCLA, other than operation, maintenance, monitoring and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: Comments must be received by *September 21, 2015.*

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–1994–0009, by mail to Michael Townsend, Remedial Project Manager, Superfund Remedial Section, Superfund Remedial Branch, Superfund Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960, or Angela Miller, Enforcement & Community Engagement, Investigations & Community Engagement Section, Superfund Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Michael Townsend, Remedial Project Manager, Superfund Remedial Section, Superfund Remedial Branch, Superfund Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960, email: *Townsend.michael@epa.gov* or (404) 562–8813.

SUPPLEMENTARY INFORMATION: In the ''Rules and Regulations'' Section of today's **Federal Register**, we are publishing a direct final Notice of Deletion of the National Southwire Aluminum Superfund Site without prior Notice of Intent to Delete because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this deletion in the preamble to the direct final Notice of Deletion and those reasons are incorporated herein. If we receive no adverse comment(s) on this deletion action, we will not take further action on this Notice of Intent to Delete. If we receive adverse comment(s), we will withdraw the direct final Notice of Deletion, and it will not take effect. We will, as appropriate, address all public comments in a subsequent final Notice of Deletion based on this Notice of Intent to Delete. We will not institute a second comment period on this Notice of Intent to Delete. Any parties interested in commenting must do so at this time.

For additional information, see the direct final Notice of Deletion which is located in the *Rules* section of this **Federal Register**.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: August 6, 2015.

Heather McTeer Toney,

Regional Administrator, Region 4.

[FR Doc. 2015–20609 Filed 8–20–15; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 80, No. 162
Friday, August 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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Notice of Committee Meeting and Virtual Meeting of the Assembly of the Administrative Conference of the United States

AGENCY: Administrative Conference of the United States.

ACTION: Notice of meetings.

SUMMARY: The Administrative Conference of the United States will hold two meetings to consider a proposed statement on the subject of Issue Exhaustion in Preenforcement Judicial Review of Administrative Rulemaking. The first of these meetings will be an in-person committee meeting. The second meeting—the meeting of the Assembly—will be the 63rd plenary session of the Administrative Conference and is subject to the requirements of the Federal Advisory Committee Act (5 U.S.C. App.). The Assembly will meet via a virtual, online Web forum extending over a period of approximately one week. Both meetings will be open to the public.

DATES: The committee meeting will take place on Wednesday, September 9, 2015, 10:00 a.m. to 5:00 p.m. The meeting may adjourn early if all business is finished prior to the scheduled end time. The Assembly meeting will be a virtual public meeting that will occur in an online format over the course of approximately one week, starting at 9:00 a.m. on Friday, September 18, 2015, and continuing through 6:00 p.m. on Friday, September 25, 2015.

ADDRESSES: The in-person committee meeting will be held at the Administrative Conference of the United States, Suite 706 South, 1120 20th Street NW., Washington, DC 20036. Any change in the location of the in-person meeting will be posted on the Administrative Conference's Web site (*www.acus.gov*). The virtual Assembly meeting will have no physical location. A link to this meeting will be posted on the Administrative Conference's Web site in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Shawne McGibbon, General Counsel (Designated Federal Officer), Administrative Conference of the United States, Suite 706 South, 1120 20th Street NW., Washington, DC 20036; Telephone 202–480–2088; email *smcgibbon@acus.gov.*

SUPPLEMENTARY INFORMATION: The Administrative Conference of the United States makes recommendations to federal agencies, the President, Congress, and the Judicial Conference of the United States regarding the improvement of administrative procedures (5 U.S.C. 594). The voting membership of the Conference, when meeting in plenary session, constitutes the Assembly of the Conference (5 U.S.C. 595).

On Wednesday, September 9, 2015, there will be an in-person meeting, open to the public, of an ad hoc Committee on Issue Exhaustion. The purpose of this meeting will be to conduct preparatory work in anticipation of full consideration of a proposed statement by the Assembly at its 63rd Plenary Session, which will be conducted as a public, virtual (online) meeting over a period of approximately one week, beginning September 18, 2015.

Committee Meeting

Agenda: Consideration will be given to a proposed statement on the topic described below. *Issue Exhaustion in Preenforcement Judicial Review of Administrative Rulemaking.* This statement examines judicial application of an issue exhaustion requirement in preenforcement review of administrative rulemaking. It sets forth a series of factors that courts may consider when examining the doctrine of issue exhaustion in the context of preenforcement review of agency rules.

Additional information about the proposed statement and the order of the agenda, as well as other materials related to the meeting, can be found on the Conference's Web site at: *https://www.acus.gov/meetings-and-events/plenary-meeting/63rd-plenary-session.*

Public Participation: The Conference welcomes the attendance of the public at the in-person committee meeting, subject to space limitations, and will make every effort to accommodate persons with disabilities or special needs. If you wish to attend in person, you must register by sending an email message to *info@acus.gov* no later than two days before the meeting, in order to facilitate entry and to confirm space availability. If you need special accommodations due to disability, please inform the Designated Federal Officer noted above at least seven days in advance of the meeting. Members of the public who attend the meeting may be permitted to speak only with the consent of the Chairman and the unanimous consent of the committee. Committee members and members of the public may also view the meeting via live webcast, which will be available at: *https://livestream.com/ACUS.*

How to Submit Comments: Persons who wish to comment on the proposed statement may do so by submitting written comments either online by clicking ''Submit a Comment'' on the Web page listed above, or by U.S. Mail addressed to: Committee Meeting (Issue Exhaustion) Comments, Administrative Conference of the United States, Suite 706 South, 1120 20th Street NW., Washington, DC 20036. Comments for the committee meeting must be relevant to the recommendations being debated, and received no later than Friday, September 4, to ensure consideration.

Virtual Assembly Meeting (63rd Plenary Session)

Agenda: The Assembly will consider the proposed statement on the issue exhaustion doctrine described above.

Conduct of the Virtual Meeting and How to Submit Comments: Consistent with the innovative techniques outlined in Administrative Conference Recommendation 2011–7, *The Federal Advisory Committee Act—Issues and Proposed Reforms,* the Administrative Conference will conduct a virtual and asynchronous Federal Advisory Committee Act meeting of the Assembly. A link to the Web forum on which the virtual meeting will occur will be provided on the Administrative Conference's Web site (*www.acus.gov*) and on the 63rd Plenary Session Web page in advance of the meeting: (*https://www.acus.gov/meetings-and-events/plenary-meeting/63rd-plenary-session*). Voting and non-voting members of the Conference, and members of the general public who wish

to comment on the proposed statement, may submit online written comments by clicking ''Submit a Comment'' on the 63rd Plenary Session Web page on the Conference's Web site. Only members of the Assembly (*i.e.,* voting members of the Conference) may vote. For quorum purposes, a majority of members of the Assembly must register their participation in the Assembly meeting, either by voting to approve or reject the proposed statement; or, at a minimum, indicating that they are present. Voting members will receive information directly on how to register their vote or their presence.

The period for commenting and voting will commence at 9:00 a.m. on Friday, September 18, 2015, and will end at 6:00 p.m. on Friday, September 25, 2015. Relevant comments and a tally of votes will be publicly available through daily postings on the 63rd Plenary Session Web page.

Additional information about the proposed statement, voting eligibility, financial disclosure for non-government members, and other materials related to the meeting, can be found at the 63rd Plenary Session Web page noted above.

Dated: August 17, 2015.

Shawne McGibbon,

General Counsel.

[FR Doc. 2015–20621 Filed 8–20–15; 8:45 am]

BILLING CODE 6110–01–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

August 17, 2015.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by September 21, 2015 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

National Institute of Food and Agriculture

Title: NIFA Proposal Review Process.

OMB Control Number: 0524–0041.

Summary of Collection: The United States Department of Agriculture (USDA), National Institute of Food and Agriculture (NIFA), administers competitive, peer-reviewed research, education and extension programs. The reviews are undertaken to ensure that projects supported by NIFA are of a high-quality and are consistent with the goals and requirements of the funding program. These programs are authorized pursuant to the authorities contained in the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3101), the Smith-Lever Act, and other legislative authorities.

Need and Use of the Information: The collected information from the evaluations is used to support NIFA grant programs. NIFA uses the results of each proposal to determine whether a proposal should be declined or recommended for award. In order to obtain this information, an electronic questionnaire is used to collect information about potential panel and ad-hoc reviewers. If this information is not collected, it would be difficult for a review panel and NIFA staff to determine which projects warrant funding, or identify appropriate qualified reviewers. In addition, Federal grants staff and auditors could not assess the quality or integrity of the review, and the writer of the application would not benefit from any feedback on why the application was funded or not.

Description of Respondents: Not-for-profit institutions; Business or other for-profit; Individuals or households; Federal Government; State, Local or Tribal Government.

Number of Respondents: 50,000.

Frequency of Responses: Reporting: On occasion; Annually.

Total Burden Hours: 100,497.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2015–20618 Filed 8–20–15; 8:45 am]

BILLING CODE 3410–09–P

DEPARTMENT OF AGRICULTURE

Forest Service

Mineral County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Mineral County Resource Advisory Committee (RAC) will meet in Superior, Montana. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act.

DATES: The meeting will be held September 16, 2015, at 6:00 p.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meeting will be held at Superior Ranger District, 209 W. Riverside Avenue, Superior, Montana.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Superior Ranger District. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Carole Johnson, Acting District Ranger, by phone at 406–822–4233 or via email at *cajohnson01@fs.fed.us;* or Racheal Koke, RAC Coordinator, by phone at

406–822–3930 or via email at *rkoke@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is for the public to make project presentations to the committee.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by September 2, 2015, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent to Racheal Koke, RAC Coordinator, P.O. Box 460, Superior, Montana 59872; by email to *rkoke@fs.fed.us,* or via facsimile to 406–822–3903.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: August 14, 2015.

Carole Johnson,

Acting District Ranger.

[FR Doc. 2015–20672 Filed 8–20–15; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Black Hills National Forest Advisory Board

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Black Hills National Forest Advisory Board (Board) will meet in Rapid City, South Dakota. The Board is established consistent with the Federal Advisory Committee Act of 1972 (5 U.S.C. App. II), the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600 *et.seq.*), the National Forest Management Act of 1976 (16 U.S.C. 1612), and the Federal Public Lands Recreation Enhancement Act (Public Law 108–447). Additional information concerning the Board, including the meeting summary/minutes, can be found by visiting the Board's Web site at: *http://www.fs.usda.gov/main/blackhills/workingtogether/advisorycommittees.*

DATES: The meeting will be held on Wednesday, September 16, 2015, at 1:00 p.m.

All meetings are subject to cancellation. For updated status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meeting will be held at the Mystic Ranger District, 8221 South Highway 16, Rapid City, South Dakota.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses, when provided, are placed in the record and available for public inspection and copying. The public may inspect comments received at the Black Hills National Forest Supervisor's Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Scott Jacobson, Board Coordinator, by phone at 605–673–9216 or by email at *sjjacobson@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to provide:

(1) Over-snow and Non-motorized Working Group Report update;

(2) Recreation Facilities Working Group update;

(3) Forest Health Working Group update;

(4) Northern Long Eared Bat Report;

(5) Restoring Large Landscapes in the Black Hills—Video; and

(6) Election preparation.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should submit a request in writing by September 7, 2015, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the Board may file written statements with the Board's staff before or after the meeting. Written comments and time requests for oral comments must be sent to Scott Jacobson, Black Hills National Forest Supervisor's Office, 1019 North Fifth Street, Custer, South Dakota 57730; by email to *sjjacobson@fs.fed.us,* or via facsimile to 605–673–9208.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: August 17, 2015.

Craig Bobzien,

Forest Supervisor.

[FR Doc. 2015–20735 Filed 8–20–15; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Mineral County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Mineral County Resource Advisory Committee (RAC) will meet in Superior, Montana. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act.

DATES: The meeting will be held September 30, 2015, at 6:00 p.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at Superior Ranger District, 209 W. Riverside Avenue, Superior, Montana.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Superior Ranger District. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Carole Johnson, Acting District Ranger,

by phone at 406–822–4233 or via email at *cajohnson01@fs.fed.us;* or Racheal Koke, RAC Coordinator, by phone at 406–822–3930 or via email at *rkoke@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to vote on projects that were previously presented.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by September 2, 2015, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent to Racheal Koke, RAC Coordinator, P.O. Box 460, Superior, Montana 59872; by email to *rkoke@fs.fed.us,* or via facsimile to 406–822–3903.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: Aug 14, 2015.

Carole Johnson,

Acting District Ranger.

[FR Doc. 2015–20673 Filed 8–20–15; 8:45 am]

BILLING CODE 3411–15–P

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 List Sampling Frame Surveys. Revision to burden hours will be needed due to changes in the size of the target population, sampling design, and/or questionnaire length. Annually, NASS obtains lists of farm and ranch operators from different crop and livestock organizations. Historically we have averaged 500,000 potential new operators each year from these lists. Before adding these names to our list of active operators we will contact the operators to collect basic farming information from them on the size and type of operation. These data will be used to eliminate any duplication we may have with names already on our list. Since the 2017 Census of Agriculture will be conducted in 2018, the sample sizes for 2017 and 2018 will be greatly reduced. Additional questions may need to be added to the questionnaires to accommodate any new trends or changes in the farming community that need to be identified (*i.e.* Organic farming, renewable energy production, expansion of acreage of alternative or specialty crops, etc.).

DATES: Comments on this notice must be received by October 20, 2015 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–0140, by any of the following methods:

- *Email: ombofficer@nass.usda.gov.* Include docket number above in the subject line of the message.
- *eFax:* (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: Renee Picanso, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–2707. Copies of this information collection and related instructions can be obtained without charge from David Hancock, NASS Clearance Officer, at (202) 690–2388.

SUPPLEMENTARY INFORMATION:

Title: List Sampling Frame Surveys.

OMB Control Number: 0535–0140.

Expiration Date of Approval: May 31, 2016.

Type of Request: Intent to Seek Approval to Revise and Extend an Information Collection for a period of three 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, economic statistics, environmental statistics related to agriculture and also to conduct the Census of Agriculture. The List Sampling Frame Surveys are used to develop and maintain a complete list of possible farm operations. The goal is to produce for each State a relatively complete, current, and unduplicated list of names for statistical sampling for agricultural operation surveys and the Census of Agriculture. Data from these agricultural surveys are used by government agencies and educational institutions in planning, farm policy analysis, and program administration. More importantly, farmers and ranchers use NASS data to help make informed business decisions on what commodities to produce and when is the optimal time to market their products. NASS data is useful to farmers in comparing their farming practices with the economic and environmental data published by NASS.

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 (Pub. L. 104–113) and the 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. 33376.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 15 minutes per respondent.

Respondents: Potential Farmers and Ranchers.

Estimated Number of Respondents: 175,000 (annually).

Estimated Total Annual Burden on Respondents: With an estimated response rate of approximately 80% we estimate the burden to be 40,500 hours (annually).

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, August 6, 2015.

R. Renee Picanso,

Associate Administrator.

[FR Doc. 2015–20695 Filed 8–20–15; 8:45 am]

BILLING CODE 3410–20–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meetings

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meetings.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) plans to hold its regular committee and Board meetings in Washington, DC, Tuesday through Thursday, September 8–10, 2015 at the times and location listed below.

DATES: The schedule of events is as follows:

Tuesday, September 8, 2015

1:30–2:30 p.m.—Technical Programs Committee
3:30–4:00 p.m.—Ad Hoc Committee on Design Guidance

Wednesday, September 9, 2015

9:30–10:30 a.m.—Ad Hoc Committee on Frontier Issues
10:45–Noon—Technical Programs Committee
1:30–2:00 p.m.—Budget Committee: Vote
2:00–2:30 p.m.—Planning and Evaluation Committee
2:30–4:00 p.m.—Ad Hoc Committee Meetings: Closed

Thursday, September 10, 2015

11:30–Noon—Ethics Briefing
1:30–3:00 p.m.—Board Meeting
Guest Speaker: William Peterson, Executive Director, Office of Accessible Systems and Technology, Department of Homeland Security: Trusted Tester Program

ADDRESSES: Meetings will be held at the Access Board Conference Room, 1331 F Street NW., Suite 800, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact David Capozzi, Executive Director, (202) 272–0010 (voice); (202) 272–0054 (TTY).

SUPPLEMENTARY INFORMATION: At the Board meeting scheduled on the afternoon of Thursday, September 10, 2015, the Access Board will consider the following agenda items:

- Approval of the draft July 29, 2015 meeting minutes (vote)
- Ad Hoc Committee Reports: Information and Communications Technologies; Self-Service Transaction Machines; Public Rights-of-Way and Shared Use Paths; Transportation Vehicles; Passenger Vessels; Medical Diagnostic Equipment; Frontier Issues; and Design Guidance
- Budget Committee
- Technical Programs Committee
- Planning and Evaluation Committee
- Election Assistance Commission Report
- Executive Director's Report
- Public Comment (final 15 minutes of the meeting)

Members of the public can provide comments either in-person or over the telephone during the final 15 minutes of the Board meeting on Thursday, September 10. Any individual interested in providing comment is asked to pre-register by sending an email to *bunales@access-board.gov* with the subject line ''Access Board meeting—Public Comment'' with your name, organization, state, and topic of comment included in the body of your email. All emails to register for public comment must be received by Friday, September 4, 2015. Commenters will be called on in the order by which they pre-registered. Due to time constraints, each commenter is limited to two minutes. Commenters on the telephone will be in a listen-only capacity until they are called on. Use the following call-in number: (877) 701–1628; passcode: 86801095 and dial in 5 minutes before the meeting begins at 1:30 p.m.

All meetings are accessible to persons with disabilities. An assistive listening system, Communication Access Realtime Translation (CART), and sign language interpreters will be available at the Board meeting and committee meetings. Persons attending Board meetings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants (see *www.access-board.gov/the-board/policies/fragrance-free-environment* for more information).

You may view the Thursday, September 10, 2015 meeting through a live captioned webcast from 1:30 p.m. to 3:00 p.m. at: *http://www.access-board.gov/webcast.*

David M. Capozzi,

Executive Director.

[FR Doc. 2015–20702 Filed 8–20–15; 8:45 am]

BILLING CODE 8150–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Oklahoma Advisory Committee for a Meeting To Hear Testimony Regarding the School to Prison Pipeline in the State

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Oklahoma Advisory Committee (Committee) will hold a meeting on Friday, September 11, 2015, for the purpose of hearing presenters testify about civil rights concerns regarding school discipline policies and juvenile justice administration as they relate to disparities in school disciplinary action and involvement in the juvenile justice system on the basis of race, color, and/or sex.

Members of the public are invited and welcomed to make statements into the record during the open forum period from 4:15–4:45 pm. Members of the public are also entitled to submit written comments; the comments must be received in the regional office by September 30, 2015. Written comments may be mailed to the Midwestern Regional Office, U.S. Commission on Civil Rights, 55 W. Monroe St., Suite 410, Chicago, IL 60615. They may also be faxed to the Commission at (312) 353–8311, or emailed to Melissa Wojnaroski, Civil Rights Analyst, at *mwojnaroski@usccr.gov.* Persons who desire additional information may contact the Midwestern Regional Office at (312) 353–8311.

If persons who will attend the meeting require accommodations based on a disability, please contact Carolyn Allen at *callen@usccr.gov* at the Midwestern Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at: *https://database.faca.gov/committee/meetings.aspx?cid=269* and clicking on the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

Opening Remarks 8–8:15 a.m.

- Panel 1: 8:15 a.m.–9:30 a.m.—School Administrator Panel
- Panel 2: 9:45 a.m.–11:00 a.m.—Academic Panel
- Panel 3: 11:15 a.m.–12:30 p.m.—Community Panel

Break 12:30 p.m.–1:30 p.m.

- Panel 4: 1:30 p.m.–2:45 p.m.—Government Panel
- Panel 5: 3:00 p.m.–4:15 p.m.—Teacher Panel
- Open Forum 4:15–4:45 p.m.—Public Participation

Closing Remarks 4:45–5 p.m.

DATES: The meeting will be held on Friday, September 11, 2015, from 8 a.m.–5 p.m.

ADDRESSES: The meeting will be held at the Oklahoma City University School of Law, Crowe & Dunlevy Commons, 800 N. Harvey Avenue, Oklahoma City 73102.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at 312–353–8311 or *mwojnaroski@usccr.gov*.

Dated: August 17, 2015.

David Mussatt,

Chief, Regional Programs Unit.

[FR Doc. 2015–20664 Filed 8–20–15; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Quarterly Survey of Plant Capacity Utilization.

OMB Control Number: 0607–0175.

Form Number(s): MQ–C2.

Type of Request: Extension of a currently approved collection.

Number of Respondents: 7,500.

Average Hours Per Response: 2 hours and 5 minutes.

Burden Hours: 62,500.

Needs and Uses: The U.S. Census Bureau on behalf of the Federal Reserve Board (FRB) and the Defense Logistics Agency (DLA), within the Department of Defense (DOD), requests an extension of approval for the Quarterly Survey of Plant Capacity Utilization (QPC). The survey provides information on use of industrial capacity in manufacturing and publishing plants as defined by the North American Industry Classification System (NAICS). The Survey of Plant Capacity Utilization began in the 1970's as an annual survey that collected fourth quarter data only. The annual survey continued through 2006. In 2007 the FRB requested that the survey be converted to a quarterly survey due to the necessity for quarterly data rather than annual. The survey is the only source of capacity rates at industry levels. Changes in capacity utilization are considered important indicators of investment demand and inflationary pressure. For these reasons, the estimates of capacity utilization are closely monitored by government policy makers and private sector decision makers.

This survey utilizes a multi-mode data collection process that includes internet reporting, fax, telephone and mail. The survey collects the value of quarterly production and the value of production that could be achieved if operating under ''full production'' capability and ''emergency production'' capability. The ratio of the actual to the full is the basis of the estimates of full capacity utilization rates and similarly, the actual to the emergency for the emergency capacity utilization rates. The survey also collects information by shift, on work patterns at the actual production level.

The FRB is the primary user of the current QPC data and expressed the need for these quarterly data. FRB publishes measures of industrial production (IP), capacity, and capacity utilization in its G.17 statistical release, which has been designated by the federal government as a Principal Federal Economic Indicator. Utilization rates from the QPC are a principle source for the measures of capacity and capacity utilization. The indexes of IP are either estimated from physical product data or estimated from monthly data on inputs to the production process, specifically production worker hours and an indicator of capital input. For many years, data on electric power use was used as the indicator of industry capital input. The deregulation of electricity markets led to the deterioration in the coverage and quality of the electricity data. As a result, in November 2005, the FRB discontinued its use of the industrial electric power data in the current estimates of IP. In order to maintain the quality of the IP index, the collection of these quarterly data, including the utilization rate data and the workweek of capital, are critical indicators of capital input use and industry output.

The FRB uses these data in several ways. First, the QPC data is the primary source of the benchmark information for the capacity indexes and utilization rates published by the FRB. Second, the QPC utilization rate data and the capital workweek data are used as an indicator of capital use in the estimation of monthly IP. Third, the QPC utilization rate data and the workweek data are used to improve the projections of labor productivity that are used to align IP with comprehensive benchmark information from the Economic Census covering the Manufacturing sector and the Annual Survey of Manufactures. Finally, utilization rate data will assist in the assessment of recent changes in IP, as most of the high-frequency movement in utilization rates reflect production changes rather than capacity changes.

The DLA uses the data to assess readiness to meet demand for goods under selected national emergency scenarios.

In addition to the FRB and DLA uses, these data are published on the Census Bureau's Web site, *http://www.census.gov/manufacturing/capacity/index.html.*

Affected Public: Business or other for-profit.

Frequency: Quarterly.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 8(b), 50 U.S.C. Section 98, et. seq, and 12 U.S.C. Section 244.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: August 18, 2015.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2015–20709 Filed 8–20–15; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD784

Fisheries of the Northeastern United States; Atlantic Herring Fishery; Supplemental Notice of Intent To Prepare an Environmental Impact Statement; Scoping Process; Request for Comments

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

ACTION: Supplemental notice of intent (NOI) to prepare an environmental impact statement (EIS); request for comments.

SUMMARY: The New England Fishery Management Council is in the process of preparing an environmental impact statement for Amendment 8 to the Atlantic Herring Fishery Management Plan. Amendment 8 would specify a long-term acceptable biological catch control rule for the herring fishery and consider alternatives for this control rule that explicitly account for herring's role in the ecosystem. The Council recently decided to expand the scope of Amendment 8 to include consideration of localized depletion in inshore waters. During this comment period, the Council is only seeking comments on the expanded scope of Amendment 8.

DATES: Written scoping comments must be received on or before 5 p.m., local time, September 30, 2015.

ADDRESSES: Written scoping comments may be sent by any of the following methods:

- Email to the following address: *comments@nefmc.org;*
- Mail to Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; or
- Fax to (978) 465–3116.
- Please indicate ''Herring Amendment 8 Re-Scoping Comment'' on your correspondence.

Requests for copies of the Amendment 8 scoping document and other information should be directed to Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950, telephone (978) 465–0492. The scoping document is accessible electronically via the Internet at *http://www.nefmc.org.*

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council, (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Background

The purpose of this notification is to alert the interested public of the Council's intent to expand the scope of Amendment 8 to consider localized depletion in inshore waters. In general, localized depletion is when harvesting takes more fish than can be replaced either locally or through fish migrating into the catch area within a given time period. The Council will consider input from the interested public as to how to define, measure, evaluate impacts, and minimize inshore, localized depletion in the herring fishery as part of the scoping process and during the development of Amendment 8.

Initially, the Council proposed Amendment 8 to further consider long-term harvest strategies for herring, including an allowable biological catch (ABC) control rule that addresses the biological needs of the herring resource and explicitly accounts for herring's role in the ecosystem. A detailed description of the background and need for Amendment 8 can be found in the original NOI dated February 26, 2015 (80 FR 10458).

At its June 2015 meeting, the Council reviewed scoping comments on Amendment 8 and considered goals and objectives for the amendment. The Council recommended the following goals for Amendment 8: (1) Account for the role of herring within the ecosystem, including its role as forage; (2) stabilize the fishery at a level designed to achieve optimum yield; and (3) address localized depletion in inshore waters. The Council also recommended that an objective for Amendment 8 be to develop and implement an ABC control rule that manages herring within an ecosystem context and addresses the goals of Amendment 8.

Public Comment

Scoping consists of identifying the range of actions, alternatives, and impacts to be considered. During this comment period, the Council is only seeking comments on Amendment 8's consideration of localized depletion in inshore waters. All persons affected by or otherwise interested in herring management are encouraged to submit comments on the expanded scope of Amendment 8 by submitting written comments (see **ADDRESSES**) or by attending the supplemental scoping meeting for this amendment. The supplemental scoping meeting will be held during the afternoon of the Council's Herring Committee meeting on September 15, 2015, at the Hilton Garden Inn, 100 Boardman Street, Boston, MA 02128, (617) 567–6789.

After the scoping process is completed, the Council will continue development of Amendment 8 and preparation of an EIS to analyze the impacts of the range of alternatives under consideration. Impacts may be direct, individual, or cumulative. The public will also have the opportunity to comment during public meetings and public comment periods throughout the development of Amendment 8, consistent with the National Environmental Policy Act, the Magnuson-Stevens Fishery Conservation and Management Act, and the Administrative Procedure Act.

Special Accommodations

The meetings are accessible to people with physical disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies (see **ADDRESSES**) at least five days prior to the meeting date.

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

Dated: August 18, 2015.

Alan D. Risenhoover,

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

[FR Doc. 2015–20798 Filed 8–20–15; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Addition to and Deletion from the Procurement List.

SUMMARY: The Committee is proposing to add a service to the Procurement List that will be provided by a nonprofit agency employing persons who are

blind or have other severe disabilities, and deletes a product previously furnished by such agency.

Comments must be received on or before: 9/21/2015.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Addition

If the Committee approves the proposed addition, the entities of the Federal Government identified in this notice will be required to provide the service listed below from the nonprofit agency employing persons who are blind or have other severe disabilities.

The following service is proposed for addition to the Procurement List for production by the nonprofit agency listed:

Service:

Service Type: Contractor Operated Parts Store Service

Service Mandatory For: US Marine Corps Garrison Mobile Equipment Branch, Marine Corps Logistics Base, Building 5400, Albany, GA.

Mandatory Source of Supply: Training, Rehabilitation, & Development Institute, Inc., San Antonio, TX.

Contracting Activity: Dept of the Navy, Commanding General, Camp Lejeune, NC.

Deletion:

The following product is proposed for deletion from the Procurement List:

Product:

NSN(s)—Product Name(s): 7520–01–439–3392—Desk Set, Liberty.

Mandatory Source of Supply: Industries for the Blind, Inc., West Allis, WI.

Contracting Activity: General Services Administration, New York, NY.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2015–20731 Filed 8–20–15; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and Deletions from the Procurement List.

SUMMARY: This action adds products and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes products and services from the Procurement List previously furnished by such agencies.

DATES: *Effective Date:* 9/21/2015.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia, 22202–4149.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 5/15/2015 (80 FR 27929–27930), 6/5/2015 (80 FR 32096–32097), 6/19/2015 (80 FR 35320–35321), 6/26/2015 (80 FR 36773–36774), and 7/10/2015 (80 FR 39759–39760), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and services are added to the Procurement List:

Products

NSN(s)—Product Name(s)

5120–00–NIB–0120—Wrench, Combination, Chrome, 12 Pt, 1/4″
5120–00–NIB–0121—Wrench, Combination, Chrome, 12 Pt, 5/16″
5120–00–NIB–0122—Wrench, Combination, Chrome, 12 Pt, 11/32″;
5120–00–NIB–0123—Wrench, Combination, Chrome, 12 Pt, 3/8″;
5120–00–NIB–0124—Wrench, Combination, Chrome, 12 Pt, 7/16″;
5120–00–NIB–0125—Wrench, Combination, Chrome, 12 Pt, 1/2″
5120–00–NIB–0126—Wrench, Combination, Chrome, 12 Pt, 9/16″
5120–00–NIB–0127—Wrench, Combination, Chrome, 12 Pt, 5/8″
5120–00–NIB–0128—Wrench, Combination, Chrome, 12 Pt, 11/16″
5120–00–NIB–0129—Wrench, Combination, Chrome, 12 Pt, 3/4″
5120–00–NIB–0130—Wrench, Combination, Chrome, 12 Pt, 13/16″
5120–00–NIB–0131—Wrench, Combination, Chrome, 12 Pt, 7/8″
5120–00–NIB–0132—Wrench, Combination, Chrome, 12 Pt, 15/16″
5120–00–NIB–0133—Wrench, Combination, Chrome, 12 Pt, 1″
5120–00–NIB–0139—Wrench Set, Combination, Chrome, 12pt, 3/8″–1″
5120–00–NIB–0147—Wrench, Combination, Chrome, 12 Pt, 10MM
5120–00–NIB–0148—Wrench, Combination, Chrome, 12 Pt, 11MM
5120–00–NIB–0149—Wrench, Combination, Chrome, 12 Pt, 12MM
5120–00–NIB–0150—Wrench, Combination, Chrome, 12 Pt, 13MM
5120–00–NIB–0151—Wrench, Combination, Chrome, 12 Pt, 14MM
5120–00–NIB–0152—Wrench, Combination, Chrome, 12 Pt, 15MM
5120–00–NIB–0153—Wrench, Combination, Chrome, 12 Pt, 16MM
5120–00–NIB–0154—Wrench, Combination, Chrome, 12 Pt, 17MM
5120–00–NIB–0155—Wrench, Combination, Chrome, 12 Pt, 18MM
5120–00–NIB–0156—Wrench, Combination, Chrome, 12 Pt, 19MM
5120–00–NIB–0157—Wrench Set, Combination, Chrome, 12pt, 10MM–19MM

Mandatory Source of Supply: Industries for the Blind, Inc., West Allis, WI

Mandatory Purchase For: Broad Government Requirement

Contracting Activity: General Services Administration, Kansas City, MO
Distribution: B-List

NSN(s)—Product Name(s):

8940–01–E62–4753—Gravy Mix, Brown, 8/12 oz. Containers
8940–01–E62–4754—Gravy Mix, Chicken, 8/12 oz. Containers
8940–01–E62–4755—Gravy Mix, Brown, Low Sodium, 8/12 oz. Containers
8940–01–E62–4756—Gravy Mix, Country, 8/20 oz. Containers
8940–01–E62–4757—Gravy Mix, Turkey, 8/12 oz. Containers
8940–01–E62–4758—Gravy Mix, Chicken, Low Sodium, 8/12 oz. Containers
Mandatory Source of Supply: CW Resources, Inc., New Britain, CT
Mandatory Purchase For: 100% of the requirement of the Department of Defense
Contracting Activity: Defense Logistics Agency Troop Support, Philadelphia, PA
Distribution: C-List

NSN(s)—Product Name(s): 8920–00–SAM–0169—Super Cereal Plus
Mandatory Source of Supply: Transylvania Vocational Services, Inc., Brevard, NC
Mandatory Purchase For: 20% of the tendered requirement up to 500 Metric Tons per tender for the U.S. Agency for International Development's World Food Program
Contracting Activity: USDA Farm Service Agency Agricultural Stabilization and Conservation Service, Kansas City, MO
Distribution: C-List

NSN(s)—Product Name(s): 1730–01–516–4899—Wheel Chock, Plastic, 14″
1730–01–516–4900—Wheel Chock, Plastic, 20″
Mandatory Source of Supply: NewView Oklahoma, Inc., Oklahoma City, OK
Mandatory Purchase For: 100% of the requirement of the Department of Defense
Contracting Activity: Defense Logistics Agency Troop Support, Philadelphia, PA
Distribution: C-List

Services

Service Type: Third Party Logistics Service
Service is Mandatory For: US Department of State, Arlington, VA
Mandatory Source of Supply: Human Technologies Corporation, Utica, NY
Contracting Activity: State, Department of, Office of Acquisition Mgmt—MA, Arlington, VA
Service Type: Custodial Service
Service is Mandatory For: US Marine Corps, Marine Corps Base Camp Lejeune, NC
Mandatory Source of Supply: Coastal Enterprises of Jacksonville, Inc., Jacksonville, NC
Contracting Activity: Dept of the Navy, Commanding General Camp Lejeune, NC
Service Type: Document Destruction Service
Service is Mandatory For: Department of Veterans Affairs, Veterans Integrated Service Network 10, Kettering, OH
Mandatory Source of Supply: Greene, Inc., Xenia, OH
Contracting Activity: Veterans Affairs, Department of, 552-Dayton, Dayton, OH
Service Type: Janitorial Service
Service is Mandatory For: US Coast Guard, Transformation Warehouse, 1873 Eringhaus Street, Elizabeth City, NC
Mandatory Source of Supply: Skills, Inc., Elizabeth City, NC
Contracting Activity: U.S. Coast Guard, Aviation Logistics Center (ALC), Elizabeth City, NC

Deletions

On 7/10/2015 (80 FR 39759–39760), and 7/17/2015 (80 FR 42481–42483), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products and service listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and service deleted from the Procurement List.

End of Certification

Accordingly, the following products and service are deleted from the Procurement List:

Products

NSN(s)—Product Name(s): 7530–01–072–2533—Paper, Mimeograph and Duplicating
Mandatory Source of Supply: Louisiana Association for the Blind, Shreveport, LA
Contracting Activity: General Services Administration, New York, NY

NSN(s)—Product Name(s):

7510–01–587–3931—Refill, Pencil Lead, Bio-Based and Biodegradable Pencil
7520–01–587–3932—Pencil, Mechanical, Bio-Based and Biodegradable
7520–01–587–3933—Pencil, Mechanical, Bio-Based and Biodegradable
7520–01–587–3934—Pencil, Mechanical, Bio-Based and Biodegradable
7520–01–587–3935—Pencil, Mechanical, Bio-Based and Biodegradable
7510–01–587–3936—Refill, Pencil Lead, Bio-Based and Biodegradable Pencil
Mandatory Source of Supply: San Antonio Lighthouse for the Blind, San Antonio, TX
Contracting Activity: General Services Administration, New York, NY
NSN(s)—Product Name(s): 7530–00–160–8476—Index Sheet Sets, Alphabetical, 9 1/2″ x 6″, Buff
Mandatory Source of Supply: Easter Seals Western and Central Pennsylvania, Pittsburgh, PA
Contracting Activity: General Services Administration, New York, NY

Service

Service Type: Food Service Attendant Service
Service Mandatory For: United States Military Academy: Enlisted Dining Facility and Summer Camp Enlisted Dining Facility—Bldg 620 Knox Road, West Point, NY
Mandatory Source of Supply: New Dynamics Corporation, Middletown, NY
Contracting Activity: Dept of the Army, W40M Northern Region Contract Office, Fort Belvoir, VA

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2015–20732 Filed 8–20–15; 8:45 am]

BILLING CODE 6353–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Electronic Filing of Targeting/Enforcement Data: Announcement of PGA Message Set Test and Request for Participants

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: To advance the concept of a ''single window'' to facilitate electronic collection, processing, sharing, and reviewing of trade data and documents required by federal agencies during the cargo import and export processes, and in furtherance of more accurately targeting imports to facilitate the flow of legitimate trade and enhanced targeting of noncompliant trade, the U.S. Consumer Product Safety Commission (''Commission'' or ''CPSC'') in consultation with U.S. Customs & Border Protection (''CBP'') announce their joint intent to conduct a test to assess the electronic filing of certain data via the Partner Government Agency (''PGA'') Message Set to the CBP-authorized Electronic Data Interchange (''EDI'') system known as the Automated Commercial Environment (''ACE'') for regulated finished consumer products under CPSC jurisdiction and three specified finished products included on

the Substantial Product Hazard List established under section 15(j) of the CPSA. During the test, participants will collaborate with CBP and CPSC to examine the effectiveness of the ''single window'' capability. Based on stakeholder feedback, the test also will assess the concept of a data registry (the ''Data Registry''), maintained by CPSC, which would allow stakeholders to file a reference to existing targeting/enforcement data through the PGA Message Set, rather than by entering all data for each entry.

This notice provides the following key information:

- International Trade Data System (''ITDS'') and CBP's authority to conduct test programs;
- the Commission's authority regarding data collection and import surveillance;
- the purpose of the test;
- an explanation of the test concept;
- the availability of CPSC's supplemental Customs and Trade Automated Interface Requirements (''CATAIR'') guideline and request for technical comments;
- participant eligibility, selection criteria, and responsibilities;
- the advantages of test participation; and
- a request that importers interested in test participation contact the Commission.

DATES: Electronic requests to participate in the test program may be submitted on or before October 5, 2015 and throughout the duration of the test. CPSC will consider applications to participate until the test capacity of nine participants is filled. The test will continue until terminated by way of an announcement in the **Federal Register**.

ADDRESSES: Requests to participate in the test and technical comments on CPSC's supplemental CATAIR guideline (which will be made available on CBP.gov) should be submitted through electronic mail to: *efilingpilot@cpsc.gov.* Requests to participate in the test should contain the subject heading: ''Application to participate in PGA Message Set Test.'' Technical comments on CPSC's supplemental CATAIR guideline should contain the subject heading ''CATAIR Technical Comments.''

FOR FURTHER INFORMATION CONTACT: Questions regarding the test should be directed to Jim Joholske, Deputy Director, Office of Import Surveillance, U.S. Consumer Product Safety Commission, (301) 504–7527, *efilingpilot@cpsc.gov.* Questions sent by electronic mail should contain the subject heading ''Question re PGA Message Set Test.'' For technical questions regarding ACE or ABI transmissions, or the PGA message set data transmission, please contact your assigned CBP client representative. Interested parties without an assigned client representative should submit an email to Steven Zaccaro at *steven.j.zaccaro@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. The Automated Commercial Environment

ACE is an automated and electronic system for commercial trade processing that is intended to streamline business processes, facilitate growth in trade, ensure cargo security, and foster participation in global commerce, while ensuring compliance with U.S. laws and regulations, and reducing costs for CBP and all of its communities of interest. The Automated Broker Interface (''ABI'') is a software interface to ACE. Commercial trade participants who want to file entries in ACE use ABI to electronically file required import data with CBP. ABI transfers trade-submitted data into ACE. CBP is developing ACE as the ''single window'' for the trade community to comply with the ITDS requirement established by the SAFE Port Act of 2006. The PGA Message Set enables additional trade-related data specified by PGAs to be entered in one location.

B. CPSC and CBP Authority To Regulate the Importation of Consumer Products

Section 14(a) of the Consumer Product Safety Act (''CPSA''), as amended by section 102(b) of the Consumer Product Safety Improvement Act of 2008 (''CPSIA''), Public Law 110–314, requires manufacturers (including importers) and private labelers of certain regulated consumer products manufactured outside the United States to test and issue a certificate of compliance certifying such products as compliant with applicable laws and regulations before importation. Pursuant to section 14(a), the Commission promulgated a final rule on ''certificates of compliance'' on November 18, 2008 (73 FR 68328), which is codified at 16 CFR part 1110 (''part 1110''). Among other things, part 1110 limits the parties who must issue a certificate to the importer, for products manufactured outside the United States, and, in the case of domestically manufactured products, to the manufacturer, and allows certificates to be in hard copy or electronic form. In addition to this authority, the Commission has admissibility authority for importing consumer products and substances that are within the CPSC's jurisdiction under section 17 of the CPSA (15 U.S.C. 2066) and section 14 of the Federal Hazardous Substances Act (''FHSA'') (15 U.S.C. 1273). Unless the Commission allows a product to be reconditioned for importation, section 17(a) of the CPSA requires refusal of admission and destruction of any product offered for import that, among other things, is not accompanied by a certificate of compliance required under section 14 of the CPSA, or is a product which is in violation of the inspection and recordkeeping requirements of section 16. In addition to the recordkeeping and inspection authority granted to the Commission under section 16(b), importers, retailers, and distributors of consumer products are required to identify the manufactuer of a consumer product by name, address, or other such identifying information requested by the Commission. 15 U.S.C. 2065(c).

CPSC's authority to regulate the importation of consumer products is further derived from section 17(h)(1), which requires the Commisson to ''establish and maintain a permanent product surveillance program, in cooperation with other appropriate Federal agencies, for the purpose of carrying out the Commission's responsibilities under this Act and the other Acts administered by the Commission and preventing the entry of unsafe consumer products into the commerce of the United States.'' 15 U.S.C. 2066(h)(1). Also, under section 222 of the CPSIA, the CPSC is required to develop a risk assessment methodology for the identification of shipments of consumer products that are intended for import into the United States, and are likely to violate consumer product safety statutes and regulations. Consistent with the federal government's movement to the ''single window,'' CPSC eventually plans to require electronic filing of either limited targeting/enforcement data or full certificate data to refine our risk assessment methodology and improve our import surveillance program.

Building on these authorities, CPSC works with CBP to review and inspect cargo and to clear compliant consumer products for importation into the United States. CPSC also works with CBP to enforce CPSC regulations and to destroy products that violate the law and cannot be reconditioned for importation. 15 U.S.C. 2066. For example, section 17 of the CPSA states that, upon the Commission's request, the Secretary of the Treasury has the authority to obtain samples of products offered for importation, without charge, and deliver

such samples to the Commission for inspection. 15 U.S.C. 2066(b). Additionally, CBP has the authority to seize and destroy products offered for importation under the Tariff Act, codified at 19 U.S.C. 1595a(c)(2)(A), where the importation or entry of such products is subject to any restriction or prohibition which is imposed by law relating to health, safety, or conservation and such products are not in compliance with the applicable rule, regulation, or statute. An admissibility determination may be deferred to allow an importer to recondition products for entry. 15 U.S.C. 2066(c). CPSC and CBP have authority to supervise the reconditioning of products for entry that are still under CBP's bond. 15 U.S.C. 2066(d). If these products cannot be reconditioned, they must be refused admission and destroyed, unless the Secretary of the Treasury permits export in lieu of destruction. 15 U.S.C. 2066(d) & (e).

Taken together, these authorities give CPSC a broad ability to monitor all consumer products within its jurisdiction. However, the PGA Message Set test described in this notice will be limited at this time to a study of CPSC regulated consumer products and the following products included on the Substantial Product Hazard List issued under section 15(j) of the CPSA (16 CFR part 1120): hand-supported hair dryers, extension cords, and seasonal and decorative lighting products. The Commission believes that insights gained through this limited PGA Message Set test will begin to inform future import surveillance efforts across broader areas of CPSC's jurisdiction.

C. ITDS Goals and CBP's Authority To Conduct National Customs Automation Program Tests

The ITDS is an electronic data interchange system whose goals include eliminating redundant information requirements, efficiently regulating the flow of commerce, and effectively enforcing laws and regulations relating to international trade by establishing a single portal system, operated by CBP, for the collection and distribution of standard electronic import and export data required by participating federal agencies. All federal agencies that require documentation for clearance or licensing the importation of cargo are required to participate in ITDS. The Customs Modernization provisions in the North American Free Trade Agreement Implementation Act provide the Commissioner of CBP with authority to conduct limited test programs or procedures designed to evaluate planned components of the National Customs Automation Program (''NCAP''), which includes ACE. The PGA Message Set test described in this notice is in furtherance of the ITDS and NCAP goals.

D. The ''Single Window'' Approach

President Obama, on February 19, 2014, issued Executive Order 13659, *Streamlining the Export/Import Process for America's Businesses* (''EO 13659''), which requires certain federal agencies to enhance significantly their use of technology to modernize and simplify the trade processing infrastructure. Specifically, EO 13659 requires applicable government agencies to use CBP's ITDS, and supporting systems, such as ACE, to create a ''single window'' through which businesses will electronically submit import-related data for clearance. EO 13659 envisions and is working toward a simpler, more efficient portal for trade use, to benefit the trade and government agencies that have related authorities and responsibilities.

Participating agencies have until December 31, 2016, to implement ACE as the primary means of receiving agency-specific standardized import data. As an independent agency, CPSC is not bound by EO 13659, but electronic filing of more limited targeting/enforcement data or certificate data will aid CPSC in focusing the agency's resources to clear compliant products more efficiently, target noncompliant shipments more effectively, and improve enforcement of our safety statutes and regulations at the ports.

E. Test Purpose and Goal

Consumer protection, by preventing noncompliant products from ever reaching American homes and American children, was a primary impetus for passage of the CPSIA and remains a high priority initiative of the CPSC. Section 222 of the CPSIA calls for the creation of a risk assessment methodology to better target noncompliant products at import. Accordingly, CPSC currently will focus its resources on a test with CBP on electronic filing of more limited targeting/enforcement data elements, using the PGA Message Set. Information and feedback from the test will be used to inform the Commission in striving to improve and streamline the import process. The initial intent of this pilot was to require electronic filing of Certificates of Compliance for all regulated imported products. However, after consultation with stakeholders, the Commission has, for the time being, limited the current PGA Message Set Test to collection of certain minimal targeting/enforcement data. This PGA Message Set Test will not provide the Commission with information relating to levels of compliance with the statutory certificate requirements. However, the Commission believes obtaining such information continues to be important to informing future Commission decisions regarding the need for electronic filing of full certificate data.

II. Targeting/Enforcement Data Test

The test will allow two different methods of filing targeting/enforcement data, using the PGA Message Set: (1) Filing a minimum of 5 data elements at time of entry (''PGA Message Set''), or (2) filing only a reference to targeting/enforcement data stored in a Registry maintained by CPSC (''Data Registry and Reference PGA Message Set''). Targeting/enforcement data for regulated finished products and specified finished products subject to section 15(j) of the CPSA, either in the form of the complete data set or the registry reference, would be submitted through the PGA Message Set as part of an ACE entry, or ACE entry summary if both entry and entry summary are filed together. Targeting/enforcement data, along with entry data, would then be made available to CPSC for validation, risk assessment, and admissibility determinations at entry, thereby facilitating compliant trade as well as sharpening our focus on noncompliant trade. The data would be used to review consumer product entry requirements and allow for earlier risk-based admissibility decisions by CPSC staff. Additionally, because it is electronic, the PGA Message Set could eliminate the necessity for submission and subsequent handling of paper documents. Piloting electronic filing as a means to transition away from paper-based filing is a priority initiative of the PGAs to meet the stated ''single window'' implementation timeline.

A. PGA Message Set

To file data electronically with CBP, information required for eligible finished products would need to be filed in CBP's ACE system. The proposed PGA Message Set test would evaluate the electronic filing of a minimum of the five targeting/enforcement data elements listed below for regulated finished products and those data elements listed below that are applicable to the following products included on the Substantial Product Hazard List issued under section 15(j) of the CPSA: hand-supported hair dryers,

extension cords, and seasonal and decorative lighting products.

1. Identification of the finished product;

2. Each consumer product safety rule to which the finished product has been certified under 16 CFR part 1110;

3. Place where the finished product was manufactured, produced, or assembled, including the identity and address of the manufacturing party;

4. Parties on whose testing a certificate under 16 CFR part 1110 depends (name and contact information of the testing entity); and

5. A check box indicating that a required certificate currently exists for the finished product, as required by Sections 14 and 17 of the CPSA.

Based on years of both CPSC and CBP staff law enforcement experience, CPSC staff has identified at this time the minimal data elements above as crucial for targeting noncompliant products before they enter commerce and enforcing related requirements.

CPSC is drafting a supplemental CATAIR guideline on filing targeting/enforcement data through the PGA Message Set that describes the technical specifications for filing targeting/enforcement data using the PGA Message Set, as well as the Data Registry and Reference PGA Message Set (described in section II.B below). The supplemental CATAIR guideline will be made available before CBP initiates the test and will be posted on *http://www.cbp.gov/trade/ace/catair.* Technical comments on CPSC's supplemental CATAIR guideline should be submitted in accordance with the instructions in the **ADDRESSES** section at the beginning of this notice.

B. CPSC Data Registry and Data Reference PGA Message Set

The Data Registry concept arises out of discussions at CPSC staff's 2014 eFiling workshop. Stakeholders noted that other agencies have existing databases that can be referenced during the CBP entry process without having to re-enter repeatedly large amounts of data. Participants expressed concern about added costs and time for importers to enter data for each regulated finished product and the need for accurate data entry. Customs brokers also expressed concern about lack of access to required data. For example, express carriers were concerned about meeting entry requirements during off-hour times when business personnel were unavailable for consultation. Stakeholders expressed concern that any requirement to re-enter large amounts of data, or lack of access to the required data, may slow the import process.

After considering stakeholder comments and concerns, CPSC has decided to include a Data Registry in the test to inform the Commission whether this concept alleviates some of the concerns expressed at the 2014 eFiling workshop. Instead of filing complete targeting/enforcement data in ACE with each entry, participants can elect to pre-file information into a Data Registry before filing an entry with CBP. The Data Registry will be created and maintained by CPSC. Use of the Data Registry will be voluntary. Firms can use the Data Registry to enter targeting/enforcement data and to manage those data; or firms with established databases or processes can provide information for many products electronically in a batch upload.

Once targeting/enforcement data are filed in the Data Registry, filers will only need to provide a reference, or identifier, to the data using the PGA Message Set during the entry process, rather than entering all data multiple times. Firms that choose to use the Data Registry only would need to provide their filer with an identifier, and would not need to provide all data elements for each product being imported. Using the Data Registry should minimize data entry; reduce costs and filing time; and allow firms to manage, update, and re-use targeting/enforcement data in the registry. CPSC demonstrated a prototype of the Registry at the May 13, 2015 public meeting with the COAC working group. A webcast of this meeting can be viewed here: *http://www.cpsc.gov/en/Newsroom/Multimedia/?vid=73411.*

III. Test Participant Eligibility, Selection Criteria, and Responsibilities

This document announces CPSC's plan, in consultation with CBP, to conduct a test for the electronic filing of targeting/enforcement data with CBP for regulated consumer products within CPSC's jurisdiction and specified products subject to section 15(j) of the CPSA that are imported into the United States. Test participants will work with CPSC and CBP to refine electronic filing of data through the PGA Message Set, by filing all data elements in the PGA Message Set, or by using the Data Registry, and filing a reference to targeting/enforcement data through PGA Message Set. CBP and CPSC are seeking small and large companies with an assortment of products under CPSC jurisdiction to participate in the test.

To be eligible to apply as a test participant, the applicant must:

- Import regulated consumer products within the Commission's jurisdiction or specified products subject to section 15(j) of the CPSA;
- File consumption entries and entry summaries in ACE, or have a broker who files in ACE;
- Use a software program that has completed ACE certification testing for the PGA Message Set;
- Be willing to participate in the Trade Support Network (TSN);
- Provide oral and written feedback on all aspects of the test as requested by CPSC, including information on costs to build to the requirements and time necessary to file targeting/enforcement data;
- Work with CPSC and CBP to test electronic filing of data using ABI to file through the Message Set, or references to targeting/enforcement data in the Data Registry; and
- Have a history of compliance with CPSC requirements.

Because the feedback on the test will be used to inform a rulemaking related to electronic filing, participant feedback will be publicly available.

CPSC, in consultation with CBP, will select participants based on the eligibility requirements, application date, the number and type of consumer products imported, how applicants would file targeting/enforcement data (PGA Message Set or Data Registry and Reference PGA Message Set), port locations, and the goal of having a diverse cross section of the trade community participate. The number of participants will be limited in the discretion of CPSC, but will in no event exceed nine participants. Selected applicants will participate in the test at the discretion of CBP and CPSC.

IV. Application Process

Any party seeking to participate in the test should email the company name, contact information, filer code, port(s) at which they are interested in filing, and an explanation of how they satisfy the requirements for participation to: *efilingpilot@cpsc.gov* on or before October 5, 2015 and throughout the duration of the test. CPSC will consider applications to participate until the test capacity of nine participants is filled. Requests to participate in the test should contain the subject heading: ''Application to participate in PGA Message Set Test.'' Applicants may be contacted directly for additional information in connection with the selection process. Selected participants will be notified by email. Selected test participants may have different starting dates. A party providing incomplete information, or otherwise not meeting the participation requirements, will be notified by email and given the

opportunity to resubmit the application. Applicants who are not selected also will be notified by email.

V. Advantages of Participation

During the period of participation in the test, which the CPSC refers to as the ''eFiling Alpha Pilot,'' test participants can expect the following:

- Opportunity to work directly with CBP and CPSC in pre-implementation stage of e-Filing targeting/enforcement data;
- Ability to provide feedback and experience that will inform ultimate e-Filing requirements;
- Ability to trouble-shoot systems and procedures;
- Reduction of product safety tests on goods imported;
- In the event of an examination, shipments will be conditionally released to the importer's premises for examination;
- In the event of testing, samples will receive ''front of the line testing'' from CPSC laboratories; and
- If destruction of products is required, participants may be allowed to destroy products in lieu of redelivering the product to CBP for destruction.

VI. Test Duration

Upon selection into the test, test participants will be expected to begin work promptly with CBP and CPSC to define and refine requirements. Once the test is operational, the test is expected to run for approximately six months or until concluded or extended by the issuance of a **Federal Register** notice announcing the extension or conclusion of this test.

VII. Paperwork Reduction Act

For this initial test of electronic filing of targeting/enforcement data, CPSC will accept fewer than 10 participants, and the test will be exempt from the requirements of the Paperwork Reduction Act of 1995. If CPSC decides to participate in a larger-scale test, we will provide notice and seek an OMB control number specifically for such test.

VIII. Confidentiality

All data submitted and entered into ACE is subject to the Trade Secrets Act (18 U.S.C. 1905) and is considered confidential, except to the extent as otherwise provided by law. As stated in previous notices, participation in this or any of the previous ACE tests is not confidential and upon a written Freedom of Information Act (''FOIA'') request, a name(s) of an approved participant(s) will be disclosed by CPSC or CBP in accordance with 5 U.S.C. 552.

Dated: August 18, 2015.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2015–20707 Filed 8–20–15; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Defense Advisory Committee on Women in the Services (DACOWITS)

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Advisory Committee on Women in the Services (DACOWITS) will take place. This meeting is open to the public.

DATES: Wednesday, September 9, 2015, from 8:00 a.m. to 12:30 p.m.; Thursday, September 10, 2015, from 8:00 a.m. to 12:00 p.m.

ADDRESSES: Hilton Alexandria—Mark Center, 5000 Seminary Road, Alexandria, VA 22311.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Bowling or DACOWITS Staff at 4800 Mark Center Drive, Suite 04J25–01, Alexandria, Virginia 22350–9000. *Robert.d.bowling1.civ@mail.mil.* Telephone (703) 697–2122. Fax (703) 614–6233. Any updates to the agenda or any additional information can be found at *http://dacowits.defense.gov/.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and Section 10(a), Public Law 92–463, as amended, notice is hereby given of a forthcoming meeting of the Defense Advisory Committee on Women in the Services (DACOWITS).

The purpose of the meeting is for the Committee to receive briefings and updates relating to their current work and vote on their 2015 recommendations. The Designated Federal Officer will give a status update on the Committee's requests for information. The Committee will receive a briefing from OSD Health Affairs on the Services' pregnancy/postpartum policies. The Navy and Coast Guard will give a briefing on the detailing/assignment process for women serving at sea. Additionally, the Committee will receive briefings from the Services on their In-Home Child Care Provider Certification programs. The Army will provide an update on the Army Ranger Assessment. Also, the Committee will propose and vote on their 2015 recommendations. There will also be a public comment period.

Pursuant to 41 CFR 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, interested persons may submit a written statement for consideration by the Defense Advisory Committee on Women in the Services. Individuals submitting a written statement must submit their statement to the point of contact listed at the address in **FOR FURTHER INFORMATION CONTACT** no later than 5:00 p.m., Tuesday, September 8, 2015. If a written statement is not received by Tuesday, September 8, 2015, prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the Defense Advisory Committee on Women in the Services until its next open meeting. The Designated Federal Officer will review all timely submissions with the Defense Advisory Committee on Women in the Services Chair and ensure they are provided to the members of the Defense Advisory Committee on Women in the Services. If members of the public are interested in making an oral statement, a written statement should be submitted. After reviewing the written comments, the Chair and the Designated Federal Officer will determine who of the requesting persons will be able to make an oral presentation of their issue during an open portion of this meeting or at a future meeting. Pursuant to 41 CFR 102–3.140(d), determination of who will be making an oral presentation is at the sole discretion of the Committee Chair and the Designated Federal Officer and will depend on time available and if the topics are relevant to the Committee's activities. Two minutes will be allotted to persons desiring to make an oral presentation. Oral presentations by members of the public will be permitted only on Thursday, September 10, 2015 from 8:15 a.m. to 8:45 a.m. in front of the full Committee. The number of oral presentations to be made will depend on the number of requests received from members of the public.

Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, this meeting is open to the public, subject to the availability of space.

Meeting Agenda

Wednesday, September 9, 2015, from 8:00 a.m. to 12:30 p.m.

—Welcome, Introductions, Announcements

—Request for Information Status Update
—Briefing—Medical Review of the Services' Pregnancy/Postpartum Policies
— Briefings—Detailing/Assignment Process for Women Serving at Sea
—Briefings—Review of In-Home Child Care Provider Certification Programs
— Briefing—Update on Army Ranger Assessment

Thursday, September 10, 2015, from 8:00 a.m. to 12:00 p.m.

—Welcome and Announcements
— Public Comment Period
—Propose and Vote on 2015 Recommendations

Dated: August 17, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015–20650 Filed 8–20–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Availability of a Draft Feasibility Study With Integrated Environmental Impact Statement, Ala Wai Canal Project, Oahu, HI

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Availability.

SUMMARY: The U.S. Army Corps of Engineers (USACE) announces the availability of a Public Review Draft Feasibility Study with Integrated Environmental Impact Statement (EIS), for the Ala Wai Canal Project, Oahu, Hawaii. To better inform potential commenters, a public meeting is scheduled on September 30, 2015 at Washington Middle School in Honolulu, Hawaii. The Draft Feasibility Study/EIS evaluates alternatives to manage flood risk within the Ala Wai watershed, which includes the neighborhoods of Makiki, Manoa, Palolo, Kapahulu, Moiliili, McCully, and Waikiki. It also documents the existing condition of environmental resources in areas considered for locating flood risk management features and potential impacts on those resources that could result from implementing each alternative. The State of Hawaii, Department of Land and Natural Resources is the non-Federal sponsor and the proposing agency for compliance with the Hawaii law on Environmental Impact Statements.

DATES: All written comments must be postmarked on or before October 7, 2015.

ADDRESSES: Written comments may be submitted to the Ala Wai Canal Project, U.S. Army Corps of Engineers, Honolulu District, ATTN: Derek Chow, Chief, Civil and Public Works Branch (CEPOH–PP–C), Building 230, Fort Shafter, HI 96858–5440 or via email to *AlaWaiCanalProject@USACE.Army.mil.* Oral and written comments may also be submitted at the public meeting described in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Mr. Derek Chow, U.S. Army Corps of Engineers, Honolulu District, 808–835–4026 or via email at *Derek.J.Chow@usace.army.mil* .

SUPPLEMENTARY INFORMATION: Before including your address, phone number, email address, or other personal identifying information in your comment, be advised that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

The document is available for review at the following locations including all regional libraries in Hawaii and the library branches in the project area:

(1) Ala Wai Canal Project Web site: *www.AlaWaiCanalProject.com*;

(2) Hawaii Kai Public Library, 249 Lunalilo Home Road, Honolulu, HI 96825;

(3) Hawaii State Library, 478 S. King Street, Honolulu, HI 96813;

(4) Hilo Public Library, 300 Waianuenue Avenue, Hilo, HI 96720;

(5) Kaimuki Public Library, 1041 Koko Head Avenue, Honolulu, HI 96816;

(6) Kaneohe Public Library, 45–829 Kamehameha Highway, Kaneohe, HI 96744;

(7) Kahului Public Library, 90 School Street, Kahului, HI 96732;

(8) Library for the Blind and Physically Handicapped, 402 Kapahulu Avenue, Honolulu, HI 96815;

(9) Lihue Public Library, 4344 Hardy Street, Lihue, HI 96766;

(10) Manoa Public Library, 2716 Woodlawn Drive, Honolulu, HI 96822;

(11) McCully-Moiliili Public Library, 2211 S. King Street, Honolulu, HI 96826;

(12) Pearl City Public Library, 1138 Waimano Home Road, Pearl City, HI 96782;

(13) University of Hawaii, Hamilton Library, 2550 McCarthy Mall, Honolulu, HI 96822; and

(14) Waikiki-Kapahulu Public Library, 400 Kapahulu Avenue, Honolulu, HI 96815.

Copies may also be requested in writing at (see **ADDRESSES**).

Proposed Action. The Ala Wai Canal Project, Oahu, Hawaii feasibility study is a single-purpose flood risk management project to reduce riverine flood risks to property and life safety in the Ala Wai Watershed. The Ala Wai Watershed is located on the southeastern side of the island of Oahu, Hawaii. The watershed is 19 square miles and encompasses three sub-watersheds of Makiki, Manoa and Palolo Streams, which all drain into the Ala Wai Canal. The study area includes the most densely populated watershed in Hawaii with approximately 200,000 residents in the developed areas. In addition, Waikiki supports approximately 79,000 visitors on a daily basis.

This study was authorized under Section 209 of the Flood Control Act of 1962 (Pub. L. 87–874), a general study authority that authorizes surveys in harbors and rivers in Hawaii ''with a view to determining the advisability of improvements in the interest of navigation, flood control, hydroelectric power development, water supply, and other beneficial uses, and related land resources.''

Alternatives. The Draft Feasibility Study/EIS considers a full range of nonstructural and structural flood risk management alternatives that would meet the proposed action's purpose and need and incorporate measures to avoid and minimize impacts to native aquatic species, stream habitat, and other resources. In response to identified flood-related problems and opportunities, a range of alternatives were evaluated through an iterative screening and formulation process, resulting in identification of a tentatively selected plan.

The Tentatively Selected Plan (TSP) is the National Economic Development (NED) Plan and consists of the following components: improvements to the flood warning system, 6 in-stream debris and detention basins in the upper reaches of the watershed, 1 stand-alone debris catchment feature, 3 multi-purpose detention basins in open space areas through the developed watershed, floodwalls along portions of the Ala Wai Canal, mitigation measures, and 3 associated pump stations to maintain internal drainage. Canal floodwalls would extend approximately 1.7 miles along the left (*makai*) bank and

approximately 0.9 mile along the right (*mauka*) bank (including gaps for bridges).

Public Involvement. As part of the current public involvement process, all affected Federal, State, and local agencies, Native Hawaiian organizations, private organizations, and the public are invited to review and comment on the Draft Feasibility Study with Integrated EIS. The USACE Honolulu District will hold a public meeting at Washington Middle School, 1633 S. King Street, Honolulu, HI from 5:00 p.m. to 8:00 p.m. on Wednesday, September 30, 2015. Comments may also be submitted as described in (see **ADDRESSES**) section.

Other Environmental Review Requirements. To the extent practicable, NEPA and HRS Chapter 343 requirements will be coordinated in the preparation of the Final EIS.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2015–20714 Filed 8–20–15; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Charter Schools Program (CSP) Grants to Non-State Educational Agency (Non-SEA) Eligible Applicants for Planning, Program Design, and Initial Implementation and for Dissemination

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Notice.

Overview Information:

CSP Grants to Non-SEA Eligible Applicants for Planning, Program Design, and Initial Implementation and for Dissemination.

Notice inviting applications for new awards for fiscal year (FY) 2016.

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.282B and 84.282C.

Dates:

Applications Available: August 21, 2015.

Dates of Pre-Application Webinars (all times are Washington, DC time):

1. August 26, 2015, 3:30 p.m. to 5:00 p.m. and

2. September 9, 2015, 3:30 p.m. to 5:00 p.m.

Deadline for Transmittal of Applications: October 6, 2015.

Deadline for Intergovernmental Review: December 21, 2015.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the CSP is to increase national understanding of the charter school model by expanding the number of high-quality charter schools available to students across the Nation; providing financial assistance for the planning, program design, and initial implementation of charter schools; and evaluating the effects of charter schools, including their effects on students, student academic achievement, staff, and parents.

This notice invites applications from non-SEA eligible applicants for two types of grants: (1) Planning, Program Design, and Initial Implementation (CFDA 84.282B); and (2) Dissemination (CFDA 84.282C). Each type of grant has its own eligibility requirements and selection criteria. Information pertaining to each type of grant is provided in subsequent sections of this notice.

Non-SEA eligible applicants are those that are qualified to participate based on requirements set forth in this notice. Non-SEA eligible applicants must be from States in which the SEA does not have an approved application under the CSP. For more information on this eligibility restriction, please see the notes in Section III.1.b. of this notice.

Priorities: This notice includes one absolute priority, three competitive preference priorities, and one invitational priority. The absolute priority and competitive preference priorities are from the notice of final supplemental priorities and definitions for discretionary grant programs published in the **Federal Register** on December 10, 2014 (79 FR 73425) (Supplemental Priorities).

Background: The absolute and competitive preference priorities focus this competition on assisting educationally disadvantaged students and other students—specifically students who are living in poverty, students with disabilities, English learners, students who are members of federally recognized Indian tribes, and students in rural areas—in meeting State academic content standards and State student academic achievement standards. Additionally, we include a competitive preference priority for improving early learning and development outcomes.

The competitive preference priorities for projects serving students with disabilities and English learners are included for the following reasons. First, a 2012 report indicated that charter schools may be serving students with disabilities at a lower rate than traditional public schools.[1] Second, across the Nation, the number of public school students identified as English learners increased significantly from 2002 to 2012, with the 2014 National Assessment of Educational Progress reports showing significant achievement gaps between English learners and their peers.[2] Additionally, recent research indicates that charter schools show gains for students with disabilities in mathematics and for English learners in mathematics and reading that are higher than those for their counterparts in other public schools.[3] The competitive preference priorities are included to supplement the absolute priority and to further emphasize the focus on serving educationally disadvantaged students, particularly students with disabilities and English learners.

The Department understands that students who are members of federally recognized Indian tribes and their communities face unique challenges. The competitive preference priority for federally recognized Indian tribes is designed to encourage applicants to collaborate with Native American communities to design and implement high-quality charter schools as part of their efforts to strengthen public education.

Furthermore, the Department recognizes that rural schools confront a particular set of challenges and seeks to encourage rural education leaders to use charter schools, as appropriate, as part of their overall efforts to improve educational outcomes.

Lastly, the Department also believes that high-quality preschool should be provided to all children in the Nation so that they enter kindergarten ready to succeed in school. To promote charter schools' offering preschool as a part of their elementary education programs, we include in this competition a competitive preference priority for improving early learning and development outcomes.

The absolute priority and competitive preference priorities are intended to encourage applicants to develop innovative projects designed to eliminate achievement gaps between the subgroups described in this notice and

[1] Government Accountability Office. GAO–12–543, June 2012. ''Additional Federal Attention Needed to Help Protect Access for Students with Disabilities,'' available online at *www.gao.gov/assets/600/591435.pdf.*

[2] U.S. Department of Education, National Center for Education Statistics. 2014. ''The Condition of Education 2014 (NCES 2014–037),'' available online at *http://nces.ed.gov/pubs2014/2014083.pdf.*

[3] Center for Research on Education Outcomes. 2013. ''National Charter School Study 2013,'' available online at *http://credo.stanford.edu/documents/NCSS%202013%20Final%20Draft.pdf.*

the highest-achieving subgroups in their States. The priorities are also intended to encourage applicants to develop innovative projects for students facing unique educational challenges.

The invitational priority builds on these goals by focusing on applicants that are designing charter schools that will attract and serve students from diverse backgrounds. The Department encourages the meaningful inclusion of diversity in charter school models, and looks to learn more about successful practices through this invitational priority.

Additionally, by way of background, under section 5210(1)(G) of the Elementary and Secondary Education Act of 1965, as amended (ESEA) (20 U.S.C. 7221i(1)(G)), all charter schools receiving CSP funds must comply with various non-discrimination laws, including the Age Discrimination Act of 1975, title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, part B of the Individuals with Disabilities Education Act (IDEA) (*i.e.,* rights afforded to students with disabilities and their parents). In addition, all charter schools receiving CSP funds must comply with applicable State laws.

Absolute Priority: For FY 2016 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Supporting High-Need Students [Students Living in Poverty].

Projects that are designed to improve academic outcomes and learning environments for students who are living in poverty and are served by schools with high concentrations of students living in poverty.

Note: The Secretary encourages the applicant to describe, through the use of supporting data, the basis by which the applicant has determined that they meet this priority.

Competitive Preference Priorities: For FY 2016 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we will award up to an additional three points to an application depending on how well the application addresses *Competitive Preference Priority 1,* up to an additional three points to an application depending on how well the application addresses *Competitive Preference Priority 2,* and up to an additional two points to an application depending on how well the application addresses *Competitive Preference Priority 3.* The maximum number of points an application can receive under these priorities is eight..

These priorities are:

Competitive Preference Priority 1—Supporting High-Need Students [Rural Students, Students with Disabilities, English Learners] (up to 3 points).

Projects that are designed to improve academic outcomes and learning environments for one or more of the following groups of students:

(a) Students served by Rural Local Educational Agencies.

(b) Students with disabilities.

(c) English learners.

Note: Applicants may choose to respond to one or more of the priority areas and are not required to respond to each priority area in order to receive the maximum available points under this competitive preference priority.

Competitive Preference Priority 2—Supporting High-Need Students [Federally Recognized Indian Tribes] (up to 3 points).

Projects that are designed to improve academic outcomes and learning environments for students who are members of federally recognized Indian tribes.

Competitive Preference Priority 3—Improving Early Learning and Development Outcomes (up to 2 points).

Projects that are designed to improve early learning and development outcomes across one or more of the essential domains of school readiness for children from birth through third grade (or for any age group within this range) through a focus on including preschool, whether offered in school or community-based settings, as part of elementary education programs and systems in order to expand opportunities for preschool students and teachers.

Invitational Priority: For FY 2016 and any subsequent year in which we make awards based on the list of unfunded applicants from this competition, this priority is an invitational priority. Under 34 CFR 75.105(c)(1), we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

Invitational Priority—Promoting Diversity.

The Secretary is particularly interested in applications from charter school developers planning schools, or from charter schools, that are designed to attract and serve students from diverse backgrounds, including students from different racial and ethnic groups and educationally disadvantaged students (*e.g.,* economically disadvantaged students, students with disabilities, migrant students, English learners, neglected or delinquent students, and homeless students), as reflected in the (a) charter school's mission statement, (b) vision of the charter school, or (c) charter or performance agreement between the charter school and its authorizer.

Note: For information on permissible ways to address this priority, please refer to the joint guidance issued by the Department of Education and the Department of Justice entitled, ''Guidance on the Voluntary Use of Race to Achieve Diversity and Avoid Racial Isolation in Elementary and Secondary Schools'' at *www2.ed.gov/about/offices/list/ocr/docs/guidance-ese-201111.pdf* and to Section E of the CSP Nonregulatory Guidance at *www2.ed.gov/programs/charter/nonregulatory-guidance.html.*

Application Requirements: An applicant applying for CSP grant funds, under either CFDA number 84.282B or 84.282C, must address the following application requirements, which are based on section 5203(b) of the ESEA (20 U.S.C. 7221b(b)). Applicants must also address the applicable selection criteria in this notice, and may choose to respond to the application requirements in the context of its responses to those selection criteria.

(a) Describe the educational program to be implemented by the proposed charter school, including how the program will enable all students to meet challenging State student academic achievement standards, the grade levels or ages of children to be served, and the curriculum and instructional practices to be used;

Note: An applicant proposing to operate a single-sex charter school should include in its application, or as an addendum to the application, a detailed description of how it is complying with applicable nondiscrimination laws, including the Equal Protection Clause of the U.S. Constitution (as interpreted in *United States* v. *Virginia,* 518 U.S. 515 (1996) and other cases) and Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, *et seq.*) and its regulations, including 34 CFR 106.34(c) with respect to the single-sex school. Specifically, the applicant should provide a written justification for a proposed single-sex charter school that explains (1) how the single-sex charter school is based on an important governmental objective(s); and (2) how the single-sex nature of the charter school is substantially related to the stated objective(s). The applicant should also provide (1) information about whether there is a substantially equal single-sex school(s) for students of the excluded sex, and, if so, a

detailed description of both the proposed single-sex charter school and the substantially equal single-sex school(s) based on the factors in 34 CFR 106.34(c)(3); and (2) information about whether there is a substantially equal coeducational school(s) for students of the excluded sex, and, if so, a detailed description of both the proposed single-sex charter school and the substantially equal coeducational school(s), based on the factors in 34 CFR 106.34(c)(3).

An applicant proposing to operate single-sex classes or extracurricular activities offerings at a coeducational charter school should include in its application, or as an addendum to its application, a detailed description of how it is complying with applicable nondiscrimination laws, including the Equal Protection Clause of the U.S. Constitution (as interpreted in *United States* v. *Virginia,* 518 U.S. 515 (1996) and other cases) and Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, *et seq.*) and its regulations, including 34 CFR 106.34(b), with respect to those single-sex offerings. The Title IX requirements are discussed in more detail in the Department's ''Questions and Answers on Title IX and Single-Sex Elementary and Secondary Classes and Extracurricular Activities,'' available at *www2.ed.gov/about/offices/list/ocr/docs/faqs-title-ix-single-sex-201412.pdf.*

(b) Describe how the charter school will be managed;

(c) Describe the objectives of the charter school and the methods by which the charter school will determine its progress toward achieving those objectives;

Note: The applicant may choose to include a discussion of the project-specific performance measures and targets it develops in response to the Performance Measures requirement as part of its response to this application requirement. The applicant should review Section VI.4. *Performance Measures* of this notice for information on the requirements for developing project-specific performance measures and targets consistent with the objectives of the proposed project.

(d) Describe the administrative relationship between the charter school and the authorized public chartering agency;

(e) Describe how parents and other members of the community will be involved in the planning, program design, and implementation of the charter school;

(f) Describe how the authorized public chartering agency will provide for continued operation of the charter school once the Federal grant has expired, if that agency determines that the charter school has met its objectives as described in paragraph (c) of this section;

(g) If the charter school desires the Secretary to consider waivers under the authority of the CSP, include a request and justification for waivers of any Federal statutory or regulatory provisions that the applicant believes are necessary for the successful operation of the charter school, and a description of any State or local rules, generally applicable to public schools, that will be waived for, or otherwise not apply to, the school.

Note: Each applicant for a Planning, Program Design, and Initial Implementation Grant under CFDA number 84.282B that is requesting a waiver of the requirement under section 5203(d)(3) of the ESEA (20 U.S.C. 7221b(d)(3)) to provide its authorized public chartering agency with notice, and a copy, of its CSP application, should indicate whether it has applied for a charter previously and, if so, the name of the authorized public chartering authority and the disposition of the charter application;

(h) Describe how the grant funds will be used, including a description of how these funds will be used in conjunction with other Federal programs administered by the Secretary;

(i) Describe how students in the community will be informed about the charter school and be given an equal opportunity to attend the charter school;

Note: The applicant should provide a detailed description of its recruitment and admissions policies and practices, including a description of the lottery it plans to employ if more students apply for admission than can be accommodated. The applicant should also describe any current or planned use of a weighted lottery or exemptions of certain categories of students from the lottery and how the use of such weights or exemptions is consistent with State law and the CSP authorizing statute. For information on the CSP lottery requirement, including permissible exemptions from the lottery and the circumstances under which charter schools receiving CSP funds may use weighted lotteries, see Section E of the CSP Nonregulatory Guidance at *www2.ed.gov/programs/charter/nonregulatory-guidance.html.*

(j) Describe how a charter school that is considered an LEA under State law, or an LEA in which a charter school is located, will comply with sections 613(a)(5) and 613(e)(1)(B) of the IDEA (for additional information on the IDEA, please see *http://idea.ed.gov/explore/view/p/%2Croot%2Cstatute%2CI%2CB%2C613%2C*); and

(k) If the eligible applicant desires to use grant funds for dissemination activities under section 5202(c)(2)(c) of the ESEA (20 U.S.C. 7221a(c)(2)(C)), describe those activities and how those activities will involve charter schools and other public schools, LEAs, charter school developers, and potential charter school developers.

Definitions

The following definitions applicable to this competition are from the Supplemental Priorities and from 34 CFR 77.1(c).

Ambitious means promoting continued, meaningful improvement for program participants or for other individuals or entities affected by the grant, or representing a significant advancement in the field of education research, practices, or methodologies. When used to describe a performance target, whether a performance target is ambitious depends upon the context of the relevant performance measure and the baseline for that measure.

Baseline means the starting point from which performance is measured and targets are set.

Essential domains of school readiness means the domains of language and literacy development, cognition and general knowledge (including early mathematics and early scientific development), approaches toward learning (including the utilization of the arts), physical well-being and motor development (including adaptive skills), and social and emotional development.

Logic model (also referred to as theory of action) means a well-specified conceptual framework that identifies key components of the proposed process, product, strategy, or practice (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the relationships among the key components and outcomes, theoretically and operationally.

Performance measure means any quantitative indicator, statistic, or metric used to gauge program or project performance.

Performance target means a level of performance that an applicant would seek to meet during the course of a project or as a result of a project.

Relevant outcome means the student outcome(s) (or the ultimate outcome if not related to students), the proposed process, product, strategy, or practice is designed to improve; consistent with the specific goals of a program.

Rural local educational agency means a local educational agency (LEA) that is eligible under the Small Rural School Achievement (SRSA) program or the Rural and Low-Income School (RLIS) program authorized under Title VI, Part B of the ESEA. Eligible applicants may determine whether a particular LEA is eligible for these programs by referring to information on the Department's Web

site at *www2.ed.gov/nclb/freedom/local/reap.html.*

Strong theory means a rationale for the proposed process, product, strategy, or practice that includes a logic model.

Program Authority: 20 U.S.C. 7221–7221i.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended in 2 CFR part 3474. (d) The Supplemental Priorities.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply only to institutions of higher education.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $4,000,000.

The Administration has requested $375,000,000 for the CSP for FY 2016, of which an estimated $4,000,000 would be available for awards under this competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications now to allow sufficient time to complete the grant review process early in FY 2016, if Congress appropriates funds for this program.

Contingent upon the availability of funds and quality of applications, we may make additional awards later in FY 2016 or in subsequent years from the list of unfunded applications from this competition.

Note: All pre-award costs are incurred at the applicant's risk, and the Secretary is under no obligation to reimburse those costs if for any reason the applicant does not receive an award, or if the award is less than anticipated and inadequate to cover the costs (2 CFR 200.209).

Note: The Consolidated Appropriations Act, 2014, and the Consolidated and Further Continuing Appropriations Act, 2015, authorized the use of CSP funds for ''grants that support preschool education in charter schools.'' If Congress includes such language in FY 2016 appropriations, a grantee under this competition may use CSP funds to support preschool education in a charter school. For additional information and guidance regarding the use of CSP funds to support preschool education in charter schools, see ''Guidance on the use of Funds to support Preschool Education,'' released in November 2014, available at *www2.ed.gov/programs/charter/csppreschoolfaqs.doc.*

Estimated Range of Awards (84.282B): $150,000 to $250,000 per year.

Estimated Average Size of Awards (84.282B): $200,000 per year.

Estimated Number of Awards (84.282B): 17–20.

Estimated Range of Awards (84.282C): $100,000 to $300,000 per year.

Estimated Average Size of Awards (84.282C): $200,000 per year.

Estimated Number of Awards (84.282C): 1–3.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months for planning, program design, and initial implementation grants under CFDA number 84.282B. Up to 24 months for dissemination grants under CFDA number 84.282C.

Note: For planning, program design, and initial implementation grants awarded by the Secretary to non-SEA eligible applicants under CFDA number 84.282B, no more than 18 months may be used for planning and program design and no more than 24 months may be used for the initial implementation of a charter school.

III. Eligibility Information

1. *Eligible Applicants:*

a. *Planning, Program Design, and Initial Implementation grants (CFDA number 84.282B):* A developer that has (1) applied to an authorized public chartering authority to operate a charter school, as defined in section 5210(1) of the ESEA (20 U.S.C. 7221i(1)); and (2) provided adequate and timely notice to that authority under section 5203(d)(3) of the ESEA (20 U.S.C. 7221b(d)(3)). In accordance with section 5203(d)(3) of the ESEA, if the authorized public chartering authority to which a charter school proposal will be submitted has not been determined, an applicant for a pre-charter planning grant may include in its application a request for a waiver from the Secretary of the requirement that the eligible applicant provide its authorized public chartering authority timely notice, and a copy, of its application for CSP funds (20 U.S.C. 7221b(d)(3)).

Note: Section 5210(2) of the ESEA (20 U.S.C. 7221i(2)) defines ''developer'' as an individual or group of individuals (including a public or private nonprofit organization), which may include teachers, administrators and other school staff, parents, or other members of the local community in which a charter school project will be carried out. Additionally, the charter school must be located in a State with a State statute specifically authorizing the establishment of charter schools (section 5210(1)(a) of the ESEA (20 U.S.C. 7221i(1)(a)) and in which the SEA does not have an application approved under the CSP (see section 5202(b) of the ESEA (20 U.S.C. 7221a(b)).

b. *Dissemination grants (CFDA number 84.282C):* A charter school, as defined in section 5210(1) of the ESEA (20 U.S.C. 7221i(1)), that has been in operation for at least three consecutive years and has demonstrated overall success, including—

(1) Substantial progress in improving student academic achievement;

(2) High levels of parent satisfaction; and

(3) The management and leadership necessary to overcome initial start-up problems and establish a thriving, financially viable charter school.

Note: Consistent with section 5204(f)(6) of the ESEA (20 U.S.C. 7221c(f)(6)), a charter school may apply for funds to carry out dissemination activities, whether or not the charter school previously applied for or received funds under the CSP for planning, program design, or implementation.

Note: In accordance with section 5202(b) of the ESEA (20 U.S.C. 7221a(b)), these competitions (CFDA numbers 84.282B and 84.282C) are limited to eligible applicants in States in which the SEA does not have an approved application under the CSP (or will not have an approved application as of October 1, 2015). States in which the SEA currently has an approved CSP application are California, Colorado, District of Columbia, Florida, Indiana, Minnesota, Missouri, New Jersey, New York, Rhode Island, and South Carolina. We will not consider applications of non-SEA eligible applicants from these States. In addition, after the deadline for transmittal of applications in this notice, the Department expects to approve additional SEAs under the FY 2015 CSP SEA competition (84.282A), which will be added to the list for which we will not accept applications of non-SEA eligible applicants. Thus, applications of non-SEA eligible applicants from these States will be withdrawn from consideration. While we realize that this approach presents challenges, it is intended to ensure that charter school developers in all eligible States have the opportunity to apply for grants for planning, program design, and initial implementation, either through an SEA subgrant or the CSP Non-SEA competition, in advance of the 2016–2017 year. FY 2015 SEA awards will be posted at *www2.ed.gov/programs/charter/awards.html* when available.

Non-SEA eligible applicants that propose to use grant funds for planning, program design, and initial implementation, of charter schools must apply under CFDA number 84.282B. Non-SEA eligible applicants that request

funds for dissemination activities must apply under CFDA 84.282C.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* Lourdes Rivery, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W255, Washington, DC 20202–5970. Telephone: (202) 453–7060 or by email: *lourdes.rivery@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.*, braille, large print, audiotape, or compact disc) by contacting the program contact person listed in this section.

2. a. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

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. The Secretary strongly encourages applicants to limit Part III to the equivalent of no more than 50 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all 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 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, you must include all of the application narrative in Part III.

b. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for the CSP Non-SEA Grants for Planning, Program Design, and Initial Implementation and for Dissemination, an application may include business information that the applicant considers proprietary. The Department's regulations define ''business information'' in 34 CFR 5.11.

Because we plan to make successful applications available to the public, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you feel is exempt from disclosure under Exemption 4 of the Freedom of Information Act. In the appropriate Appendix section of your application, under ''Other Attachments Form,'' please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Submission Dates and Times:*

Applications Available: August 21, 2015.

Dates of Pre-Application Webinars: The Department will hold a pre-application Webinar for prospective applicants on the following dates (all times are Washington, DC time):

1. August 26, 2015, 3:30 p.m. to 5:00 p.m. and
2. September 9, 2015, 3:30 p.m. to 5:00 p.m.

Individuals interested in attending one of the Webinars are encouraged to pre-register by emailing their name, organization, contact information, and preferred Webinar date and time with the subject heading NON-SEA PRE-APPLICATION MEETING to *Charterschools@ed.gov.* There is no registration fee for attending this Webinar.

For further information about the pre-application Webinar, contact Lourdes Rivery, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W255, Washington, DC 20202–5970. Telephone: (202) 453–7060 or by email: *lourdes.rivery@ed.gov.*

Deadline for Transmittal of Applications: October 6, 2015.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to Section IV.

We do not consider an application that does not comply with the deadline requirements. Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in Section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: December 21, 2015.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:*

Use of Funds for Post-Award Planning and Design of the Educational Program and Initial Implementation of the Charter School. A non-SEA eligible applicant receiving a grant under CFDA number 84.282B may use the grant funds only for—

(a) Post-award planning and design of the educational program, which may include (1) refinement of the desired educational results and of the methods for measuring progress toward achieving those results; and (2) professional development of teachers and other staff who will work in the charter school; and

(b) Initial implementation of the charter school, which may include (1) informing the community about the school; (2) acquiring necessary equipment and educational materials and supplies; (3) acquiring or developing curriculum materials; and (4) other initial operational costs that cannot be met from State or local sources. (20 U.S.C. 7221c(f)(3)).

Note: CSP funds awarded under CFDA number 84.282B may be used only for the planning and initial implementation of a charter school. As a general matter, the Secretary considers charter schools that have been in operation for more than three years to be past the initial implementation phase and, therefore, ineligible to receive CSP funds to support the initial implementation of a charter school.

Use of Funds for Dissemination Activities. A charter school receiving a grant under CFDA number 84.282C may use the grant funds to assist other schools in adapting the charter school's program (or certain aspects of the charter school's program), or to disseminate information about the charter school, through such activities as—

(a) Assisting other individuals with the planning and start-up of one or more new public schools, including charter schools, that are independent of the assisting charter school and the assisting charter school's developers, and that agree to be held to at least as high a level of accountability as the assisting charter school;

(b) Developing partnerships with other public schools, including charter schools, designed to improve student academic achievement in each of the schools participating in the partnership;

(c) Developing curriculum materials, assessments, and other materials that promote increased student achievement and are based on successful practices within the assisting charter school; and

(d) Conducting evaluations and developing materials that document the successful practices of the assisting charter school and that are designed to improve student performance in other schools. (20 U.S.C. 7221c(f)(6))

We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM) (formerly the Central Contractor Registry (CCR)), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one to two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 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: *www2.ed.gov/fund/grant/apply/sam-faqs.html.*

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/web/grants/register.html.*

7. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the CSP, CFDA numbers 84.282B and 84.282C, 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 CSP at *www.Grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.282, not 84.282B or 282C).

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 program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *www.G5.gov.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described

elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in Section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception 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: Lourdes Rivery, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W255, Washington, DC 20202–5970.

FAX: (202) 205–5630.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.282B or 84.282C), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.282B or 84.282C), 550 12th Street SW., Room 7039, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in

Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:*

The selection criteria for this competition are from sections 5203, 5204, and 5210 of the ESEA (20 U.S.C. 7221b, 7221c, and 7221i) and 34 CFR 75.210.

The selection criteria for applicants submitting applications under CFDA number 84.282B are listed in paragraph (a) of this section, and the selection criteria for applicants submitting applications under CFDA number 84.282C are listed in paragraph (b) of this section.

(a) *Selection Criteria for Planning, Program Design, and Initial Implementation Grants (CFDA number 84.282B).*

The following selection criteria are based on sections 5203, 5204, and 5210 of the ESEA (20 U.S.C. 7221b, 7221c, and 7221i) and 34 CFR 75.210. The maximum possible score for addressing all of the criteria in this section is 100 points. The maximum possible score for addressing each criterion is indicated in parentheses following the criterion. In evaluating an application for a Planning, Program Design, and Implementation Grant, the Secretary considers the following criteria:

(1) *Quality of the proposed curriculum and instructional practices (20 U.S.C. 7221c(b)(1)) (up to 15 points).*

Note: The Secretary encourages the applicant to describe the quality of the educational program to be implemented by the proposed charter school, including: How the program will enable all students to meet challenging State student academic achievement and content standards; the grade levels or ages of students to be served; and the curriculum and instructional practices to be used.

(2) *The extent to which the proposed project will assist educationally disadvantaged students and other students in meeting State academic content standards and State student academic achievement standards (20 U.S.C. 7221c(a)(1)) (up to 5 points).*

(3) *The quality of the strategy for assessing achievement of the charter school's objectives (20 U.S.C. 7221c(a)(4)) (up to 15 points).*

Note: The Secretary encourages the applicant to propose a comprehensive plan for assessing the achievement of the charter school's objectives, inclusive of developing performance measures and performance targets for its proposed grant project that are consistent with those objectives. The applicant should clearly identify the project-specific performance measures and performance targets in its plan and should review Section VI.4. *Performance Measures* of this notice for information on the requirements for developing those performance measures and performance targets consistent with the objectives of the proposed project. The applicant may choose to include a discussion of the project-specific performance measures and targets it develops in response to the Performance Measures requirements when addressing this criterion.

(4) *The extent of community support and parental and community involvement (20 U.S.C. 7221c(b)(3); 20 U.S.C. 7221b(b)(3)(E)) (up to 10 points).*

The Secretary considers the extent of community support for, and parental and community involvement in, the charter school. In determining the extent of community support for, and parental and community involvement in, the charter school, the Secretary considers—

(i) The extent of community support for the application (up to 5 points); and

(ii) How parents and other members of the community will be involved in the planning, program design, and implementation of the charter school (up to 5 points).

Note: In describing the extent to which the proposed project encourages parental and community involvement in the planning, program design, and implementation of the charter school, the Secretary encourages the applicant to describe how parents and other members of the community will be informed about the charter school and how students will be given an equal opportunity to attend the charter school.

(5) *Quality of project personnel (34 CFR 75.210(e)(1), (e)(2), and (e)(3)(ii)) (up to 22 points).*

The Secretary considers the quality of the personnel who will carry out the proposed project. In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (up to 2 points).

In addition, the Secretary considers the qualifications, including relevant training and experience, of key project personnel (up to 20 points).

Note: The Secretary encourages the applicant to provide evidence of the key project personnel's training and experience in activities related to the planning, program design, and initial implementation of a charter school.

(6) *Quality of the management plan (34 CFR 75.210(g)(1) and (g)(2)(i)) (up to 15 points).*

The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(7) *Existence and quality of a charter or performance contract between the charter school and its authorized public chartering agency (20 U.S.C. 7221i(1)(L)) (up to 15 points).*

The Secretary considers—

(i) Whether a written charter or performance contract between the charter school and its authorized public chartering agency exists; and

(ii) The extent to which the charter or performance contract describes how student performance will be measured in the charter school pursuant to State assessments that are required of other schools and pursuant to any other assessments mutually agreeable to the authorized public chartering agency and the charter school (up to 5 points).

Note: In considering whether there is a written charter or performance contract between the charter school and its authorized public chartering agency, the Secretary will consider, on a case-by-case basis, whether the school has received preliminary, conditional, or other intermediate approval to operate from the authorized public chartering authority, if applicable. An applicant should submit documentation regarding the status of any such approval and clearly describe the authorizer's approval process under applicable State law.

(8) *The degree of flexibility afforded by the SEA and, if applicable, the LEA to the charter school (20 U.S.C. 7221c(b)(2)) (up to 3 points).*

Note: The Secretary encourages the applicant to describe the flexibility afforded under its State's charter school law in terms of establishing an administrative relationship between the charter school and the authorized public chartering agency, and whether charter schools are exempt from significant State or local rules that inhibit the flexible operation and management of public schools.

(b) *Selection Criteria for Dissemination Grants (CFDA number 84.282C).*

The following selection criteria are based on sections 5204 and 5210(1)(L)

of the ESEA (20 U.S.C. 7221c and 7221i(1)(L)) and from 34 CFR 75.210. The maximum possible score for addressing all the criteria in this section is 100 points. The maximum possible score for addressing each criterion is indicated in parentheses following the criterion. In evaluating an application for a dissemination grant, the Secretary considers the following criteria:

(1) *Quality of the project design (34 CFR 75.210(c)(1) and (c)(2)(xxix) (up to 10 points).*

The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the extent to which the proposed project is supported by strong theory (as defined in 34 CFR 77.1(c)) (up to 10 points).

(2) *Quality of the proposed dissemination activities and the likelihood that those activities will improve student achievement (20 U.S.C. 7221c(b)(7)) (up to 10 points).*

Note: The applicant should review the Performance Measures section of this notice for information on the requirements for developing project-specific performance measures and targets consistent with those objectives. The applicant may choose to include a discussion of the project-specific performance measures and targets it develops in response to the Performance Measures requirements when addressing this criterion.

(3) *Existence and quality of a charter or performance contract between the charter school and its authorized public chartering agency (20 U.S.C. 7221i(1)(L)) (up to 5 points).* The Secretary considers—

(i) Whether a written charter or performance contract between the charter school and its authorized public chartering agency exists (up to 1 point); and

(ii) The extent to which the charter or performance contract describes how student performance will be measured in the charter school pursuant to State assessments that are required of other schools and pursuant to any other assessments mutually agreeable to the authorized public chartering agency and the charter school (up to 4 points).

(4) *Demonstration of success (20 U.S.C. 7221c(f)(6)(A)) (up to 30 points).*

The extent to which the school has demonstrated overall success, including—

(i) Substantial progress in improving student academic achievement (up to 20 points);

(ii) High levels of parent satisfaction (up to 5 points); and

(iii) The management and leadership necessary to overcome initial start-up problems and establish a thriving, financially viable charter school (up to 5 points).

Note: The Secretary encourages the applicant to provide performance data for the past three years to demonstrate student academic achievement (while maintaining the appropriate standards that protect personally identifiable information).

(5) *Significance (34 CFR 75.210(b)(2)(xii)) (up to 15 points).*

The Secretary considers the significance of the proposed project. In determining the significance of the proposed project, the Secretary considers the extent to which the results of the proposed project are to be disseminated in ways that will enable others to use the information or strategies.

(6) *Quality of project personnel (34 CFR 75.210(e)(1), (e)(2), and (e)(3)(i)) (up to 15 points).*

The Secretary considers the quality of the personnel who will carry out the proposed project. In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (up to 3 points).

In addition, the Secretary considers the qualifications, including relevant training and experience, of the project director or principal investigator (up to 12 points).

(7) *Quality of the management plan (34 CFR 75.210(g)(1) and (g)(2)(i)) (up to 15 points).*

The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines and milestones for accomplishing project tasks.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 2 CFR 3474.10, the Secretary may impose special conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR

75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:*

(a) *Program Performance Measures.* The goal of the CSP is to support the creation and development of a large number of high-quality charter schools that are free from State or local rules that inhibit flexible operation, are held accountable for enabling students to reach challenging State performance standards, and are open to all students. The Secretary has two performance indicators to measure progress toward this goal: (1) The number of charter schools in operation around the Nation, and (2) the percentage of fourth- and eighth-grade charter school students who are achieving at or above the proficient level on State assessments in mathematics and reading/language arts. Additionally, the Secretary has established the following measure to examine the efficiency of the CSP: Federal cost per student in implementing a successful school (defined as a school in operation for three or more consecutive years).

All grantees must submit an annual performance report with information that is responsive to these performance measures.

(b) *Project-Specific Performance Measures.* Applicants must propose project-specific performance measures and performance targets consistent with the objectives of the proposed project. Applications must provide the following information as required under 34 CFR 75.110(b) and (c):

(1) *Performance measures.* How each proposed performance measure would accurately measure the performance of the project and how the proposed performance measure would be consistent with the performance measures established for the program funding the competition.

(2) *Baseline data.* (i) Why each proposed baseline is valid; or (ii) If the applicant has determined that there are no established baseline data for a particular performance measure, an explanation of why there is no established baseline and of how and when, during the project period, the applicant would establish a valid baseline for the performance measure.

(3) *Performance targets.* Why each proposed performance target is ambitious yet achievable compared to the baseline for the performance measure and when, during the project period, the applicant would meet the performance target(s).

Note: The Secretary encourages the applicant to consider developing project-specific performance measures and targets tied to its grant activities (for instance, if grant funds will support professional development for teachers and other staff, the applicant should include measures related to the outcomes for the professional development), as well as to student academic achievement during the grant period. The project-specific performance measures should be sufficient to gauge the progress throughout the grant period, show results by the end of the grant period, and, for applicants for Dissemination Grants (CFDA number 84.282C), be included in the logic model supporting a strong theory under Selection Criterion 1, *Quality of project design.*

For technical assistance in developing effective performance measures, applicants are encouraged to review information provided by the Department's Regional Educational Laboratories (RELs). The RELs seek to build the capacity of States and school districts to incorporate data and research into education decision-making. Each REL provides research support and technical assistance to its region but makes learning opportunities available to educators everywhere. For example, the REL Northeast and Islands has created the following resource on logic models: *http://relpacific.mcrel.org/resources/elm-app.*

(4) *Data Collection and Reporting.* The applicant must also describe in the application: (i) The data collection and reporting methods the applicant would use and why those methods are likely to yield reliable, valid, and meaningful performance data, and (ii) the applicant's capacity to collect and report reliable, valid, and meaningful performance data, as evidenced by high-quality data collection, analysis, and reporting in other projects or research.

Note: If the applicant does not have experience with the collection and reporting of performance data through other projects or research, the applicant should provide other evidence of its capacity to successfully carry out data collection and reporting for the proposed project.

5. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

6. *Project Director's Meeting:* Applicants approved for funding under this competition must attend a two-day meeting for project directors during each year of the project. An applicant may include the cost of attending this meeting in its proposed budget.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Lourdes Rivery, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W255, Washington, DC 20202–5970. Emails and telephone numbers: *erin.pfeltz@ed.gov* or (202) 205–3525; *lourdes.rivery@ed.gov* or (202) 453–7060.

If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in Section VII of this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site. You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.*

Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: August 18, 2015.

Nadya Chinoy Dabby,

Associate Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. 2015–20723 Filed 8–20–15; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, September 9, 2015; 6:00 p.m.

ADDRESSES: Department of Energy Information Center, Office of Science and Technical Information, 1 Science.gov Way, Oak Ridge, Tennessee 37830.

FOR FURTHER INFORMATION CONTACT: Melyssa P. Noe, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 241–3315; Fax (865) 576–0956 or email: *melyssa.noe@orem.doe.gov* or check the Web site at *http://energy.gov/orem/services/community-engagement/oak-ridge-site-specific-advisory-board.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

- Welcome and Announcements
- Comments from the Deputy Designated Federal Officer
- Comments from the DOE, Tennessee Department of Environment and Conservation, and Environmental Protection Agency Liaisons
- Public Comment Period
- DOE Presentation
- Additions/Approval of Agenda
- Motions/Approval of June 10, 2015 Meeting Minutes
- Status of Recommendations with DOE
- Committee Reports
- Federal Coordinator Report
- Adjourn

Public Participation: The EM SSAB, Oak Ridge, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Melyssa P. Noe at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda item should contact Melyssa P. Noe at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Melyssa P. Noe at the address and phone number listed above. Minutes will also be available at the following Web site: *http://energy.gov/orem/services/community-engagement/oak-ridge-site-specific-advisory-board.*

Issued at Washington, DC on August 17, 2015.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2015–20710 Filed 8–20–15; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF15–26–000]

Corpus Christi Liquefaction, LLC, Cheniere Corpus Christi Pipeline, L.P.; Notice of Intent To Prepare an Environmental Assessment for the Planned Stage 3 Project, and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Corpus Christi Liquefaction, LLC's (CCL's) and Cheniere Corpus Christi Pipeline, L.P.'s (CCPL's) Stage 3 Project (Project) involving the expansion of the liquefied natural gas (LNG) liquefaction and storage capacity of the previously approved Corpus Christi Liquefaction Project (Liquefaction Project) (Docket Nos. CP12–507–000 and CP12–508–000); and new associated bi-directional interstate natural gas pipeline facilities (Stage 3 Pipeline) in San Patricio County, Texas. The Commission will use this EA in its decision-making process to determine whether the Project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the Project. You can make a difference by providing us with your specific comments or concerns about the Project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the EA. The Commission staff will also use the scoping process to help determine whether preparation of an environmental impact statement is more appropriate for this Project based upon the potential significance of the anticipated levels of impact. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before September 16, 2015.

If you sent comments on this Project to the Commission before the opening of this docket on June 9, 2015, you will need to file those comments in Docket No. PF15–26–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this Project. State and local government representatives should notify their constituents of this planned Project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the planned facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the Project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' is available for viewing on the FERC Web site (*www.ferc.gov*). This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings.

Public Participation

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

1) You can file your comments electronically using the *eComment* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* This is an easy method for submitting brief, text-only comments on a project;

2) You can file your comments electronically by using the *eFiling* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.''* If you are filing a comment on a particular project, please select ''Comment on a Filing'' as the filing type; or

3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the Project docket number (PF15–26–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Please note this is not your only public input opportunity; please refer to the review process flow chart in Appendix 1.[1]

Summary of the Planned Project

CCL and CCPL plan to expand the LNG liquefaction and storage capacity of the recently authorized Liquefaction Project. The planned Project would include the addition of two liquefaction trains, each capable of processing up to approximately 700 million cubic feet per day of natural gas, one 160,000 cubic meter (m^3) full containment LNG tank, one 22-mile-long, 42-inch-diameter pipeline, additional compression at the Sinton Compressor Station, and appurtenant facilities located within San Patricio County, Texas. According to CCL and CCPL, its Project would expand the Liquefaction Project's production capabilities and increase the sale of domestic natural gas as LNG to the global market.

The Stage 3 Project would consist of the following facilities:

- LNG Facilities:
  - Two LNG liquefaction trains, each capable of producing a maximum of approximately 5 million tonnes per annum of LNG;
  - One 160,000 m^3 full containment LNG storage tank;
  - Interconnecting piping and an LNG transfer line;
  - Control and safety systems; and
  - Utilities, infrastructure, and support systems.
- Pipeline Facilities:
  - An approximately 22-mile-long, 42-inch-diameter pipeline originating north of the City of Sinton, Texas and terminating at the Stage 3 Project LNG facilities;
  - Two electric motor driven compressor units to provide a total of approximately 32 megawatts of additional compression at the existing Sinton Compressor Station; and
  - Meter and regulator (M&R) stations, launcher/receiver facilities, and mainline valves (MLVs) at various locations along the planned pipeline route.

The general location of the Project facilities is shown in Appendix 2.

Land Requirements for Construction

Construction of the LNG facilities would require approximately 826 acres of land, of which 658 acres will have been impacted by the previously authorized Liquefaction Project. Following construction, approximately 368 acres of land would be maintained for permanent operation of the Project's LNG facilities, of which 351 acres was previously approved for operation of the Liquefaction Project facilities. CCL and CCPL are still in the design phase of the pipeline facilities, and workspace requirements for the M&R stations, launcher/receiver facilities, and MLVs have not been finalized. However, construction of the 42-inch pipeline, which would generally parallel the previously authorized 48-inch Corpus Christi Pipeline, and planned facilities at the Sinton Compressor Station would temporarily disturb a total of approximately 388 acres of land. Following construction, CCL and CCPL would maintain approximately 110 acres for operation of the new permanent pipeline easement. Permanent land impacts associated with operation of the planned facilities at the Sinton Compressor Station have yet to be determined.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[2] to discover and address concerns the public may have about proposals. This process is referred to as scoping. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the planned Project under these general headings:

- geology and soils;
- land use;
- water resources, fisheries, and wetlands;
- cultural resources;
- vegetation and wildlife;
- socioeconomics;
- air quality and noise;
- endangered and threatened species;
- public safety; and
- cumulative impacts.

We will also evaluate possible alternatives to the planned Project or portions of the Project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Although no formal application has been filed, we have already initiated our NEPA review under the Commission's pre-filing process. The purpose of the pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before the FERC receives an application. As part of our pre-filing review, we have begun to contact some federal and state agencies to discuss their involvement in the scoping process and the preparation of the EA.

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 2 of this notice.

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues related to this Project to formally cooperate with us in the preparation of the EA.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice. Currently no agencies have expressed their intention to participate as a cooperating agency in the preparation of the EA to satisfy their NEPA responsibilities related to this Project.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the Texas Historical Commission which has been given the role of the State Historic Preservation Officer (SHPO) for Texas, and to solicit the SHPO's review and those of other government agencies, interested Indian tribes, and the public on the Project's potential effects on historic properties.[4] We will define the Project-specific Area of Potential Effects (APE) in consultation with the SHPO(s) as the Project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this Project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the planned facilities and the environmental information provided by CCL and CCPL that we think deserves attention. This preliminary list of issues may change based on your comments and our analysis. The issues identified to date include impacts on:

- threatened and endangered species;
- vegetation, wildlife, and fisheries;
- land use and aesthetics;
- socioeconomics;
- public safety and reliability;
- air quality and noise;
- water use and quality; and
- cumulative impacts.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the Project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the planned Project.

If we publish and distribute the EA copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (Appendix 3).

Becoming an Intervenor

Once CCL and CCPL file their application with the Commission, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Motions to intervene are more fully described at *http://www.ferc.gov/resources/guides/how-to/intervene.asp.* Instructions for becoming an intervenor are in the ''Document-less Intervention Guide'' under the ''e-filing'' link on the Commission's Web site. Please note that the Commission will not accept requests for intervenor status at this time. You must wait until the Commission receives a formal application for the Project.

Additional Information

Additional information about the Project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.,* PF15–26). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: August 17, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–20746 Filed 8–20–15; 8:45 am]

BILLING CODE 6717–01–P

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

[4] The Advisory Council on Historic Preservation regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP15–1190–000.

Applicants: MidAmerican Energy Company, MidAmerican Energy Services, LLC.

Description: Request for Temporary Waiver, Request for Expedited Action, and Request for Shortened Notice Period of MidAmerican Energy Company and MidAmerican Energy Services, LLC.

Filed Date: 8/12/15.

Accession Number: 20150812–5199.

Comments Due: 5 p.m. ET 8/19/15.

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: August 13, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–20651 Filed 8–20–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC15–12–000]

Commission Information Collection Activities (FERC–725); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC–725 [Certification of Electric Reliability Organization; Procedures for Electric Reliability Standards].

DATES: Comments on the collection of information are due October 20, 2015.

ADDRESSES: You may submit comments (identified by Docket No. IC15–12–000) by either of the following methods:

- eFiling at Commission's Web site: *http://www.ferc.gov/docs-filing/efiling.asp*
- Mail/Hand Delivery/Courier: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov*, or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov*, telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–725, Certification of Electric Reliability Organization; Procedures for Electric Reliability Standards

OMB Control No.: 1902–0225

Type of Request: Three-year extension of the FERC–725 information collection requirements with no changes to the current reporting requirements.

Abstract: The FERC–725 information collection contains the following information collection elements:

- *Self Assessment and Electric Reliability Organization (ERO) Application:* The Commission requires the ERO to submit to FERC a performance assessment report every five years. The next assessment is due in 2019. Each Regional Entity submits a performance assessment report to the ERO. Submitting an application to become an ERO is also part of this collection.[1]
- *Reliability Assessments:* 18 CFR 39.11 requires the ERO to assess the reliability and adequacy of the Bulk-Power System in North America. Subsequently, the ERO must report to the Commission on its findings. Regional entities perform similar assessments within individual regions. Currently, the ERO submits to FERC three assessments each year: long term, winter, and summer. In addition, NERC also submits various other assessments as needed.
- *Reliability Standards Development:* Under Section 215 of the Federal Power Act (FPA), the ERO is charged with developing Reliability Standards. Regional Entities may also develop regional specific standards. Reliability Standards are one of the three principal mechanisms provided to FERC to ensure reliability on the Bulk-Power System.
- *Reliability Compliance:* Reliability Standards are mandatory and enforceable upon approval by FERC. In addition to the specific information collection requirements contained in each Reliability Standard (cleared under other information collections), there are general compliance, monitoring and enforcement information collection requirements imposed on applicable entities. Audits, spot checks, self-certifications, exception data submittals, violation reporting, and mitigation plan confirmation are included in this area.
- *Stakeholder Survey:* The ERO uses a stakeholder survey to solicit feedback from registered entities[2] in preparation for its three year and five year self-performance assessment. The Commission assumes that the ERO will perform another survey prior to the 2019 self- assessment.
- *Other Reporting:* This category refers to all other reporting requirements imposed on the ERO or regional entities in order to comply with the Commission's regulations. For example, FERC may require NERC to submit a special reliability assessment. This category is mentioned to capture these types of one-time filings required of NERC or the Regions.

The Commission implements its responsibilities through 18 CFR part 39. Without the FERC–725 information, the Commission, ERO, and Regional Entities will not have the data needed to determine whether sufficient and appropriate measures are being taken to ensure the reliability of the nation's electric grid.

Type of Respondents: ERO and regional entities

Estimate of Annual Burden:[3] The Commission estimates the annual public reporting burden for the information collection as:

[1] The Commission does not expect any new ERO applications to be submitted in the next five years and is not including any burden for this requirement in the burden estimate. FERC still seeks to renew the regulations pertaining to a new ERO application under this renewal but is expecting the burden to be zero for the foreseeable future. 18 CFR 39.3 contains the regulation pertaining to ERO applications.

[2] A ''registered entity'' is an entity that is registered with the ERO. All Bulk-Power System owners, operators and users are required to register with the ERO. Registration is the basis for determining the Reliability Standards with which an entity must comply. See *http://www.nerc.com/page.php?cid=3%7C25* for more details.

[3] The Commission defines burden as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

FERC–725—CERTIFICATION OF THE ERO; PROCEDURES FOR ELECTRIC RELIABILITY STANDARDS

Type of respondent	Type of reporting requirement	Number of respondents (A)	Number of responses per respondent (B)[4]	Total number of responses (A) × (B) = (C)	Average burden hours & cost per response (D)	Estimated total annual burden & cost (C) × (D)
Electric Reliability Organization (ERO)[1].	Self-Assessment		.2	.2	7,800 [5] $574,704	1,560 $114,941
	Reliability Assessments.		5.5	5.5	15,600 [5] $1,149,408	85,800 $6,321,744
	Reliability Compliance.		2	2	12,480 [5] $919,526	24,960 $1,839,053
	Standards Development.		1	1	28,080 [6] $1,865,916	28,080 $1,865,916
	Other Reporting	1	1	1	2080 [7] $270,130	2,080 $270,130
Regional Entities	Self-Assessment		.2	1.6	16,640 [6] $1,105,728	26,624 $1,769,164
	Reliability Assessments.		1	8	15,600 [6] $1,036,620	124,800 $8,292,960
	Reliability Compliance.		1	8	40,560 [5] $2,988,461	324,480 $23,907,688
	Standards Development.		1	8	2,340 [6] $155,493	18,720 $1,243,944
	Other Reporting	8	1	8	1,040 [7] $135,065	8,320 $1,080,520
Registered Entities	Stakeholder Survey		.2	289	8 [5] $589	2,312 $170,221
	Reliability Compliance.	estimated 1446	1	1446	400 [5] $29,472	578,400 $42,616,512
Subtotals:						
ERO	N/A					*142,480 hrs.*
Regional						*502,944 hrs.*
Registered						*580,712 hrs.*
Total Burden Hours.						1,226,136 hrs.
Total Cost						$89,492,791

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: August 17, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–20744 Filed 8–20–15; 8:45 am]

BILLING CODE 6717–01–P

[4] In all instances below where the number of responses per respondent is ''1'' the Commission acknowledges that actual number of responses varies and cannot be estimated clearly.

[5] Uses the weighted hourly average wage (salary plus benefits) for electrical engineers and lawyers obtained from the Bureau of Labor Statistics (data for May 2014, posted on 4/1/2015 at *http://www.bls.gov/oes/current/naics2_22.htm*): $91.82/hour. The weighted average used the following calculation: [(0.20) * ($129.87) + (0.60) * ($66.45) + (0.2) * ($39.18)] = $73.68. $129.87/hour is the wage for lawyers. $66.45/hour is the wage for engineers. $39.17/hour is the wage for office and administrative support. Occupation codes are 23–0000, 17–2071, and 43–0000 respectively.

[6] Uses the hourly average wage (salary plus benefits) for electrical engineers obtained from the Bureau of Labor Statistics (data for May 2014, posted on 4/1/2015 at *http://www.bls.gov/oes/current/naics2_22.htm*): $66.45/hour. Occupation code is 17–2071.

[7] Uses the hourly average wage (salary plus benefits) for lawyers obtained from the Bureau of Labor Statistics (data for May 2014, posted on 4/1/2015 at *http://www.bls.gov/oes/current/naics2_22.htm*): $129.87/hour. Occupation code is 23–0000.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD14–15–000]

Common Performance Metrics; Request for Information on Common Performance Metrics for RTOs and ISOs and Utilities Outside RTO and ISO Regions

On August 26, 2014, Commission Staff issued a ''Common Metrics Report,'' establishing 30 common metrics for independent system operators (ISOs), regional transmission organizations (RTOs), and utilities in non-ISO/RTO regions. In that report, Commission Staff indicated that upon approval by the Office of Management and Budget (OMB) for additional data collection, a notice would be issued requesting that the ISOs, RTOs, and participating utilities in non-ISO/RTO regions provide performance

information on the common metrics on a schedule to be specified in the notice.[1]

Consistent with the OMB-approved data collection [2] and past practice regarding this effort, ISOs, RTOs, and utilities in non-ISO/RTO regions are encouraged to submit information responsive to the 30 common metrics listed in the August 2014 report. Information submitted should cover the 2010–2014 period, and should be submitted by October 30, 2015.[3] Commission staff plans to contact representatives of the ISOs, RTOs, and utilities in non-ISO/RTO regions that have previously participated in this effort.

For further information, please contact: Eric Krall, Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–6180, *eric.krall@ferc.gov.*

Dated: August 17, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–20743 Filed 8–20–15; 8:45 am]

BILLING CODE 6717–01–P

[1] *Common Metrics Commission Staff Report,* Docket No. AD14–15–000, at 4 (Aug. 26, 2014).

[2] On August 6, 2015, OMB approved a request for reinstatement and revision of information collection FERC–922, ''Performance Metrics for ISOs, RTOs and Regions Outside ISOs and RTOs'' (OMB Control No. 1902–0262).

[3] Information should be submitted in docket no. AD14–15–000. Submissions must be formatted and filed in accordance with the submission guidelines described at: *http://www.ferc.gov/resources/guides/submission-guide.asp.* Submissions must be in an acceptable file format as described at: *http://www.ferc.gov/docs-filing/elibrary/accept-file-formats.asp.* The numeric values corresponding to all charts and tables containing metrics must be submitted in an accompanying file, in one of the following formats: Microsoft Office 2003/2007/2010: Excel (.xls or .xlsx), or ASCII Comma Separated Value (.csv).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP09–6–001; CP09–7–001; Docket No. CP13–507–000]

LNG Development Company, LLC; Oregon Pipeline Company, LLC; Northwest Pipeline LLC; Notice of Public Meetings for Comments On the Draft Environmental Impact Statement for the Oregon LNG Terminal and Pipeline Project and Washington Expansion Project

The staff of the Federal Energy Regulatory Commission (Commission) has prepared a draft environmental impact statement (EIS) for the Oregon LNG Terminal and Pipeline Project proposed by LNG Development Company, LLC and Oregon Pipeline Company, LLC and the Washington Expansion Project proposed by Northwest Pipeline LLC in the above-referenced dockets. The draft EIS was issued on August 5, 2015, and the public comment period for the document will end on October 6, 2015. The notice of availability for the draft EIS clarifies the methods to submit written and electronic comments. In lieu of sending written or electronic comments, the Commission invites you to attend one of the public comment meetings its staff will conduct in the project area to receive oral comments on the draft EIS. Transcripts of the meetings will be available for review in eLibrary under the project docket numbers. The meeting times and locations are provided below.

Date and time	Location
September 14, 2015, 6 p.m.–9 p.m.	Kent Senior Activity Center, 600 East Smith Street, Kent, Washington 98030, (253) 856–5150.
September 15, 2015, 6 p.m.–9 p.m.	Sedro-Woolley Community Center, 703 Pacific Street, Sedro-Woolley, Washington 98284, (360) 855–3568.
September 16, 2015, 6 p.m.–9 p.m.	Snohomish Senior Center, 506 4th Street, Snohomish, WA 98290, (360) 568–0934.
September 17, 2015, 6 p.m.–9 p.m.	Southwest Washington Fairgrounds-Community Events Building, 2555 N National Avenue, Chehalis, Washington 98532, (360) 736–6072.
September 21, 2015, 1 p.m.–4 p.m.	Clatsop County Fairgrounds-Exhibit Hall, 92937 Walluski Loop, Astoria, Oregon 97103, (503) 325–4600.
September 21, 2015, 6 p.m.–9 p.m.	Clatsop County Fairgrounds-Exhibit Hall, 92937 Walluski Loop, Astoria, Oregon 97103, (503) 325–4600.
September 22, 2015, 6 p.m.–9 p.m.	Vernonia High School-Commons Area, 1000 Missouri Avenue, Vernonia, Oregon 97064, (503) 429–1333.
September 23, 2015, 6 p.m.–9 p.m.	Summit Grove Lodge, 30810 NE Timmen Road, Ridgefield, WA 98642, 360–263–6623.
September 24, 2015, 6 p.m.–9 p.m.	Red Lion Hotel, 510 S Kelso Drive, Kelso, Washington 98626, (360) 636–4400.

The Commission's staff will begin the sign-up of speakers one-half hour before the meeting begins. The comment meeting will begin with a brief description of our environmental review process by Commission staff, after which speakers will be called. The meeting will end once all speakers have provided their comments or at the end time for each meeting stated above, whichever comes first. If a significant number of people are interested in providing verbal comments, a time limit of three minutes may be implemented for each commenter to ensure all those wishing to comment have the opportunity to do so within the designated meeting time. Speakers should structure their oral comments accordingly. If time limits are implemented, they will be strictly enforced to ensure that as many individuals as possible are given an opportunity to comment. It is important to note that oral comments hold the same weight as written or electronically submitted comments.

Dated: August 17, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–20742 Filed 8–20–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13511–002]

Igiugig Village Council; Notice Concluding Pre-Filing Process and Approving Process Plan and Schedule

a. *Type of Filing:* Notice of Intent to File an Application for a Hydrokinetic Pilot Project.

b. *Project No.:* 13511–002.

c. *Date Filed:* April 1, 2015.

d. *Submitted By:* Igiugig Village Council (Igiugig).

e. *Name of Project:* Igiugig Hydrokinetic Project.

f. *Location:* On the Kvichak River in the Lake and Peninsula Borough, near the town of Igiugig, Alaska. The project would not occupy any federal lands.

g. *Filed Pursuant to:* 18 CFR 5.3 and 5.5 of the Commission's regulations.

h. *Applicant Contact:* AlexAnna Salmon, President, Igiugig Village Council, P.O. Box 4008, Igiugig, Alaska 99613; (907) 533–3211.

i. *FERC Contact:* Dianne Rodman (202) 502–6077.

j. Igiugig has filed with the Commission: (1) A notice of intent to file an application for a pilot hydrokinetic hydropower project and a draft license application with monitoring plans; (2) a request for waivers of certain Integrated Licensing Process regulations necessary for

expedited processing of a license application for a hydrokinetic pilot project; (3) a proposed process plan and schedule; and (4) a request to be designated as the non-federal representative for section 7 of the Endangered Species Act (ESA) consultation and for section 106 consultation under the National Historic Preservation Act.

k. A notice was issued on April 23, 2015, soliciting comments on the draft license application from agencies and stakeholders. Comments were filed by non-governmental organizations and individuals.

l. On April 23, 2015, Igiugig was designated as the non-federal representative for section 7 consultation under the ESA and for section 106 consultation under the National Historic Preservation Act.

m. The proposed Igiugig Hydrokinetic Project would consist of: (1) An in-stream 20- kilowatt (kW), 64-foot-long, 11-foot-high, 43-foot-wide pontoon-mounted RivGen Power System Turbine Generator Unit (TGU) in Phase 1; (2) an additional in-stream 20-kW pontoon-mounted TGU in Phase 2; (3) two anchoring systems consisting of a 13,000-pound anchor, chain, shackles, and 150 feet of mooring; (4) a 375-foot-long, coated and weighted combined power, data, and environmental monitoring cable from the TGU for Phase 1; and a 675-foot-long cable from the TGU for Phase 2; (5) an existing 10-foot-long by 8-foot-wide shore station for housing project electronics and Issue biological assessment February 15, 2015.

n. controls; and (6) appurtenant facilities. The project is estimated to have an annual generation of 409,504 kilowatt-hours.

o. The pre-filing process has been concluded and the requisite regulations have been waived such that the process and schedule indicated below can be implemented.

p. The post-filing process will be conducted pursuant to the following schedule. Revisions to the schedule may be made as needed.

Milestones	Dates
Final license application expected	November 2, 2015.
Issue notice of acceptance and ready for environmental analysis and request for interventions	November 17, 2015.
Recommendations, Conditions, Comments and Interventions due	December 17, 2015.
Issue notice of availability of environmental assessment	February 15, 2016.
Issue biological assessment	February 15, 2016.
Comments due and 10(j) resolution, if needed	March 16, 2016.

q. Register online at *http://ferc.gov/esubscribenow.htm* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: August 17, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–20745 Filed 8–20–15; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL 9932–99–Region 3]

Notice of Administrative Settlement Agreement Pursuant to Section 122(H) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), notice is hereby given that a proposed administrative settlement agreement for recovery of response costs (''Proposed Agreement'') associated with the Lin Electric Superfund Site, Bluefield, Mercer County, West Virginia (''Site'') was executed by the Environmental Protection Agency (''EPA'') and is now subject to public comment, after which EPA may modify or withdraw its consent if comments received disclose facts or considerations that indicate that the Proposed Agreement is inappropriate, improper, or inadequate. The Proposed Agreement would resolve potential EPA claims under Section 107(a) of CERCLA, against Danny E. Lusk and Gordon M. Lusk, (''Settling Parties''). The Proposed Agreement would require Settling Parties to reimburse EPA $21,358.00 for response costs incurred by EPA for the Site.

For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the Proposed Agreement. EPA's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103.

DATES: Comments must be submitted on or before thirty (30) days after the date of publication of this notice.

ADDRESSES: The Proposed Agreement and additional background information relating to the Proposed Agreement are available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103. A copy of the Proposed Agreement may be obtained from Robin E. Eiseman (3RC41), Senior Assistant Regional Counsel, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103. Comments should reference the ''Lin Electric Superfund Site, Proposed Settlement Agreement'' and ''EPA Docket No. CERC–03–2015–0182CR,'' and should be forwarded to Robin E. Eiseman at the above address.

FOR FURTHER INFORMATION CONTACT: Robin E. Eiseman (3RC41), U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103, Phone: (215) 814–2612; *eiseman.robin@epa.gov.*

Dated: August 17, 2015.

Karen Melvin,

Acting Director, Hazardous Site Cleanup Division, U.S. Environmental Protection Agency, Region III.

[FR Doc. 2015–20724 Filed 8–20–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9932–91–Region 10]

Final National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges from Industrial Activities Availability for Idaho, Federal Operators in Washington, and the Spokane Tribe

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of corrections to the 2015 Multi-Sector General Permit.

SUMMARY: The Environmental Protection Agency (EPA) previously announced the

issuance of the NPDES general permit for storm water discharges from industrial activity, also referred to as the 2015 Multi-Sector General Permit (2015 MSGP), in the June 16, 2015 **Federal Register**. This action provides notice of final 2015 MSGP issuance for Idaho; federal operators in Washington; and the Spokane Tribe.

DATES: The 2015 MSGP became effective in Idaho on August 12, 2015; for federal operators in Washington on July 21, 2015; and for the Spokane Tribe on August 12, 2015. These effective dates provide dischargers with the immediate opportunity to comply with Clean Water Act requirements in light of the expiration of the 2008 MSGP on September 29, 2013. The 2015 MSGP and the authorization to discharge will expire everywhere at midnight on June 4, 2019. Within 90 days of the permit's date of issuance, operators of existing facilities must submit an NOI for coverage under the new permit. Therefore, for existing facilities located in areas in the State of Idaho (except for Indian country) NOIs must be submitted by no later than November 10, 2015. For existing facilities in the State of Washington operated by or at the behest of a Federal Operator, NOIs must be submitted by no later than October 19, 2015.

In accordance with 40 CFR part 23, this permit shall be considered issued for the purpose of judicial review on the date of this publication. Under section 509(b) of the Clean Water Act, judicial review of this general permit can be had by filing a petition for review in the United States Court of Appeals within 120 days after the permit is considered issued for purposes of judicial review. Under section 509(b)(2) of the Clean Water Act, the requirements in this permit may not be challenged later in civil or criminal proceedings to enforce these requirements. In addition, this permit may not be challenged in other agency proceedings. Deadlines for submittal of notices of intent for projects located in the areas listed above are provided as part of this action.

FOR FURTHER INFORMATION CONTACT: For further information on the MSGP, contact the appropriate EPA Regional office listed in Section I.C, or you can send an email to *msgp@epa.gov.* You may also contact Bryan Rittenhouse, EPA Headquarters, Office of Water, Office of Wastewater Management at 202–564–0577 or *rittenhouse.bryan@epa.gov.*

SUPPLEMENTARY INFORMATION: This supplementary information is organized as follows:

Table of Contents

I. General Information
A. Does this action apply to me?
B. How can I get copies of these documents and other related information?
C. Who are the EPA regional contacts for this permit?
II. Summary of Permit Actions
A. Issuance of 2015 MSGP for Additional States and Tribes
III. Compliance with Other Statutes

I. General Information

EPA summarized the MSGP permit conditions, as well as changes from the previous version of the MSGP, in the **Federal Register** notice at 80 FR 34403, June 16, 2015.

A. Does this action apply to me?

The final 2015 construction general permit (also referred to as ''MSGP'' or ''2015 MSGP'') applies to the following industrial activities:

Sector A—Timber Products.

Sector B—Paper and Allied Products Manufacturing.

Sector C—Chemical and Allied Products Manufacturing.

Sector D—Asphalt Paving and Roofing Materials Manufactures and Lubricant Manufacturers.

Sector E—Glass, Clay, Cement, Concrete, and Gypsum Product Manufacturing.

Sector F—Primary Metals.

Sector G—Metal Mining (Ore Mining and Dressing).

Sector H—Coal Mines and Coal Mining-Related Facilities.

Sector I—Oil and Gas Extraction.

Sector J—Mineral Mining and Dressing.

Sector K—Hazardous Waste Treatment Storage or Disposal.

Sector L—Landfills and Land Application Sites.

Sector M—Automobile Salvage Yards.

Sector N—Scrap Recycling Facilities.

Sector O—Steam Electric Generating Facilities.

Sector P—Land Transportation.

Sector Q—Water Transportation.

Sector R—Ship and Boat Building or Repairing Yards.

Sector S—Air Transportation Facilities.

Sector T—Treatment Works.

Sector U—Food and Kindred Products.

Sector V—Textile Mills, Apparel, and other Fabric Products Manufacturing.

Sector W—Furniture and Fixtures.

Sector X—Printing and Publishing.

Sector Y—Rubber, Miscellaneous Plastic Products, and Miscellaneous Manufacturing Industries.

Sector Z—Leather Tanning and Finishing.

Sector AA—Fabricated Metal Products.

Sector AB—Transportation Equipment, Industrial or Commercial Machinery.

Sector AC—Electronic, Electrical, Photographic and Optical Goods.

Sector AD—Reserved for Facilities Not Covered Under Other Sectors and Designated by the Director.

If you have questions regarding the applicability of this action to a particular entity, consult one of the persons listed for technical information in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How can I get copies of these documents and other related information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID Number EPA–HQ–OW–2012–0803. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20460. Although all documents in the docket are listed in an index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Publicly available docket materials are available in hard copy at the EPA Docket Center Public Reading Room, 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 Water Docket is (202) 566–2426.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the United States government on-line source for Federal regulations at *http://www.regulations.gov.*

Electronic versions of this final permit and fact sheet are available on EPA's NPDES Web site at *http://water.epa.gov/polwaste/npdes/stormwater/EPA-Multi-Sector-General-Permit-MSGP.cfm.*

An electronic version of the public docket is available through the EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/dockets.* Although not all

docket materials may be available electronically, you may still access any of the publicly available docket materials through the Docket Facility identified in Section I.B.1.

C. Who are the EPA regional contacts for this permit?

For EPA Region 10, contact Margaret McCauley at tel.: (206) 553–1772 or email at *mccauley.margaret@epa.gov.*

II. Summary of Permit Actions

A. Issuance of 2015 MSGP for Additional States and Tribes

On June 4, 2015, EPA issued the 2015 MSGP for most of the areas where EPA is the permitting authority. Because EPA had not yet received Clean Water Act Section 401 certifications from certain states and tribes, EPA was not able to issue the final MSGP in these areas. The following states and tribe were affected:

- The State of Idaho;
- Federal operators in Washington;
- The Spokane Tribe.

Now that EPA has received the required Clean Water Act 401 certifications, the Agency has issued the final 2015 MSGP for these areas. Pursuant to CWA section 401(d), the limitations and requirements contained in these certifications are now conditions of the 2015 MSGP and are included in Part 9.10.3, 9.10.6.7, and 9.10.7 of the permit.

The complete text of the updated 2015 MSGP as well as additional information on Webcasts, Guidance, and Other Implementation Assistance can be obtained through EPA's Web site at *http://water.epa.gov/polwaste/npdes/stormwater/EPA-Multi-Sector-General-Permit-MSGP.cfm.*

III. Compliance With Other Statutes

EPA summarized the Agency's compliance with the National Environmental Policy Act (NEPA), Executive Orders 12866 and 13563, Executive Order 12898, and Executive Order 13175 in the 80 FR 304403, June 16, 2015 **Federal Register** notice. See 77 FR 12292–12293, February 29, 2012, for more information.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: August 12, 2015.

Daniel D. Opalski,

Director, Office of Water and Watersheds, EPA Region 10.

[FR Doc. 2015–20725 Filed 8–20–15; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Federal Advisory Committee Act; Communications Security, Reliability, and Interoperability Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the Federal Communications Commission's (FCC or Commission) Communications Security, Reliability, and Interoperability Council (CSRIC) V will hold its second meeting.

DATES: September 21, 2015.

ADDRESSES: Federal Communications Commission, Room TW–C305 (Commission Meeting Room), 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jeffery Goldthorp, Designated Federal Officer, (202) 418–1096 (voice) or *jeffery.goldthorp@fcc.gov* (email); or Suzon Cameron, Deputy Designated Federal Officer, (202) 418–1916 (voice) or *suzon.cameron@fcc.gov* (email).

SUPPLEMENTARY INFORMATION: The meeting will be held on September 21, 2015, from 1:00 p.m. to 5:00 p.m. in the Commission Meeting Room of the Federal Communications Commission, Room TW–C305, 445 12th Street SW., Washington, DC 20554.

The CSRIC is a Federal Advisory Committee that will provide recommendations to the FCC regarding best practices and actions the FCC can take to help ensure the security, reliability, and interoperability of communications systems. On March 19, 2015, the FCC, pursuant to the Federal Advisory Committee Act, renewed the charter for the CSRIC for a period of two years through March 18, 2017. The meeting on September 21, 2015, will be the second meeting of the CSRIC under the current charter. The FCC will attempt to accommodate as many attendees as possible; however, admittance will be limited to seating availability. The Commission will provide audio and/or video coverage of the meeting over the Internet from the FCC's Web page at *http://www.fcc.gov/live.* The public may submit written comments before the meeting to Jeffery Goldthorp, CSRIC Designated Federal Officer, by email to *jeffery.goldthorp@fcc.gov* or U.S. Postal Service Mail to Jeffery Goldthorp, Associate Bureau Chief, Public Safety and Homeland Security Bureau, Federal Communications Commission, 445 12th Street SW., Room 7–A325, Washington, DC 20554.

Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (tty). Such requests should include a detailed description of the accommodation needed. In addition, please include a way the FCC can contact you if it needs more information. Please allow at least five days' advance notice; last-minute requests will be accepted, but may be impossible to fill.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison Officer.

[FR Doc. 2015–20680 Filed 8–20–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to all Interested Parties of the Termination of the Receivership of 10437, Palm Desert National Bank Palm Desert, CA

Notice is hereby given that the Federal Deposit Insurance Corporation (''FDIC'') as Receiver for 10437, Palm Desert National Bank, Palm Desert, CA (''the Receiver'') intends to terminate its receivership for said institution. The FDIC was appointed receiver of Palm Desert National Bank on April 27, 2012. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 32.1, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated: August 14, 2015.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2015–20625 Filed 8–20–15; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination: 4650–Hamilton Bank, N. A. Miami, Florida

The Federal Deposit Insurance Corporation (FDIC), as Receiver for 4650, Hamilton Bank, N. A., Miami, Florida (Receiver) has been authorized to take all actions necessary to terminate the receivership estate of Hamilton Bank, N. A. (Receivership Estate); The Receiver has made all dividend distributions required by law.

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary; including but not limited to releases, discharges, satisfactions, endorsements, assignments and deeds.

Effective August 1, 2015 the Receivership Estate has been terminated, the Receiver discharged, and the Receivership Estate has ceased to exist as a legal entity.

Dated: August 13, 2015.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2015–20622 Filed 8–20–15; 8:45 am]

BILLING CODE P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of the Termination of the Receivership of 10420, BankEast, Knoxville, Tennessee

Notice is hereby given that the Federal Deposit Insurance Corporation (''FDIC'') as Receiver for BankEast, Knoxville, Tennessee (''the Receiver'') intends to terminate its receivership for said institution. The FDIC was appointed receiver of BankEast on January 27, 2012. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 34.6, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated: August 14, 2015.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2015–20624 Filed 8–20–15; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination; 10320—Chestatee State Bank Dawsonville, GA

The Federal Deposit Insurance Corporation (FDIC), as Receiver for 10320—Chestatee State Bank, Dawsonville, Georgia (Receiver) has been authorized to take all actions necessary to terminate the receivership estate of Chestatee State Bank, N. A. (Receivership Estate). The Receiver has made all dividend distributions required by law.

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary; including but not limited to releases, discharges, satisfactions, endorsements, assignments and deeds.

Effective August 1, 2015 the Receivership Estate has been terminated, the Receiver discharged, and the Receivership Estate has ceased to exist as a legal entity.

Dated: August 13, 2015.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2015–20623 Filed 8–20–15; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of the Termination of the Receivership of 10479, Central Arizona Bank, Scottsdale, Arizona

Notice is hereby given that the Federal Deposit Insurance Corporation (''FDIC'') as Receiver for Central Arizona Bank, Scottsdale, Arizona (''the Receiver'') intends to terminate its receivership for said institution. The FDIC was appointed receiver of Central Arizona Bank on May 14, 2013. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 34.6, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated: August 14, 2015.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2015–20626 Filed 8–20–15; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to all Interested Parties of the Termination of the Receivership of 10483, Mountain National Bank, Sevierville, Tennessee

NOTICE IS HEREBY GIVEN that the Federal Deposit Insurance Corporation (''FDIC'') as Receiver for Mountain

National Bank, Sevierville, Tennessee (''the Receiver'') intends to terminate its receivership for said institution. The FDIC was appointed receiver of Mountain National Bank on June 7, 2013. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 32.1, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated: August 14, 2015.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2015–20627 Filed 8–20–15; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL HOUSING FINANCE AGENCY

[No. 2015–N–6]

Federal Home Loan Bank Community Support Program—Opportunity To Comment on Members Subject To Review

AGENCY: Federal Housing Finance Agency.

ACTION: Notice.

SUMMARY: The Federal Housing Finance Agency (FHFA) is announcing that FHFA will review all applicable Federal Home Loan Bank (Bank) members in 2015 under FHFA's community support requirements regulation. This Notice invites the public to comment on the community support performance of individual members.

DATES: Public comments on individual Bank members' community support performance must be submitted to FHFA on or before December 31, 2015.

ADDRESSES: Comments on members' community support performance should be submitted to FHFA by electronic mail at *hmgcommunitysupportprogram@fhfa.gov* or by fax to 202–649–4130.

FOR FURTHER INFORMATION CONTACT: Melissa Allen, Principal Program Analyst, at *hmgcommunitysupportprogram@fhfa.gov* or 202–658–9266, Office of Housing and Community Investment, Division of Housing Mission and Goals, Federal Housing Finance Agency, Ninth Floor, 400 Seventh Street SW., Washington, DC 20024.

SUPPLEMENTARY INFORMATION:

I. Community Support Review

Section 10(g)(1) of the Federal Home Loan Bank Act (Bank Act) requires FHFA to promulgate regulations establishing standards of community investment or service that Bank members must meet in order to maintain access to long-term Bank advances. *See* 12 U.S.C. 1430(g)(1). The regulations promulgated by FHFA must take into account factors such as the Bank member's performance under the Community Reinvestment Act of 1977 (CRA), 12 U.S.C. 2901 *et seq.,* and the Bank member's record of lending to first-time homebuyers. *See* 12 U.S.C. 1430(g)(2). Pursuant to section 10(g) of the Bank Act, FHFA has promulgated a community support requirements regulation that establishes standards a Bank member must meet in order to maintain access to long-term advances, and establishes review criteria FHFA must apply in evaluating a member's community support performance. *See* 12 CFR part 1290. The regulation includes standards and criteria for the two statutory factors—members' CRA performance and members' record of lending to first-time homebuyers. 12 CFR 1290.3. Only members subject to the CRA must meet the CRA standard. 12 CFR 1290.3(b). All members subject to community support review, including those not subject to the CRA, must meet the first-time homebuyer standard. 12 CFR 1290.3(c). Members that have been certified as community development financial institutions (CDFIs) are deemed to be in compliance with the community support requirements and are not subject to periodic community support review, unless the CDFI member is also an insured depository institution or a CDFI credit union. 12 CFR 1290.2(d). In addition, FHFA will not review an institution's community support performance until it has been a Bank member for at least one year. 12 CFR 1290.2(e).

Under the regulation, as amended effective June 29, 2015, FHFA reviews all applicable members in 2015 and every two years afterwards. FHFA is currently in transition to this new schedule beginning in 2015, and has already reviewed the community support performance of a significant number of Bank members during the 2014–15 review cycle that FHFA conducted under the previous regulation. Consequently, during the balance of 2015, FHFA is reviewing the community support performance of applicable members that have not already submitted Community Support Statements during the 2014–15 cycle. 12 CFR 1290.2(b)(2).

II. Public Comments

FHFA encourages the public to submit comments on the community support performance of Bank members, on or before December 31, 2015. Under the amended regulation, each Bank has notified its Advisory Council, nonprofit housing developers, community groups, and other interested parties in its district, and has posted a notice on its public Web site of the opportunity to submit comments on the community support programs and activities of Bank members, with the name and address of each member subject to community support review. 12 CFR 1290.2(c)(1). In reviewing a member for community support compliance, FHFA will consider any public comments it has received concerning the member. 12 CFR 1290.2(c)(3). To ensure consideration by FHFA, comments concerning the community support performance of members being reviewed in 2015 must be submitted to FHFA, either by electronic mail to *hmgcommunitysupportprogram@fhfa.gov,* or by fax to 202–649–4130, on or before December 31, 2015. 12 CFR 1290.2(c)(2).

The names of applicable members currently subject to Community Support review can be found on the public Web sites for the individual Banks at:

Federal Home Loan Bank of Boston—District 1 (Connecticut, Massachusetts, New Hampshire, Rhode Island, Vermont) *http://www.fhlbboston.com/communitydevelopment/programs/support_statements.jsp*

Federal Home Loan Bank of New York—District 2 (New Jersey, New York, Puerto Rico) *http://www.fhlbny.com/news-events/bulletins-memos/prior-bulletins-memos/2015/bulletin062915.aspx*

Federal Home Loan Bank of Pittsburgh—District 3 (Delaware, Pennsylvania, West Virginia) *http://*

www.fhlb-pgh.com/community-support.html

Federal Home Loan Bank of Atlanta—District 4 (Alabama, District of Columbia, Florida, Georgia, Maryland, North Carolina, South Carolina, Virginia) *http://corp.fhlbatl.com/fhlbank-atlanta-highlights/2015-community-support-review/*

Federal Home Loan Bank of Cincinnati—District 5 (Kentucky, Ohio, Tennessee) *https://web.fhlbcin.com/Documents/Community%20Support%20Public%20Notice%20Master.pdf*

Federal Home Loan Bank of Indianapolis—District 6 (Indiana, Michigan) *http://www.fhlbi.com/housing/documents/Letterto InterestedParties.pdf*

Federal Home Loan Bank of Chicago—District 7 (Illinois, Wisconsin) *http://www.fhlbc.com/ProductsandServices/CommunityInvestmentsand AffordableHousingPrograms/Pages/federal-home-loan-bank-chicago-community-support-statements.aspx*

Federal Home Loan Bank of Des Moines—District 8 (Alaska, Guam, Hawaii, Idaho, Iowa, Minnesota, Missouri, Montana, North Dakota, Oregon, South Dakota, Utah, Washington, Wyoming) *http://www.fhlbdm.com/homepage-news-feed/2015-community-support-statement/*

Federal Home Loan Bank of Dallas—District 9 (Arkansas, Louisiana, Mississippi, New Mexico, Texas) *https://www.fhlb.com/membership/Pages/Community-Support-Standards.aspx*

Federal Home Loan Bank of Topeka—District 10 (Colorado, Kansas, Nebraska, Oklahoma) *http://www.fhlbtopeka.com/s/index.cfm?aid=336*

Federal Home Loan Bank of San Francisco—District 11 (Arizona, California, Nevada) *http://www.fhlbsf.com/community/grant/community-support-review.aspx*

Dated: August 17, 2015.

Melvin L. Watt,

Director, Federal Housing Finance Agency.

[FR Doc. 2015–20734 Filed 8–20–15; 8:45 am]

BILLING CODE 8070–01–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 September 17, 2015.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Heartland Bancorp, Inc.,* Bloomington, Illinois; to acquire 100 percent of the voting shares of National Bancorp, Inc., Schaumburg, Illinois, and thereby indirectly acquire voting shares of American Midwest Bank, Sycamore, Illinois.

B. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *CFSB Holding Co.,* Broken Bow, Nebraska; to become a bank holding company by acquiring 100 percent of the voting shares of Custer Federal State Bank, Broken Bow, Nebraska.

Board of Governors of the Federal Reserve System, August 18, 2015.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2015–20685 Filed 8–20–15; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Immediate Disaster Case Management (IDCM) Intake Assessment

OMB No.: 0970–NEW

Description: The Administration for Children and Families (ACF) seeks to collect information from disaster survivors following a Presidential Declaration of a disaster where Individual Assistance is approved. The information collection tool will promote: 1) efficient collection of information from disaster survivors, 2) centralization of information and resources to allow rapid connection to resources, and 3) improvement in the collection and output of key metrics that related to specific mission and disaster.

Respondents: Individuals who voluntarily enroll in the IDCM program.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
IDCM Intake Assessment	3,500	1	40 Minutes	140,000 Minutes.

Estimated Total Annual Burden Hours: 140,000 minutes

Additional Information:

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment:

OMB is required to make a decision concerning the collection of information between 30 and 60 days after

publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV,* Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2015–20716 Filed 8–20–15; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: Administration for Native Americans Annual Data Collection.

OMB No.: New.

Description: Content and formatting changes are being made to the Objective Progress Report (OPR). Content changes are being made to the OPR, now known as the Annual Data Collection (ADC) previously approved under information collection OMB No. 0980–0204. ANA has determined that the requirement for ANA grantees to submit information about the project activities on quarterly basis creates undue burden for Grantees. Therefore, ANA has reformatted the OPR to require Grantees submit and annual report instead of quarterly report when reporting on partnerships, youth and elder engagement, impact indicators, community involvement etc. This will reduce the administrative burden on Grantees, especially the smaller organizations. The majority of content being requested from the grantees essentially remain same except for the frequency of reporting. The other sections of the document with reference to ''quarterly'' information will be changed to reflect the shift from four-times a year reporting requirement to once per year and once at the end of the project period.

Respondents: Tribal Government, Native non-profit organizations, Tribal Colleges & Universities receiving ANA funding.

The following is the hour of burden estimate for this information collection:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ADC	275	1	1	275

Estimated Total Annual Burden Hours: 275.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) The accuracy of the agency's estimate of the burden of the proposed collection of information; (b) the quality, utility, and clarity of the information to be collected; and (c) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2015–20703 Filed 8–20–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Notice of the Intent to Award a Single-Source Grant to the National Association of States United for Aging and Disabilities

AGENCY: Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: The Administration for Community Living (ACL) announces the intent to award a single-source grant award in the amount of $285,000 to the National Association of State United for Aging and Disabilities (NASUAD). This award is to support and stimulate the expansion of work already under way by NASUAD to further develop and assist states to implement a valid and reliable National Core Indicator Survey for older adults and people with physical disabilities (NCI–AD).

Program Name: National Core Indicator Survey.

Award Amount: $285,000.

DATES: The award will be issued for a project period of September 30, 2015 through September 29, 2016.

Award Type: Single Source Award.

Statutory Authority: The Statutory authority contained in Title II of the Older Americans Act (OAA) (42 U.S.C. 3017), as amended by the Older Americans Act Amendments of 2006, Public Law 109–365 (Catalog of Federal Domestic Assistance 93.048, Title II Evaluation), as well as Title I, Subtitle E of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15081), Public Law 106–402 (Catalog of Federal Domestic Assistance 93.631, Developmental Disabilities Projects of National Significance), and Title II of the Rehabilitation Act of 1973, as amended (Pub. L. 113–128).

CFDA Numbers: 93.048, 93.631, and 93.433

FOR FURTHER INFORMATION CONTACT: Shawn Terrell, Office of Policy and Evaluation, Administration for Community Living, 1 Massachusetts Avenue NW., Washington, DC 20001. Telephone: 202–357–3517; Email: *Shawn.Terrell@acl.hhs.gov.*

SUPPLEMENTARY INFORMATION: In 2009, NASUAD began a partnership with National Association of State Directors of Developmental Disabilities Services (NASDDDS) and Human Services Research Institute (HSRI) to expand the National Core Indicators Survey to include older adults and people with physical disabilities. As a result of the NASUAD/NASDDDS/HSRI partnership,

the expanded tool, NCI–AD, has been piloted in 3 states. Fourteen states are currently slated to begin using the tool in the summer of 2015. NASUAD is the lead partner for the NCI–AD project. This one-year of grant funding, through a continuation grant, will support NASUAD in their efforts to develop and perform comprehensive and rigorous validity/reliability testing; provide support for NCI–AD regional meetings (in conjunction with ACL regional meetings); engage in additional technical assistance including bi-monthly TA calls, continuous quality improvement activities, stakeholder engagement, survey customization, in-person interviewer training, in-person meeting with state staff, refresher webinars, and monthly update calls; recruit states to participate in the project; enhance person centered planning measures in the tool; sampling methodologies, outcome reports by state, quality improvement activities by state, and others.

This program is authorized under the Older Americans Act of 1965, as amended in 2006, Public Law 109–365 as well as Title II of the Rehabilitation Act of 1973, as amended (Pub. L. 113–128), and Title I, Subtitle E of the Developmental Disabilities Assistance and Bill of Rights Act of 2000, Public Law 106–402 (Developmental Disabilities Projects of National Significance).

Dated: August 12, 2015.

Aaron Bishop,

Commissioner Administration for Intellectual and Developmental Disabilities, Administration Community Living.

[FR Doc. 2015–20392 Filed 8–20–15; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Respiratory Integrative Biology and Translational Research Study Section.

Date: October 1, 2015.

Time: 8:00 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Riverwalk, 217 N. St. Mary's Street, San Antonio, TX 78205.

Contact Person: Bradley Nuss, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC7814, Bethesda, MD 20892, 301–451–8754, *nussb@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Musculoskeletal Tissue Engineering Study Section.

Date: October 5, 2015.

Time: 8:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Pier 2620 Hotel, 2620 Jones Street, San Francisco, CA 94133.

Contact Person: Baljit S Moonga, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7806, Bethesda, MD 20892, 301–435–1777, *moongabs@mail.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Psychosocial Risk and Disease Prevention Study Section.

Date: October 5–6, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Stacey FitzSimmons, Ph.D., MPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7808, Bethesda, MD 20892, (301) 451–9956, *fitzsimmonss@csr.nih.gov.*

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Pathobiology of Kidney Disease Study Section.

Date: October 5–6, 2015.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Atul Sahai, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2188, MSC 7818, Bethesda, MD 20892, 301–435–1198, *sahaia@csr.nih.gov.*

Name of Committee: Vascular and Hematology Integrated Review Group; Vascular Cell and Molecular Biology Study Section.

Date: October 5–6, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Row Hotel, 2015 Massachusetts Avenue NW., Washington, DC 20036.

Contact Person: Larry Pinkus, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214, *pinkusl@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 17, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–20645 Filed 8–20–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Age-Induced Bone Loss.

Date: September 22, 2015.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institution on Aging, Gateway Building, 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Isis S. Mikhail, MD, MPH, DRPH National Institute On Aging Gateway Building, 7201 Wisconsin Avenue Suite 2C212, Bethesda, MD 20892, 301–402–7704, *mikhaili@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 17, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–20643 Filed 8–20–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request; Web-Based Resource for Youth About Clinical Research

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on 3/12/2015 pages 13013–13014, and allowed 60-days for public comment. One public comment was received. The purpose of this notice is to allow an additional 30 days for public comment. The National Heart, Lung and Blood Institute (NHLBI), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: NIH Desk Officer.

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Ms. Victoria Pemberton, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Dr., Room 8102, MSC 7940, Bethesda, MD 20892–7940, or call non-toll-free number 301–435–0510, or Email your request, including your address to *pembertonv@nhlbi.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

Proposed Collection: Web-based Resource for Youth about Clinical Research (NHLBI), 0925–New, National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH).

Need and Use of Information Collection: The purpose and use of the information collection for this project is to develop a comprehensive web-based resource for youth with chronic illnesses or diseases that will attempt to increase knowledge, self-efficacy, and positive attitudes towards participation in various clinical trials and research. As a result of the proposed web-based resource, the knowledge gained from developing and testing this web-based resource will ultimately help equip youth to make informed decisions about clinical research and increase motivation to participate in that research. In addition, the knowledge gained will be invaluable to the field of clinical research given the need for more clinical trials with youth. Specifically, the proposed web-based resource will be an interactive, multimedia, developmentally appropriate resource for youth to be educated about pediatric clinical trials. The resource will be developed for youth aged 8 to 14 years. The theme of ''investigative cyber-reporting'' will be used throughout and will include youth making a series of decisions about different aspects of participating in clinical research studies. Youth will be tasked with the responsibility of learning all they can about clinical research trials in order to facilitate their knowledge and decision-making processes. Language typically used in journalism and design elements reminiscent of journalism will be incorporated into the content, design, and layout of the resource. There are three main components that will comprise the web-based resource. These include an interactive leaning module, full length video testimonials, and an electronic comic book. The benefits and necessities for this particular research on pediatric clinical trials are congruent with NHLBI's research goals and mission statement: Attempting to assist in the enhancement of the health of individuals so that they can live longer and more fulfilling lives. The current lack of knowledge surrounding pediatric clinical trials can be dangerous and unhealthy towards the lives of youth, becoming a large public health need.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 172.

ESTIMATES OF HOUR BURDEN

Form name	Type of respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hour
Individual Interview Parent Permission Form	parents	9	1	5/60	1
One-to-One Evaluation Study Parent Permission Form	parents	5	1	5/60	0.42
Pre-Post Feedback Study Parent Permission	parents	34	1	5/60	3
Individual Interview Child Assent Form	youth	9	1	5/60	1
One-to-One Evaluation Study Child Assent Form	youth	5	1	5/60	0.42
Pre-Post Feedback Study Child Assent Form	youth	34	1	5/60	3
Individual Interview Questions (Feature Stories)	youth	3	1	2	6
Individual Interview Questions (Family Spotlights)	youth	3	1	2	6
Individual Interview Questions (Comic Book)	youth	3	1	2	6
One-to-One Evaluation Study Questionnaire	youth	5	1	2	10
Pre-Post Feedback Study Questionnaire	youth	34	1	4	136

Dated: July 30, 2015.

Valery Gheen,

NHLBI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2015–20708 Filed 8–20–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2); notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The purpose of this meeting is to evaluate requests for preclinical development resources for potential new therapeutics for the treatment of cancer. The outcome of the evaluation will provide information to internal NCI committees that will decide whether NCI should support requests and make available contract resources for development of the potential therapeutic to improve the treatment of various forms of cancer. The research proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposed research projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Jun2015 Cycle 20 NExT SEP Committee Meeting.

Date: September 22, 2015.

Time: 8:30 a.m. to 4:30 p.m.

Agenda: To evaluate the NCI Experimental Therapeutics Program Portfolio.

Place: National Institutes of Health, 9000 Rockville Pike, Campus Building 31, Conference Room 6C6, Bethesda, MD 20892.

Contact Person: Barbara Mroczkowski, Ph.D., Executive Secretary, Discovery Experimental Therapeutics Program, National Cancer Institute, NIH, 31 Center Drive, Room 3A44, Bethesda, MD 20817, (301) 496–4291, *mroczkoskib@mail.nih.gov.*

Toby Hecht, Ph.D., Executive Secretary, Development Experimental Therapeutics Program, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 3W110, Rockville, MD 20850, (240) 276–5683, *toby.hecht2@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 17, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–20644 Filed 8–20–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 209 and 37 CFR part 404 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301–496–7057; fax: 301–402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

SUPPLEMENTARY INFORMATION: Technology descriptions follow.

Novel Benztropine Analogs for Treatment of Cocaine Abuse and Other Mental Disorders

Description of Technology: Dopamine is a neurotransmitter that exerts important effects on locomotor activity, motivation and reward, and cognition. The dopamine transporter (DAT) is expressed on the plasma membrane of dopamine synthesizing neurons, and is responsible for clearing dopamine released into the extra-cellular space, thereby regulating neurotransmission. The dopamine transporter plays a significant role in neurotoxicity and human diseases, such as Parkinson's disease, drug abuse (especially cocaine addiction), Attention Deficit Disorder/Attention Deficit Hyperactivity Disorder (ADD/ADHD), and a number of other CNS disorders. Therefore, the dopamine transporter is a strong target for research and the discovery of potential therapeutics for the treatment of these indications.

This invention discloses novel benztropine analogs and methods of using these analogs for treatment of mental and conduct disorders such as cocaine abuse, narcolepsy, ADHD, obesity and nicotine abuse. The disclosed analogs are highly selective and potent inhibitors of DAT, but without an apparent cocaine-like behavioral profile. In addition to their use as a treatment for cocaine abuse, these compounds have also shown efficacy in animal models of ADHD and nicotine abuse, and have also been shown to reduce food intake in animals. They may also be useful medications for other indications where dopamine-related behavior is compromised, such as alcohol addiction, tobacco addiction, and Parkinson's disease.

Potential Commercial Applications:

- Drug leads for treatment of cocaine abuse, ADHD, nicotine abuse, obesity, and other dopamine-related disorders
- Imaging probes for dopamine transporter binding sites

Development Stage: Early-stage; In vitro data available

Inventors: Amy H. Newman, Mu-fa Zou, Jonathan L. Katz (all of NIDA)

Intellectual Property: HHS Reference No. E–234–2005/1—US Patent No. 8,383,817 issued February 26, 2013

Licensing Contact: Betty B. Tong, Ph.D.; 301–594–6565; *tongb@mail.nih.gov*

Collaborative Research Opportunity: The National Institute on Drug Abuse, Medicinal Chemistry and Psychobiology Sections, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize medications to treat cocaine abuse and addiction. For collaboration opportunities please contact John D. Hewes, Ph.D. at *john.hewes@nih.gov.*

Novel Dopamine Receptor Ligands as Therapeutics for Central Nervous System Disorders

Description of Technology: The dopamine D3 receptor subtype is a member of the dopamine D2 subclass of receptors. These receptors have been implicated in a number of CNS disorders, including psychostimulant

abuse, psychosis and Parkinson's disease. Compounds that bind with high affinity and selectivity to D3 receptors can not only provide important tools with which to study the structure and function of this receptor subtype, but may also have therapeutic potential in the treatment of numerous psychiatric and neurologic disorders.

The 4-phenylpiperazine derivatives are an important class of dopamine D3 selective ligands. However, due to their highly lipophilic nature, these compounds suffer from solubility problems in aqueous media and reduced bioavailability. To address this problem, a process was designed to introduce functionality into the carbon chain linker of these compounds. Compared to currently available dopamine D3 receptor ligands, the resulting compounds show improved pharmacological properties and D3 selectivities but due to their more hydrophilic nature, these derivatives are predicted to have improved water solubility and bioavailability.

Potential Commercial Applications:

- Therapeutics for a variety of psychiatric and neurologic disorders
- Research tools to study D3 receptor structure and function

Competitive Advantages:

- Improved pharmacological properties and selectivity over existing dopamine D3 receptor ligands
- Hydrophilic nature likely to lead to improved water solubility and bioavailability

Development Stage: Early-stage; In vitro data available

Inventors: Amy H. Newman (NIDA), Peter Grundt (NIDA), Jianjing Cao (NIDA), Robert Luedtke

Intellectual Property: HHS Reference No. E–128–2006/0—US Patent No. 8,748,608 issued June 10, 2014

Licensing Contact: Betty B. Tong, Ph.D.; 301–594–6565; *tongb@mail.nih.gov*

Collaborative Research Opportunity: The National Institute on Drug Abuse, Medications Discovery Research Branch, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize 4-phenylpiperazine derivatives as dopamine D3 selective ligands. For collaboration opportunities, please contact Vio Conley, M.S. at 240–276–5531 or *conleyv@mail.nih.gov*.

Genome Wide DNase I Hypersensitive Sites Detection in Formalin-Fixed Paraffin-Embedded Single Cells

Description of Technology: A method of detecting DNase I hypersensitive sites ((DHS) in a single cell or very small number of cells, including cells recovered from formalin-fixed paraffin-embedded (FFPE) tissue slides of patient samples. DHS has revealed a large number of potential regulatory elements for transcriptional regulation in various cell types. The application of DNase-Seq techniques to patient samples can elucidate pathophysiological mechanisms of gene function in a variety of diseases as well as provide potentially important diagnostic and prognostic information. Unfortunately, the current DNase-Seq techniques require large number of cells and are applicable only to larger biopsies and surgical specimens. This technique, called Pico-Seq, allows detection when only very small population of cells are available, such as rare primary tumor cells and circulating-tumor-cells, isolated by a variety of methods. Pico-Seq uses conditions capable of restoring the DNase I sensitivity, similar to native/fresh cells, in tissue/cells from slides processed by extremely harsh conditions, such as in FFPE tissues.

Potential Commercial Applications:

- Diagnostic and prognostic kits
- Research kits

Competitive Advantages:

- Applicable to very small number of cells down to a single cell.
- Capable of using cells isolated by any of the available methods, including flow cytometry, biopsies, laser capture microdissection, and even cells recovered from formalin-fixed paraffin-embedded tissue slides of patient samples.

Development Stage: Early-stage; In vitro data available

Inventors: Keji Zhao and Tang Qingsong (NHLBI)

Intellectual Property: HHS Reference No. E–254–2014/0—US Provisional Application No. 62/118,574 filed February 20, 2015

Licensing Contact: Cristina Thalhammer-Reyero, Ph.D., M.B.A.; 301–435–4507; *ThalhamC@mail.nih.gov*

Dated: August 18, 2015.

Richard U. Rodriguez,

Acting Director, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2015–20694 Filed 8–20–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI P01 Meeting II.

Date: October 15–16, 2015.

Time: 8:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Delia Tang, MD, Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W602, Bethesda, MD 20892, 240–276–6456, *tangd@mail.nih.gov*

Name of Committee: National Cancer Institute Initial Review Group; Subcommittee I-Transition to Independence.

Date: October 20–21, 2015.

Time: 8:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Sergei Radaev, Ph.D. Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W114, Bethesda, MD 20892, 240–276–6466, *sradaev@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 17, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–20642 Filed 8–20–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Charter Renewal

In accordance with Title 41 of the U.S. Code of Federal Regulations, Section 102–3.65(a), notice is hereby given that the Charter for the Advisory Committee to the Deputy Director for Intramural Research, National Institutes of Health, was renewed for an additional two-year period on August 15, 2015.

It is determined that the Advisory Committee to the Deputy Director for Intramural Research, National Institutes of Health, is in the public interest in connection with the performance of duties imposed on the National Institutes of Health by law, and that these duties can best be performed through the advice and counsel of this group.

Inquiries may be directed to Jennifer Spaeth, Director, Office of Federal, Advisory Committee Policy, Office of the Director, National Institutes of Health, 6701 Democracy Boulevard, Suite 1000, Bethesda, Maryland 20892 (Mail code 4875), Telephone (301) 496–2123, or *spaethj@od.nih.gov* .

Dated: August 17, 2015.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–20646 Filed 8–20–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2015–0753]

Recreational Boating Accident Reporting Manual, COMDTINST M16782.1

AGENCY: Coast Guard, DHS.

ACTION: Notice; request for comments.

SUMMARY: The Coast Guard has developed a draft Recreational Boating Accident Reporting Manual, COMDTINST M16782.1, to replace Standard Method of Reporting (Boating Accidents), CG–449, which was last published in September 1973. We seek public comment on this draft.

DATES: Comments must be received by the Coast Guard on or before November 19, 2015.

ADDRESSES: You may submit comments using one of the listed methods, and see **SUPPLEMENTARY INFORMATION** for more information on public comments.

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* (202) 493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is (202) 366–9329.

FOR FURTHER INFORMATION CONTACT: For information about this document call or email Susan Weber; 202–372–1103, *susan.m.weber@uscg.mil.* For information about viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at *http://www.regulations.gov,* or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type the docket number [USCG–2015–0753] in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number (USCG–2015–0753) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of 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 a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one, using one of the methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Discussion

The Coast Guard's National Recreational Boating Safety Program aims to reduce accidents, injuries and deaths on America's waterways and to facilitate safe enjoyable boating. It promotes greater uniformity among States and localities in boating safety laws, enforcement, and administration. The Program also requires boating safety reporting by States and boaters involved in accidents. This notice announces the availability of a new draft accident reporting manual and seeks comment on its content.

The manual addresses the following broad topics:

- Regulations, vessel determinations, accident scenarios policy, and definitions of terms.
- Report form and reporting system.
- Expected roles of the Coast Guard and State.

• Investigation and data entry expectations.

Comments can discuss any aspects or other concerns about the Manual. Submissions will be reviewed internally to determine whether amendments need to be made to the Manual.

This notice is issued under the authority of 46 U.S.C. 6102 and 5 U.S.C. 552(a).

Dated: August 17, 2015.

Verne B. Gifford,

Captain, U.S. Coast Guard, Director of Inspections and Compliance.

[FR Doc. 2015–20738 Filed 8–20–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2015–0698]

Merchant Mariner Medical Advisory Committee

AGENCY: Department of Homeland Security, Coast Guard.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Merchant Mariner Medical Advisory Committee will meet to discuss matters relating to medical certification determinations for issuance of licenses, certificates of registry, merchant mariners' documents, medical standards and guidelines for the physical qualifications of operators of commercial vessels, medical examiner education, and medical research. The meeting will be open to the public.

DATES: The Merchant Mariner Medical Advisory Committee is scheduled to meet on Monday, September 28 and Tuesday, September 29, 2015, from 8 a.m. to 5:15 p.m. and 8 a.m. to 5:00 p.m. respectively. Please note that the meeting may close early if the committee has completed its business. All submitted written materials, comments, and requests to make oral presentations at the meeting should reach Lieutenant Ashley Holm, Alternate Designated Federal Officer for the Merchant Mariner Medical Advisory Committee, no later than September 21, 2015. For contact information, please see the **FOR FURTHER INFORMATION CONTACT** section below. Any written material submitted by the public both before and after the meeting will be distributed to the Merchant Mariner Medical Advisory Committee and become part of the public record.

ADDRESSES: The meeting will be held at the Texas A&M Maritime Academy, Mary Moody Northen Banquet Room, 200 Seawolf Parkway, Galveston, TX 77554 (*http://www.tamug.edu/corps/index.html*). For further information about the meeting facilities, please contact Ms. Kathey Walker at (409) 740–4408.

For information on services for individuals with disabilities or to request special assistance at the meeting, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section as soon as possible. For planning purposes, please notify the Merchant Mariner Medical Advisory Committee Alternate Designated Federal Officer of your attendance as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the committee as listed in the ''Agenda'' section below. Written comments must be submitted no later than September 21, 2015, in order for committee members to review comments before the meeting, and must be identified by docket number USCG–2015–0698 and submitted by *one* of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments (preferred method to avoid delays in processing).

• *Fax:* 202–493–2251.

• *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

• *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. The telephone number is 202–366–9329.

Instructions: All submissions must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided. You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Docket: For access to the docket to read documents or comments related to this Notice, go to *http://www.regulations.gov,* insert USCG–2011–0138 in the ''SEARCH'' box, press Enter and then click on the item you wish to view.

A public comment period will be held on September 28, 2015, from approximately 11:30 a.m.–12:00 p.m. and September 29, 2015 from approximately 2:15 p.m.–2:45 p.m. Speakers are requested to limit their comments to 5 minutes. Please note that the public comment period may end before the time indicated, following the last call for comments. Additionally, public comment will be sought throughout the meeting as specific issues are discussed by the committee. Contact Lieutenant Ashley Holm as indicated below to register as a speaker.

FOR FURTHER INFORMATION CONTACT: Lieutenant Ashley Holm, Alternate Designated Federal Officer for the Merchant Mariner Medical Advisory Committee, at telephone 202–372–1128 or email *Ashley.e.holm@uscg.mil.* If you have any questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826 or 1–800–647–5527.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the *Federal Advisory Committee Act,* 5 United States Code Appendix. The Merchant Mariner Medical Advisory Committee Meeting is authorized by 46 United States Code 7115 and advises the Secretary on matters related to (a) medical certification determinations for issuance of licenses, certificates of registry, and merchant mariners' documents; (b) medical standards and guidelines for the physical qualifications of operators of commercial vessels; (c) medical examiner education; and (d) medical research.

A copy of all meeting documentation is available at *https://homeport.uscg.mil* by using these key strokes: Missions; Port and Waterways; Safety Advisory Committees; MEDMAC and then use the announcements key. Alternatively, you may contact Lieutenant Ashley Holm as noted in the **FOR FURTHER INFORMATION CONTACT** section above.

Agenda

Day 1

The agenda for the September 28, 2015 meeting is as follows:

(1) Opening remarks from Texas A&M leadership.

(2) Opening remarks from Coast Guard leadership.

(3) Opening remarks from the Designated Federal Officer.

(4) Roll call of committee members and determination of a quorum.

(5) Review of last full committee meeting's minutes.

(6) Introduction of new task(s).

(7) Presentation on Merchant Mariner Fitness for Duty.

(8) Public comments.

(9) Presentation on Infectious Diseases.

(10) Working Groups addressing the following task statements may meet to deliberate—

(a) Task Statement 13, Mariner Occupational Health Risk Analysis. This is a joint task statement with the Merchant Marine Personnel Advisory Committee.

(b) The Committee will receive new task statements from the Coast Guard, review the information presented on each issue, deliberate and formulate recommendations for the Department's consideration.

(8) Adjournment of meeting.

Day 2

The agenda for the September 29, 2015 meeting is as follows:

(1) Continue work on Task Statements.

(2) Public comments.

(3) By mid-afternoon, the Working Groups will report, and if applicable, make recommendations for the full committee to consider for presentation to the Coast Guard. The committee may vote on the working group's recommendations on this date. The public will have an opportunity to speak after each Working Group's Report before the full committee takes any action on each report.

(4) Closing remarks/plans for next meeting.

(5) Adjournment of Meeting.

Dated: August 14, 2015.

V.B. Gifford,

Captain, U.S. Coast Guard, Director of Inspections and Compliance.

[FR Doc. 2015–20681 Filed 8–20–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2012–0026]

Notice To Extend the Comment Period for the Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants; NUREG–0654/FEMA–REP–1, Rev. 2

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Extension of comment period.

SUMMARY: The Federal Emergency Management Agency (FEMA) is extending the comment period for the proposed revision to ''Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants'' NUREG–0654/FEMA–REP–1, Rev. 2, which published in the **Federal Register** on May 29, 2015. The comment period for the proposed revised guidance, which would have ended on August 27, 2015, is extended until October 13, 2015.

DATES: The comment period is extended until October 13, 2015.

ADDRESSES: Comments must be identified by Docket ID FEMA–2012–0026 and may be submitted by one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments. Please note that this draft guidance is not a rulemaking and the Federal Rulemaking Portal is being utilized only as a mechanism for receiving comments.

Mail/Hand Delivery/Courier: Regulatory Affairs Division, Office of Chief Counsel, Federal Emergency Management Agency, 500 C Street SW., 8 NE., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: William Eberst, Policy Supervisor, Professional Services Branch, Technological Hazards Division, Protection and National Preparedness Directorate, *william.eberst@fema.dhs.gov,* (202) 341–4917.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Instructions: All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice, which can be viewed by clicking on the ''Privacy Notice'' link on the homepage of *www.regulations.gov.*

You may submit your comments and material by methods specified in the **ADDRESSES** section above. Please submit your comments and any supporting material by only one means to avoid the receipt and review of duplicate submissions.

Docket: The draft guidance is available in Docket ID FEMA–2012–0026. For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov* and search for the Docket ID. Submitted comments may also be inspected at FEMA, Office of Chief Counsel, 500 C Street SW., 8 NE., Washington, DC 20472.

II. Background

In November 1980, the Federal Emergency Management Agency issued ''Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants'' (NUREG–0654/FEMA–REP–1, Rev. 1) with the Nuclear Regulatory Commission (NRC) as a joint policy document. (45 FR 85862, December 30, 1980). Since the publication of NUREG–0654/FEMA–REP–1, Rev. 1 in 1980, four supplementary documents and one addendum (66 FR 22270, May 3, 2001) have been issued that update and modify specific planning and procedural elements. FEMA and the NRC are proposing to revise NUREG–0654/FEMA–REP–1, Rev. 1 to address stakeholder interest and the various emergency planning and preparedness lessons learned since its initial publication.

On May 29, 2015, both FEMA and the NRC published notices to solicit public input on the draft ''Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants,'' NUREG–0654/FEMA–REP–1, Rev. 2. (80 FR 30697 and 80 FR 30739). Based on comments received, and because FEMA and the NRC have specifically requested the public's comments on the proposed revised guidance in an attempt to benefit from the experience of all interested parties, the comment period will be extended for an additional 45 days. This notice announces the extension of the public comment period to October 13, 2015.

Authority: NRC Authorization Acts of 1980 (Pub. L. 96–295) and 1982–1983 (Pub. L. 97–415); Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, Titles II and VI, Sections 201 and 611, 42 U.S.C. 5131 and 5196; Homeland Security Act of 2002, as amended, Title VI, Chapter 1, Subchapter V, Sections 503 and 504, 6 U.S.C. 313 and 314; Security and Accountability for Every Port Act of 2006, Title V, Section 612, 6 U.S.C. 314a; Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations for 1999, 42 U.S.C. 5196e; Post-Katrina Emergency Management Reform Act of 2006, Title VI, Sections 602, 642, 643, and 644, 6 U.S.C. 701, 742, 743, and 744; Reorganization Plan No. 3 of 1978; E.O. 12241, as amended; E.O. 12127, as amended. E.O. 12148, as amended; E.O. 12657, as amended; FEMA's regulations in Title 44, Chapter I, Parts 350–354 of the CFR.

Dated: August 12, 2015.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2015–20721 Filed 8–20–15; 8:45 am]

BILLING CODE 9111–21–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5828–N–34]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 402–3970; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, and suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to: Ms. Theresa M. Ritta, Chief Real Property Branch, the Department of Health and Human Services, Room 5B–17, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–2265 (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Ann Marie Oliva at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Agriculture:* Ms. Debra Kerr, Department of Agriculture, Reporters Building, 300 7th Street SW., Room 300, Washington, DC 20024, (202) 720–8873; *Commerce:* Ms. Linda Steward, Department of Commerce, Office of Real Estate, 1401 Constitution Ave. NW., Room 1036, Washington, DC 20230, (202)–482–1770; *Energy:* Mr. David Steinau, Department of Energy, Office of Property Management, 1000 Independence Ave. SW., Washington, DC 20585, (202) 287–1503; *GSA:* Mr. Flavio Peres, General Services Administration, Office of Real Property Utilization and Disposal, 1800 F Street NW., Room 7040, Washington, DC 20405, (202) 501–0084; *Navy:* Mr. Steve Matteo, Department of the Navy, Asset Management; Division, Naval Facilities Engineering Command, Washington Navy Yard, 1330 Patterson Ave. SW., Suite 1000, Washington, DC 20374; (202) 685–9426 (These are not toll-free numbers).

Dated: August 13, 2015.

Juanita N. Perry,

Special Needs Assistance Program Specialist, Office of Special Needs Assistance Programs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 08/21/2015

Suitable/Available Properties

Building

Michigan

Luther
Fornell Road
Luzerne MI 48636
Landholding Agency: Agriculture
Property Number: 15201530003
Status: Unutilized
Comments: off-site removal; no future agency need; 40+ yrs. old; 852 sq. ft.; vacant 36+ mos.; poor conditions; contact Agriculture for more information.

Sprinkler Lake Staff Dorm
1700 Adams Rd.,
Glennie MI 48737
Landholding Agency: Agriculture
Property Number: 15201530005
Status: Unutilized
Directions: 51258 Staff Dormitory
Comments: off-site removal only; no future agency need; 2,112 sq. ft.; removal difficult due to size/type; repairs needed; asbestos; contact Agriculture for more information.

Kenton Dwelling #3
5005 East M–28
Kenton MI 49967
Landholding Agency: Agriculture
Property Number: 15201530007
Status: Excess
Directions: Infra #1107
Comments: 1,500 sq. ft.; residential; 50+ yrs.-old; fair conditions; contact Agriculture for more information.

Land

Oklahoma

FAA Oklahoma City Outer Marker
NW 3rd. Street
Oklahoma City OK 73127
Landholding Agency: GSA
Property Number: 54201530003
Status: Surplus

GSA Number: 7–U–OK–0582–AA
Directions: Disposal Agency: GSA; Land Holding Agency: DOT/Federal Aviation Admin.
Comments: 0.27 fee acres and a 0.08 acre assess easement.

West Virginia

Former AL1–RCLR Tower Site
2146 Orleans Rd.,
Great Cacapon WV 25422
Landholding Agency: GSA
Property Number: 54201530002
Status: Surplus
GSA Number: 4–U–WV–0561AA
Directions: Direction: Disposal Agency: GSA? Land Holding Agency: Federal Aviation Administration
Comments: 9.69 acres; located on ridgetop.

Unsuitable Properties

Building

California

Building 2389
2389 Training Street
Marine Corps Camp Pen CA 92055
Landholding Agency: Navy
Property Number: 77201530017
Status: Excess
Comments: Property located within floodway which has not been correct or contained; public access denied and no alternative method to gain access without compromising national security.
Reasons: Floodway; Secured Area

Building 23213 (Storage)
23213 Teamwork Street
Marine Corps Camp Pen CA 92055
Landholding Agency: Navy
Property Number: 77201530018
Status: Underutilized
Comments: Located within floodway which has not been correct or contained; public access denied and no alternative method to gain access w/out compromising national security.
Reasons: Secured Area; Floodway

Illinois

5 Buildings
Argonne National Laboratory
Argonne IL 60439
Landholding Agency: Energy
Property Number: 41201530004
Status: Excess
Directions: OSF031, OSF032, OSF163, OSF264, OSF160
Comments: Public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Louisiana

2 Buildings
Barksdale AFB
Barksdale AFB LA 71110
Landholding Agency: Navy
Property Number: 77201530020
Status: Unutilized
Comments: Public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Michigan

Wakeley Lake Storage Building
Wakeley Lake Access Rd.
Grayling MI 49738
Landholding Agency: Agriculture
Property Number: 15201530004
Status: Unutilized
Comments: Documented deficiencies: structurally unsound; clear threat to physical safety.
Reasons: Extensive deterioration

Kenton House #2
4969 East M–28
Kenton MI 49967
Landholding Agency: Agriculture
Property Number: 15201530006
Status: Excess
Directions: Infra #1106
Comments: Documented deficiencies: collapsed foundation and structurally unsound; clear threat to physical safety.
Reasons: Extensive deterioration

Virginia

Sterling Field Support Ctr.,
43741 Weather Service Rd.
Sterling VA 20166
Landholding Agency: Commerce
Property Number: 27201530001
Status: Unutilized
Directions: Building 22, Quonset Hut
Comments: Public access denied and no alternative method to gain access without compromising national security; structurally unsound; building is collapsing.
Reasons: Secured Area; Extensive deterioration

[FR Doc. 2015–20486 Filed 8–20–15; 8:45 am]

BILLING CODE 4210–67–P

BUREAU OF LAND MANAGEMENT

[LLNV912. L12100000.PH0000 LXSS006F0000 261A; 14–08807; MO #4500082778]

Sierra Front-Northwest Great Basin Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

Title: Notice of Public Meetings: Sierra Front-Northwestern Great Basin Resource Advisory Council, Nevada: Correction

ACTION: Notice; Correction.

SUMMARY: The Bureau of Land Management published a notice in the **Federal Register** on August 7, 2015, (80 FR 47515) in the first column, stating the intent to hold a Federal Advisory Committee, (FACA) meeting of the Sierra Front-Northwest Great Basin Resource Advisory Council. The official FACA meeting scheduled in Winnemucca, Nevada on September 17–18, 2015, at the BLM Winnemucca BLM District Office (5100 East Winnemucca Blvd.) has an additional agenda item regarding a Forest Service recreation fee proposal.

DATES: September 17 and September 18. Approximate meeting times are from 8 a.m. to 4 p.m.

ADDRESSES: Winnemucca BLM District Office, 5100 East Winnemucca Blvd., Winnemucca, Nevada 89445; Phone: 775–623–1500.

FOR FURTHER INFORMATION CONTACT: Lisa Ross, Public Affairs Specialist, Carson City District Office, 5665 Morgan Mill Road, Carson City, NV 89701, telephone: (775) 885–6107, email: *lross@blm.gov.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., during normal business hours.

Correction

In the **Federal Register** of August 7, 2015, in FR Vol. 80, No. 152 on page 47515 in the first column, Topics for discussion, add:

- Recreation fee proposal regarding Christmas tree permits for the Humboldt-Toiyabe National Forest

Stephen D. Clutter,

Chief of Communications, BLM Nevada State Office.

[FR Doc. 2015–20668 Filed 8–20–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVW0000.L5110000.GN0000. LVEMF1402860.14X; MO #4500078994]

Notice of Availability of the Draft Environmental Impact Statement for the Proposed Coeur Rochester Mine Plan of Operations Amendment 10 and Closure Plan, Pershing County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, the Bureau of Land Management (BLM) has prepared a Draft Environmental Impact Statement (EIS) for the Coeur Rochester Mine Plan of Operations Amendment 10 and Closure Plan and by this notice is announcing the opening of the comment period.

DATES: To ensure comments will be considered, the BLM must receive written comments on the Coeur Rochester Mine Plan of Operations Amendment 10 and Closure Plan Draft EIS within 45 days following the date the Environmental Protection Agency publishes its Notice of Availability in

the **Federal Register**. The BLM will announce future meetings or hearings and any other public involvement activities at least 15 days in advance through public notices, media releases, and/or mailings.

ADDRESSES: You may submit comments related to the Coeur Rochester Mine Plan of Operations Amendment 10 and Closure Plan Draft EIS by any of the following methods:

- *Web site: http://on.doi.gov/1d5pIxR.*
- *Email: wfoweb@blm.gov.* Include Coeur Rochester Mine POA10 DEIS Comments in the subject line.
- *Fax:* 775–623–1503.
- *Mail:* BLM Winnemucca District, Humboldt River Field Office, 5100 E. Winnemucca Blvd., Winnemucca, NV 89445.

Copies of the Coeur Rochester Mine Plan of Operations Amendment 10 and Closure Plan Draft EIS are available in the Winnemucca District Office at the above address.

FOR FURTHER INFORMATION CONTACT: Kathleen Rehberg, Project Lead, telephone 775–623–1500; address BLM Winnemucca District, Humboldt River Field Office, 5100 E. Winnemucca Blvd., Winnemucca, NV 89445; email *krehberg@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 applicant, Coeur Rochester, Inc. (CRI), has requested an expansion of their operations at the existing Coeur Rochester Mine, which is located approximately 18 miles northeast of Lovelock, Nevada, in the Humboldt Range, Pershing County. The mine is currently authorized up to a disturbance of 1,939 acres (approximately 187 acres of private land and 1,752 acres of public land), which was permitted under a series of Environmental Assessments (EA N26–86–002P, February 1986; EA NV–020–99–12, February 1999; EA NV–020–01–06, December 2000; EA NV–020–01–06, February 2002; EA NV–020–03–13, August 2003; DOI–BLM–NV–W010–2010–0010–EA, October 2010).

The Draft EIS analyzes the potential environmental impacts associated with the proposed changes to CRI's current operations presented under this Plan of Operations (Plan) modification, which includes disturbance to 2,170.1 acres, of which 1,939 acres are already approved for disturbance. A total of 254.5 acres of the new disturbance is proposed on public land, however, there will be a reduction of approved disturbance acres of 23.3 acres on private land.

The Draft EIS analyzes three alternatives: (1) The Proposed Action, (2) Permanent Management of Potentially Acid Generating (PAG) Material Outside of the Rochester Pit Alternative, and (3) the No Action Alternative. If selected by the BLM, the Proposed Action would include a change to the Plan boundary designed to include existing claims and newly acquired private lands within the boundary. However, all of the proposed disturbance to public land would be within the existing approved Plan boundary. The proposal includes the following:

- An approximately 67-acre expansion to the existing Stage IV Heap Leach Pad (HLP);
- An increase of the allowable maximum Stage IV HLP stacking height from 330 feet to 400 feet;
- Construction of a 124-acre Stage V HLP with associated ponds and tank;
- Relocation of a portion of the American Canyon public access road and establishment of an associated right-of-way (ROW);
- Relocation of a portion of the paved Rochester main access road ROW;
- Realignment of the Stage IV haul road and construction of secondary access roads;
- Relocation of existing power lines consistent with the proposed ROW realignments and HLP construction;
- Relocation of the electrical building, core shed, and production well PW–2a;
- Excavation of new borrow areas and construction of one new growth medium stockpile;
- Installation of the Stage IV HLP conveyor system, associated load out points, ore stockpiles, maintenance road, and utility corridor, including process solutions and fresh water supply pipelines; and
- Changes to closure activities for existing facilities including: altering the open pit safety berm sizes; HLP interim fluid management plans; HLP cover designs; the installation of evaporation cells; and long-term draindown management.

Under the the Permanent Management of PAG Material Outside of the Rochester Pit Alternative, the proposed activities listed in the Proposed Action would be the same, with the exception of the permanent location of the PAG material. In this alternative the material would be permanently relocated outside of the existing pit.

Under the No-Action Alternative, the BLM would not approve the proposed Plan modification and there would be no expansion. CRI would continue mining activities under their previously approved plan of operation.

Three other alternatives were considered, then eliminated: (1) Pit Backfill Elevation Alternative, (2) Alternate Location for Stage V HLP Alternative, and (3) Close a Portion of American Canyon Road to Public Access Alternative.

A Notice of Intent to Prepare an EIS for the Proposed Coeur Rochester Mine Expansion was published in the **Federal Register** on June 27, 2014 (79 FR 36554). Eleven comments were received during a 30-day scoping period. Information accepted during project scoping was compiled to develop issue statements, which are listed in the Draft EIS. The following issues of environmental, social, and economic concern were identified: Air quality from mine emissions (including mercury and greenhouse gases), climate change, geochemical mining impacts, baseline data, alternatives development, monitoring, cumulative impacts assessment, and potential impacts on vegetation, riparian resources, dispersed recreation, visual resources, water quality and quantity, wild horses and burros, and wildlife and special status species.

The BLM analyzed a combination of proposed environmental measures and possible mitigation to eliminate or minimize any impacts associated with the proposed action. These included the potential for identifying opportunities to apply mitigation hierarchy strategies for on-site, regional, and compensatory mitigation appropriate to the size of the proposal, and management actions to achieve resource objectives. The BLM will use NEPA public participation requirements to assist the agency in satisfying the public involvement requirements under the National Historic Preservation Act (NHPA) (54 U.S.C. 306108) pursuant to 36 CFR 800.2(d)(3). The information about historic and cultural resources within the area potentially affected by the proposed Coeur Rochester Mine Plan of Operations Amendment 10 will assist the BLM in identifying and evaluating impacts to such resources in the context of both NEPA and the NHPA.

The BLM continues to consult with Indian tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Tribal concerns, including impacts to 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 or affected are invited to comment on the proposal that the BLM is evaluating.

Please note that public comments and information submitted including names, street addresses, and email addresses of

persons who submit comments will be available for public review and disclosure at the above address during regular business hours (8 a.m. to 4 p.m.), Monday through Friday, except holidays.

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.

Authority: 40 CFR 1506.6, 40 CFR 1506.10

James W. Schroeder,

Field Manager, Humboldt River Field Office.

[FR Doc. 2015–20582 Filed 8–20–15; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMTL07000 L12320000.AL0000.LVRDMT010000.13X MO #4500076731]

Notice of Intent To Collect Fees on the Upper Missouri National Wild and Scenic River in Blaine, Chouteau, Fergus, and Phillips Counties, MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to applicable provisions of the Federal Lands Recreation Enhancement Act, the Bureau of Land Management (BLM) Central Montana District, Upper Missouri River Breaks National Monument (UMRBNM), Lewistown Field Office is proposing to begin collecting fees for overnight camping at Coal Banks Landing Recreation Area, Judith Landing Recreation Area and for day and overnight trips (floats) on the Upper Missouri River from Coal Banks Landing Recreation Area (River Mile 41.5) to James Kipp Recreation Area (River Mile 149). The Upper Missouri River from Fort Benton, Montana (River Mile 0) to the James Kipp Recreation Area (River Mile 149) was designated as a National Wild and Scenic River on October 12, 1976, and subsequently included within the Upper Missouri River Breaks National Monument (UMRBNM) designation on January 17, 2001. The UMRBNM Record of Decision and Approved Resource Management Plan designated the Upper Missouri National Wild and Scenic River (UMNWSR) as a Special Area in December 2008.

DATES: To ensure that comments will be considered, the BLM must receive written comments on the proposal to collect fees by September 21, 2015. Effective 6 months after publication of this notice, the BLM's Central Montana District, UMRBNM will initiate fee collection at Coal Banks Landing, Judith Landing, and on the Upper Missouri River between Coal Banks Landing and James Kipp Recreation Area unless the BLM publishes a **Federal Register** notice to the contrary.

ADDRESSES: You may submit comments on this fee collection proposal by any of the following methods:

- *Email: blm_upper_missouri_river_breaks_nm@blm.gov*
- *Fax:* 406–622–4040
- *Mail:* 920 NE Main, Lewistown, MT 59457

Copies of the fee proposal are available at the BLM Central Montana District Office, Fort Benton River Management Station, 701 7th St., P.O. Box 1389, Fort Benton, MT 59442 or on line at: *http://www.blm.gov/mt/st/en/fo/umrbnm.html.*

FOR FURTHER INFORMATION CONTACT: Mark Schaefer, Supervisory Outdoor Recreation Planner, telephone: 406–622–4015; address: 920 NE Main, Lewistown, MT 59457; email: *mrschaef@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 Mr. Schaefer during normal business hours. FIRS is available 24 hours a day, 7 days a week, to leave a message or question for Mr. Schaefer. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Lands Recreation Enhancement Act (REA)(16 U.S.C. 6801 *et seq.*), the Secretary may establish, modify, charge and collect recreation fees at Federal recreation lands and waters. The Coal Banks Landing to James Kipp Recreation Area section of the Upper Missouri River offers outstanding opportunities for overnight and day-use floating in canoes, kayaks, rafts or motorized watercraft. The special area also provides access to high quality outdoor recreation opportunities (primarily camping, sightseeing, hiking, fishing, and hunting). Maintaining a natural-appearing recreation setting, a quality social setting, and enhancing the visitor experience on the river while protecting natural resources requires substantial Federal investment. The BLM is committed to finding the proper balance between public use and the protection of resources.

The new fees include a $10 overnight camping fee at the Coal Banks Landing Recreation Area and a $5 overnight camping fee at the Judith Landing Recreation Area. A Special Area Permit fee of $5 per watercraft for day use and $4 per person per day for overnight use will also be implemented between Coal Banks Landing (River Mile 41.5) and James Kipp Recreation Area (River Mile 149).

Fee amounts will be posted on the BLM Central Montana District, UMRBNM Web site, at the Central Montana District Office, and Fort Benton River Management Station. Copies of the Fee Business Plan are available at the Central Montana District, UMRBNM Headquarters, the Fort Benton River Management Station, and the Montana State Office.

The BLM may collect fees in conjunction with a Special Recreation Permit (SRP) as required to manage visitor use, protect natural resources, and achieve the goals of the UMRBNM Resource Management Plan (RMP). The special area qualifies as a site where visitors can be charged a fee in conjunction with an SRP authorized under Section 803(h) of the REA, 16 U.S.C. 6802(h). In accordance with the REA and implementing regulations at 43 CFR part 2930, visitors would obtain an individual SRP to boat within the Coal Banks Landing (River Mile 41.5) to James Kipp Recreation Area (River Mile 149) section of the Upper Missouri River. All fees collected would be used for expenses within the river corridor.

The BLM's goal for the Upper Missouri River Fee program is to ensure that funding is available to protect resources and outstanding remarkable recreation values, maintain the area in a natural-appearing condition consistent with the recreation setting established by the RMP, and enhance visitor services and safety, including construction of additional campground exclosures at remote developed boat camps to mitigate conflicts between recreational users and livestock. In 1997, the UMNWSR was established as a fee area under the Recreational Fee Demonstration Program with only one campground (James Kipp Recreation Area) designated as a fee site. The James Kipp Recreation Area Business Plan was developed and amended in 2007 when fees at this location were increased. In December 2008, the UMRBNM record of Decision and Resource Management Plan was published which outlines the operational goals of recreation services and the area. The plan emphasizes protection and restoration of the natural

resources while still providing for resource use and enjoyment. This 2008 Decision allows for recreation opportunities, the issuing of use permits, and the charging of expanded amenity fees for overnight camping in Level 1 sites and an individual special recreation permit for boating the UMNWSR. The establishment of a permit process and the collection of user fees were also addressed in the UMNWSR Business Plan, prepared pursuant to the REA and BLM recreation fee program policy. The Business Plan establishes the rationale for charging recreation fees. In accordance with BLM recreation fee program policy, the Business Plan explains the fee collection process and outlines how the fees will be used on the UMNWSR. BLM has notified and involved the public at each stage of the planning process, including the proposal to collect fees. The business plan provides management direction for the UMRBNM to include public enjoyment of these public lands and specifically comments on commercial use, fee collection, camping, boating, hunting, fishing and myriad other outdoor recreational opportunities. The current business plan for the UMRBNM/UMNWSR River Fees was completed in 2014 and encompasses the James Kipp Recreation Area business plan. The business plan addresses recreation opportunities, the issuance of SRP's and the charging of fees on a per watercraft and per person, per launch basis. The UMRBNM/UMNWSR River Fees plan, prepared pursuant to the REA and BLM recreation fee policy, also addresses the establishment of a permit process and the collection of user fees. The business plan articulates the rationale for charging recreation fees. In accordance with the BLM recreation fee program policy, the plan explains the fee collection process and outlines how the fees would be used on the UMRBNM/UMNWSR. The fee rates have been reviewed by the Central Montana Resource Advisory Council (RAC) and unanimously approved. Future adjustments in the fee amount would be made in accordance with the plan and through consultation with the Central Montana RAC and the public prior to a fee increase. Fee amounts will be posted onsite and online at the UMRBNM Web site at: *http://www.blm.gov/mt/st/en/fo/umrbnm.html.* Copies of the plan will be available at the BLM Central Montana District Office and online at the UMRBNM Web site.

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.

Authority: 16 U.S.C. 6803(b) and 43 CFR 2932.13.

Michael Kania,

Upper Missouri River Breaks National Monument Manager.

[FR Doc. 2015–20713 Filed 8–20–15; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[[15X L1109AF LLUTY01000 L16100000.DS0000.LXSS030J0000 24 1A]

Notice of Availability of the Moab Master Leasing Plan and Draft Resource Management Plan Amendments/Draft Environmental Impact Statement for the Moab and Monticello Field Offices, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) has prepared the Moab Master Leasing Plan (MLP) and Draft Resource Management Plan (RMP) Amendments/Draft Environmental Impact Statement (EIS) for the Moab and Monticello Field Offices in the Canyon Country District. The MLP/Draft RMP Amendments/Draft EIS would amend the Resource Management Plans for the Moab and Monticello Field Offices. This notice announces a 90-day comment period.

DATES: To ensure that comments will be considered, the BLM must receive written comments on the MLP/Draft RMP Amendments/Draft EIS within 90 days following the date the Environmental Protection Agency publishes its Notice of Availability of the MLP/Draft RMP Amendments/Draft EIS in the **Federal Register**. The BLM will announce future meetings or hearings and any other public involvement activities at least 15 days in advance through public notices, media releases, and/or mailings.

ADDRESSES: You may submit comments on the MLP/Draft RMP Amendments/Draft EIS by either of these methods:

- *Web site: http://www.blm.gov/21jd.*
- *Email: blm_ut_mb_mlpcomments@blm.gov.*
- *Fax:* 435–259–2106.
- *Mail:* BLM, Canyon Country District Office, 82 East Dogwood, Moab, Utah 84532, Attention: Brent Northrup.

Reference copies and compact discs of the MLP/Draft RMP Amendments/Draft EIS are available at the following locations:

- Bureau of Land Management, Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah
- Bureau of Land Management, Moab Field Office, 82 East Dogwood, Moab, Utah
- Bureau of Land Management, Monticello Field Office, 365 North Main, Monticello, Utah

The MLP/Draft RMP Amendments/Draft EIS and accompanying background documents are available on the MLP Web site at: *http://www.blm.gov/21jd.*

FOR FURTHER INFORMATION CONTACT: Brent Northrup, Project Manager, BLM Moab Field Office, 82 East Dogwood, Moab, UT 84532, telephone 435–259–2151 or email *Brent_Northrup@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 for the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The planning area covers about 785,000 acres of public lands in east-central Utah, Grand and San Juan Counties. The area is located south of Interstate 70 and adjoins the town of Moab and Arches National Park. The western boundary is the Green River and the northeastern boundary of Canyonlands National Park. To the south of Moab, the planning area includes the Indian Creek/Lockhart Basin/Hatch Point area between Canyonlands National Park and Highway 191. The planning area encompasses a mix of land uses including a wide variety of recreation uses oil, gas, and potash development.

The BLM is preparing a MLP/Draft RMP Amendments/Draft EIS in accordance with the BLM Washington Office (WO) Instruction Memorandum (IM) No. 2010–117: Oil and Gas Leasing Reform—Land Use Planning and Lease Parcel Reviews (May 17, 2010) and the BLM Handbook H–1624–1: Planning for Fluid Mineral Resources (January 28,

2013). Although the IM and the Handbook pertain to oil and gas leasing decisions, the BLM determined that the MLP concepts are also applicable to potash leasing decisions. Therefore, the MLP process provides additional planning and analysis for areas prior to new leasing of oil and gas and potash. The MLP/Draft RMP Amendments/Draft EIS analyzes likely mineral development scenarios and land use plan alternatives with varying mitigation levels for leasing.

The MLP/Draft RMP Amendments/Draft EIS includes a range of management alternatives designed to address management challenges and issues raised during scoping concerning mineral leasing decisions. The four alternatives are:

(1) Alternative A is the No Action alternative and represents the continuation of existing mineral leasing management (oil, gas, and potash). Alternative A allows for oil, gas, and potash leasing and development to occur on the same tracts of land where it is consistent with current leasing decisions.

(2) Alternative B provides for mineral leasing and development outside of areas that are protected for high scenic quality (including public lands visible from Arches and Canyonlands National Parks), high use recreation areas, and other sensitive resources with stipulations that minimize surface disturbance and associated potential resource impacts. Mineral leasing decisions are divided into two options specified as Alternative B1 and Alternative B2. In Alternative B1, surface impacts would be minimized by separating new leasing of the two commodities (oil/gas and potash), limiting the density of mineral development, and locating potash processing facilities in areas identified with the least amount of sensitive resources. Potash leasing would involve a phased approach and would be prioritized within identified areas. Alternative B2 provides for only oil and gas leasing; no new potash leasing would occur. Alternative B2 would also minimize surface impacts by limiting the density of oil and gas development.

(3) Alternative C provides for only oil and gas leasing; no potash leasing would occur. This alternative affords the greatest protection to areas with high scenic quality, recreational uses, special designations, BLM lands adjacent to Arches and Canyonlands National Parks, and other sensitive resources.

(4) Alternative D is the BLM's preferred alternative and provides for both oil leasing and potash leasing. Mineral development would be precluded in many areas with high scenic quality, in some high use recreation areas, specifically designated areas, and in other areas with sensitive resources. Outside of these areas, surface impacts would be minimized by separating leasing of the two commodities (oil/gas and potash), locating potash processing facilities in areas with the least amount of sensitive resources, and limiting the density of mineral development. Potash leasing would involve a phased approach and would be prioritized within identified areas. Alternative D provides operational flexibility from mineral leasing and development through some specific exceptions and closes BLM lands adjacent to Arches and Canyonlands National Parks to mineral leasing and development.

The preferred alternative has been identified as described in 40 CFR 1502.14(e). However, identification of a preferred alternative does not represent the final agency decision. The MLP/Proposed RMP Amendments/Final EIS will reflect changes or adjustments based on information received during public comment, new information, or changes in BLM policies or priorities. The MLP/Proposed RMP Amendments/Final EIS may include portions of any analyzed alternatives. For this reason, the BLM encourages comments on all alternatives and management actions described in the MLP/Draft RMP Amendments/Draft EIS.

You may submit comments on the MLP/Draft RMP Amendments/Draft EIS in writing to the BLM at any public meeting, or you may submit them to the BLM using one of the methods listed in the **ADDRESSES** section above. All comments must be received by the end of the comment period. Comments submitted must include the commenter's name and street address. Whenever possible, please include reference to either the page or section in the MLP/Draft RMP Amendments/Draft EIS to which the comment applies. Please note that public comments and information submitted including names, street addresses, and email addresses of persons who submit comments will be available for public review and disclosure at the above address during regular business hours (8 a.m. to 4 p.m.), Monday through Friday, except holidays.

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. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, are available for public inspection in their entirety.

Authority: 40 CFR 1506.6, 40 CFR 1506.10 and 43 CFR 1610.2.

Approved: August 17, 2015.

Jenna Whitlock,

Acting State Director.

[FR Doc. 2015–20784 Filed 8–20–15; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NER–BOHA–19019; PPMPSPD1Z.YM0000; PPNEBOHAS1]

Boston Harbor Islands National Recreation Area Advisory Council

AGENCY: National Park Service, Interior.

ACTION: Notice of Annual Meeting.

SUMMARY: This notice announces the annual meeting of the Boston Harbor Islands National Recreation Area Advisory Council (Council). The agenda includes results of the Council survey, planning for the 20th anniversary of the Boston Harbor Islands National Recreation Area, the National Park Service (NPS) Centennial, and the Boston Light Tricentennial in 2016, and membership of and planning for the next steps for the Council. Superintendent Giles Parker will also give updates about park operations and planning efforts.

DATES: September 9, 2015, 6 p.m. to 8 p.m. (Eastern).

ADDRESSES: WilmerHale, 60 State Street, 26th Floor, Conference Room, Boston, MA 02109.

FOR FURTHER INFORMATION CONTACT: Giles Parker, Superintendent and Designated Federal Official (DFO), Boston Harbor Islands National Recreation Area, 15 State Street, Suite 1100, Boston, MA 02109, telephone (617) 223–8669, or email *giles_parker@nps.gov.*

SUPPLEMENTARY INFORMATION: This meeting is open to the public. Those wishing to submit written comments may contact the DFO for the Council, Giles Parker, by mail at National Park Service, Boston Harbor Islands, 15 State Street, Suite 1100, Boston, MA 02109 or via email *giles_parker@nps.gov.* Before

including your address, telephone 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 may 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 Council was appointed by the Director of the National Park Service pursuant to 16 U.S.C. 460kkk(g). The purpose of the Council is to advise and make recommendations to the Boston Harbor Islands Partnership with respect to the implementation of a management plan and park operations. Efforts have been made locally to ensure that the interested public is aware of the meeting dates.

Dated: August 8, 2015.

Shirley Sears,

Acting Chief, Office of Policy.

[FR Doc. 2015–20782 Filed 8–20–15; 8:45 am]

BILLING CODE 4310–EE–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NRSS–EQD–SSB–19096; PPWONRADI1, PPMRSNR1Y.AM0000 (155)]

Information Collection Request Sent to the Office of Management and Budget (OMB) for Approval; Use of iNaturalist by the National Park Service To Record Natural History Observations

AGENCY: National Park Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (National Park Service, NPS) have sent an Information Collection Request (ICR) to OMB for review and approval. We summarize the ICR below and describe the nature of the collection and the estimated burden and cost. 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.

DATES: You must submit comments on or before September 21, 2015.

ADDRESSES: Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA_Submission@omb.eop.gov* (email) and identify your submission as 1024–iNAT. Please send a copy of your comments to Phadrea Ponds, Information Collection Coordinator, National Park Service, 1201 Oakridge Drive, Fort Collins, CO 80525 (mail); or *phadrea_ponds@nps.gov* (email). Please reference Information Collection 1024–iNAT in the subject line.

FOR FURTHER INFORMATION CONTACT: Simon Kingston, National Park Service, Inventory and Monitoring Division, 1201 Oakridge Dr., Suite 100, Fort Collins, CO 80525; *simon_kingston@nps.gov*; or 970–225–3551. You may review the ICR online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Park Service (NPS) is requesting approval for a new collection of information in which scientists and members of the public will use iNaturalist to record natural history observations during NPS Bioblitz and other citizen science sponsored events. The NPS is requesting to use iNaturalist—a web-based tool program that will allow park visitors to record the natural history of wildlife, plant and other species observed inside NPS Park units and managed lands. These recorded observations will be used to supply NPSpecies biodiversity database with additional information not currently known about species in the parks. The participation of citizen scientists via iNaturalist provides immediate on-site input that is often not available with the current level of NPS staffing.

II. Data

OMB Control Number: 1024–New.

Title: Use of iNaturalist by the National Park Service To Record Natural History Observations.

Type of Request: New Collection.

Description of Respondents: General public and non-federal scientists.

Respondent's Obligation: Voluntary.

Frequency of Collection: One-time, on-occasion.

Estimated Annual Number of Responses: 61,250.

Estimated Completion Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 5,104.

Estimated Annual Non-hour Burden Cost: None.

III. Comments

A Notice was published in the **Federal Register** (Vol. 80, No. 68, p. 19092) on April 9, 2015 stating that we intended to request OMB approval of our information collection associated with the iNaturalist project. In this notice, we solicited public comment for 60 days ending June 8, 2015. We did not receive any comments as a result of the **Federal Register** Notice.

We again invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. 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 or OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: August 17, 2015.

Madonna L. Baucum,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2015–20677 Filed 8–20–15; 8:45 am]

BILLING CODE 4310–EH–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–149 (Fourth Review)]

Barium Chloride From China; Scheduling of an Expedited Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the antidumping duty order on barium chloride from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: *Effective Date:* August 4, 2015.

FOR FURTHER INFORMATION CONTACT: Amy Sherman (202–205–3289), Office

of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On August 4, 2015, the Commission determined that the domestic interested party group response to its notice of institution (80 FR 24973, May 1, 2015) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)).

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Staff report.—A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on September 18, 2015, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before September 23, 2015 and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by September 23, 2015. However, should the Department of Commerce extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to filing have changed. The most recent amendments took effect on July 25, 2014. *See* 79 FR 35920 (June 25, 2014), and the revised Commission Handbook on E-filing, available from the Commission's Web site at *http://edis.usitc.gov.*

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined this review is extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: August 18, 2015.

By order of the Commission.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015–20689 Filed 8–20–15; 8:45 am]

BILLING CODE 7020–02–P

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

[2] The Commission has found the response submitted by Chemical Products Corporation to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–963]

Certain Activity Tracking Devices, Systems, and Components Thereof; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 7, 2015, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of AliphCom d/b/a Jawbone of San Francisco, California and BodyMedia, Inc. of Pittsburgh, Pennsylvania. A supplement was filed on July 24, 2015. The complaint as supplemented alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain activity tracking devices, systems, and components thereof by reason of infringement of certain claims of U.S. Patent No. 8,073,707 (''the '707 patent''); U.S. Patent No. 8,398,546 (''the '546 patent''); U.S. Patent No. 8,446,275 (''the '275 patent''); U.S. Patent No. 8,529,811 (''the '811 patent''); U.S. Patent No. 8,793,522 (''the '522 patent''); and U.S. Patent No. 8,961,413 (''the '413 patent''), and that an industry in the United States exists as required by subsection (a)(2) of section 337. The complaint further alleges misappropriation of trade secrets, the threat or effect of which is to destroy or substantially injure an industry in the United States.

The complainants request that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is 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., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning

the Commission may also be obtained by accessing its internet server 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.*

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2015).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on August 17, 2015, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine:

(a) Whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain activity tracking devices, systems, and components thereof by reason of infringement of one or more of claims 19, 23, and 24 of the '707 patent; claims 1–18 and 20–28 of the '546 patent; claims 1, 2, 4, 5, 8–10, 13–15, 18, and 19 of the '275 patent; claims 1, 5–7, 16, and 17 of the '811 patent; claim 2 of the '522 patent; and claims 1–3, 5, 7–9, 11, and 12 of the '413 patent; and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(b) whether there is a violation of subsection (a)(1)(A) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain activity tracking devices, systems, and components thereof by reason of misappropriation of trade secrets, the threat or effect of which is to destroy or substantially injure an industry in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

AliphCom d/b/a Jawbone, 99 Rhode Island Street, 3rd Floor, San Francisco, CA 94103.

BodyMedia, Inc., Union Trust Building, 501 Grant Street, Suite 1075, Pittsburgh, PA 15219.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Fitbit, Inc., 405 Howard Street, San Francisco, CA 94105.

Flextronics International Ltd., 6201 America Center Drive, San Jose, CA 95002.

Flextronics Sales & Marketing (A–P) Ltd., Suite 802, St. James Court, St. Denis Street, Port Louis, Mauritius.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

Issued: August 18, 2015.

By order of the Commission.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015–20730 Filed 8–20–15; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0028]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Currently Approved Collection

AGENCY: Office on Violence Against Women, Department of Justice.

ACTION: 60-day notice.

SUMMARY: The Department of Justice, Office on Violence Against Women (OVW) 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 October 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 Cathy Poston, Office on Violence Against Women, at 202–514–5430 or *Catherine.poston@usdoj.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:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Semi-annual Progress Report for Children and Youth Exposed to Violence Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–0028. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the approximately 25 grantees under the Consolidated Grant Program to Address Children and Youth Experiencing Domestic and Sexual Assault and Engage Men and Boys as Allies (hereafter referred to as the Consolidated Youth Program) enacted in the FY 2012, 2013, 2014, and 2015 appropriation acts, which consolidated four previously authorized and appropriated programs into one comprehensive program. The four programs included in the FY 2012, FY 2013, FY 2014, and FY 2015 consolidations were: Services to Advocate for and Respond to Youth (Youth Services), Grants to Assist Children and Youth Exposed to Violence (CEV), Engaging Men and Youth in Preventing Domestic Violence (EMY), and Supporting Teens through Education and Prevention (STEP).

The Consolidated Youth Program supports projects designed to provide coordinated community responses that support child, youth and young adult victims through direct services, training, coordination and collaboration, effective intervention, treatment, response, and prevention strategies. The Consolidated Youth Program creates a unique opportunity for communities to increase collaboration among non-profit victim service providers; violence prevention, and children (0–10), youth (11–18), young adult (19–24) and men-serving organizations; tribes and tribal governments; local government agencies; schools; and programs that support men's role in combating sexual assault, domestic violence, dating violence and stalking.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 25 respondents (grantees from the Consolidated Youth Program) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities in which grantees may engage. A Consolidated Youth Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 50 hours, that is 25 grantees completing a form twice a year with an estimated completion time for the form being one hour.

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: August 18, 2015.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2015–20700 Filed 8–20–15; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

[OMB Number 1105–0096]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension With Change, of a Previously Approved Collection Sequestered Juror Information Form

AGENCY: U.S. Marshals Service, Department of Justice.

ACTION: 60-day notice.

SUMMARY: The Department of Justice (DOJ), U.S. Marshals Service, 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 October 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 Nicole Feuerstein, Publications Specialist, U.S. Marshals Service, CS–3, 10th Floor, Washington, DC 20530–0001 (phone: 202–307–5168).

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 U.S. Marshals Service, 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:* Extension with change of a currently approved collection.

2. *The Title of the Form/Collection:* Sequestered Juror Information Form.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is USM–523A. The applicable component within the Department of Justice is the U.S. Marshals Service (USMS).

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Households/Individuals. Form USM–523A Sequestered Juror Information Form. The authority for collecting the information on this form is 28 U.S.C. 509, 510 and 561 *et seq.* The United States Marshals Service is responsible for ensuring the security of federal courthouses, courtrooms, and federal jurist. This information assists Marshals Service personnel in the planning of, and response to, potential security needs of the court and jurors during the course of proceedings.

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 14 respondents will complete a 4 minute form. The following factors were considered when creating the burden

estimate: the average number of people on a jury and the average number of sequestered juries held per year (estimated at one; many years go without one).

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 1 hour. It is estimated that respondents will take 4 minutes to complete Form USM–523A. The burden hours for collecting respondent data sum to 1 hour (14 respondents × 4 minutes = 56 minutes or 1 hour).

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: August 17, 2015.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2015–20647 Filed 8–20–15; 8:45 am]

BILLING CODE 4410–04–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0001]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Currently Approved Collection: Certification of Compliance With the Statutory Eligibility Requirements of the Violence Against Women Act as Amended

AGENCY: Office on Violence Against Women, Department of Justice.

ACTION: 60-day notice.

SUMMARY: The Department of Justice, Office on Violence Against Women (OVW) 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 October 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 Cathy Poston, Office on Violence Against Women, at 202–514–5430 or *Catherine.poston@usdoj.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:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Certification of Compliance with the Statutory Eligibility Requirements of the Violence Against Women Act as Amended.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–0001. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes STOP formula grantees (50 states, the District of Columbia and five territories (Guam, Puerto Rico, American Samoa, Virgin Islands, Northern Mariana Islands). The STOP Violence Against Women Formula Grant Program was authorized through the Violence Against Women Act of 1994 and reauthorized and amended in 2000, 2005, and 2013. The purpose of the STOP Formula Grant Program is to promote a coordinated, multi-disciplinary approach to improving the criminal justice system's response to violence against women. It envisions a partnership among law enforcement, prosecution, courts, and victim advocacy organizations to enhance victim safety and hold offenders accountable for their crimes of violence against women. The Department of Justice's Office on Violence Against Women (OVW) administers the STOP Formula Grant Program funds which must be distributed by STOP state administrators according to statutory formula (as amended in 2000, 2005 and 2013).

(4) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 56 respondents (state administrators from the STOP Formula Grant Program) less than one hour to complete a Certification of Compliance with the Statutory Eligibility Requirements of the Violence Against Women Act, as Amended.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the Certification is less than 56 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., 3E.405B, Washington, DC 20530.

Dated: August 18, 2015.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2015–20699 Filed 8–20–15; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On August 17, 2015, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Eastern District of Pennsylvania in the lawsuit entitled *United States of America and the Commonwealth of Pennsylvania, Department of Environmental Protection* v. *Delaware County Regional Water Quality Control Authority (DELCORA),* Civil Action No. 15–4652.

This action addresses the combined sewer system in the City of Chester, and throughout Delaware County, PA. The lawsuit seeks civil penalties and injunctive relief pursuant to sections 309(b) and (d) of the Clean Water Act, 33 U.S.C. 1319 (b) and (d), for violations including failure to develop a Long Term Control Plan (LTCP), unpermitted

sewage discharges, and effluent limit exceedances. The proposed Consent Decree requires DELCORA to develop and implement an LTCP and a Nine Minimum Controls plan to control combined sewer overflows and bring its combined sewer system into good operation and maintenance, and to pay a civil penalty of $1,375,000. The proposed Consent Decree also resolves concurrent claims under the Pennsylvania Clean Streams Law alleged in the Joint Complaint by the Commonwealth of Pennsylvania Department of Environmental Protection.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and the Commonwealth of Pennsylvania, Department of Environmental Protection* v. *Delaware County Regional Water Quality Control Authority (DELCORA),* D.J. Ref. No. 90–5–1–1–10972. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email ...	*pubcomment-ees.enrd@usdoj.gov*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $16.00 (25 cents per page reproduction cost) payable to the United States Treasury.

Robert Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2015–20620 Filed 8–20–15; 8:45 am]

BILLING CODE 4410–15–P

NUCLEAR REGULATORY COMMISSION

[NRC–2015–0046]

Information Collection: Billing Instructions for NRC Cost-Reimbursement Type Contracts

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, ''Billing Instructions for NRC Cost Type Contracts.''

DATES: Submit comments by September 21, 2015.

ADDRESSES: Submit comments directly to the OMB reviewer at: Vlad Dorjets, Desk Officer, Office of Information and Regulatory Affairs (3150–0109), NEOB–10202, Office of Management and Budget, Washington, DC 20503; telephone: 202–395–7315, email: *oira_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Tremaine Donnell, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6258; email: *INFOCOLLECTS.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2015–0046 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- Federal rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0046. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2015–0046 on this Web site.
- 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.* A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession No. ML15208A504. The supporting statement is available in ADAMS under Accession No. ML15208A514.
- 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.
- NRC's Clearance Officer: A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, Tremaine Donnell, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6258; email: *INFOCOLLECTS.Resource@NRC.GOV.*

B. Submitting Comments

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *http://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, ''Billing Instructions for NRC Cost Type Contracts.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment

period on this information collection on March 18, 2015 (80 FR 14172).

1. *The title of the information collection:* ''Billing Instructions for NRC Cost Type Contracts.''

2. *OMB approval number:* 3150–0109.

3. *Type of submission:* Extension.

4. *The form number if applicable:* None.

5. *How often the collection is required or requested:* Monthly and on occasion.

6. *Who will be required or asked to respond:* NRC Contractors.

7. *The estimated number of annual responses:* 1,506.

8. *The estimated number of annual respondents:* 41.

9. *An estimate of the total number of hours needed annually to comply with the information collection requirement or request:* 752.

10. *Abstract:* In administering its contracts, the NRC provides billing instructions for its contractors to follow in preparing invoices. These instructions stipulate the level of detail in which supporting data must be submitted for NRC review. The review of this information ensures that all payments made by the NRC for valid and reasonable costs are in accordance with the contract terms and conditions.

Dated at Rockville, Maryland, this 17th day of August, 2015.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2015–20666 Filed 8–20–15; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 040–09068; NRC–2008–0391]

Lost Creek ISR, LLC; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Temporary Exemption; issuance; correction.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is correcting a notice that was published in the **Federal Register** on July 24, 2015, that gave notice to the public that it is considering issuance of a temporary exemption from certain NRC financial assurance requirements to Lost Creek ISR, LLC, for its Lost Creek *In Situ* Recovery (ISSR) Project in Crook County, Wyoming. This action is being taken to correct the date that the exemption expires.

DATES: This correction is effective on August 21, 2015.

ADDRESSES: Please refer to Docket ID NRC–2008–0391 when contacting the NRC about the availability of information regarding this action. You may obtain publicly-available information related to this action using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0391. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.*
- *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: John Saxton, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–0697; email: *John.Saxton@nrc.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 24, 2015 (80 FR 44158), on page 44160, first column, the Conclusions Section, the third sentence is corrected to read as follows: ''This exemption will expire on February 10, 2017, for the Lost Creek ISR Project.''

Dated in Rockville, Maryland, this 17th day of August, 2015.

For the Nuclear Regulatory Commission.

Andrew Persinko,

Deputy Director, Division of Decommissioning, Uranium Recovery and Waste Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2015–20719 Filed 8–20–15; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 63–001–HLW; NRC–2015–0051]

Department of Energy; Yucca Mountain, Nye County, Nevada

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft supplement to environmental impact statements; availability.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment the draft ''Supplement to the U.S. Department of Energy's Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada,'' NUREG–2184. This supplements the U.S. Department of Energy's (DOE) 2002 Environmental Impact Statement (EIS) and its 2008 Supplemental EIS for the proposed repository in accordance with the findings and scope outlined in the NRC staff's 2008 Adoption Determination Report (ADR) for DOE's EISs. The scope of this supplement is limited to the potential environmental impacts from the proposed repository on groundwater and from surface discharges of groundwater. The NRC staff plans to hold four public meetings during the public comment period to present an overview of the supplement and to accept public comments on the draft supplement.

DATES: Submit comments on the supplement by October 20, 2015. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

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

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0051. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov*. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- Mail comments to: Cindy Bladey, Office of Administration, Mail Stop: OWFN–12–H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Christine Pineda, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6789; email: *YMEIS_Supplement@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2015–0051 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0051.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search*.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- 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.

B. Submitting Comments

Please include Docket ID NRC–2015–0051 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Discussion

This supplement evaluates the potential environmental impacts on groundwater and impacts associated with the discharge of any contaminated groundwater to the ground surface due to potential releases from a geologic repository for spent nuclear fuel and high-level radioactive waste at Yucca Mountain, Nye County, Nevada. This supplements DOE's 2002 ''Final Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada'' and 2008 ''Final Supplemental Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada,'' in accordance with the findings and scope outlined in the NRC staff's 2008 ''Adoption Determination Report for the U.S. Department of Energy's Environmental Impact Statements for the Proposed Geologic Repository at Yucca Mountain.'' The ADR provides the NRC staff's conclusion as to whether it is practicable for the NRC to adopt DOE's EISs under the Nuclear Waste Policy Act of 1982, as amended. The NRC's decision on adoption of the EISs will occur after completion of the adjudication under part 2, subpart J of Title 10 of the *Code of Federal Regulations* (10 CFR).

The scope of this supplement is limited to those areas defined in the ADR, specifically, the potential environmental impacts from the proposed repository on groundwater and from surface discharges of groundwater. In the ADR, the NRC staff found that the analysis in DOE's EISs does not provide adequate discussion of the cumulative amounts of radiological and nonradiological contaminants that may enter the groundwater over time and how these contaminants would behave in the aquifer and surrounding environments. This supplement provides the information the NRC staff identified in its ADR as necessary. The supplement describes the affected environment with respect to the groundwater flow path for potential contaminant releases from the repository that could be transported beyond the regulatory compliance location through the alluvial aquifer in Fortymile Wash and the Amargosa Desert, and to the Furnace Creek/Middle Basin area of Death Valley. The analysis in this supplement considers both radiological and nonradiological contaminants. Using groundwater modeling, the NRC staff finds that contaminants from the repository would be captured by groundwater withdrawal along the flow path, such as the current pumping in the Amargosa Farms area, or would continue to Death Valley in the absence of such pumping. Therefore, this supplement provides a description of the flow path from the regulatory compliance location to Death Valley, the locations of current groundwater withdrawal, and locations of potential natural discharge along the groundwater flow path. The supplement evaluates the potential radiological and nonradiological environmental impacts at these groundwater and surface discharge locations over a one-million year period following repository closure, including potential impacts on the aquifer environment, soils, ecology, and public health, as well as the potential for disproportionate impacts on minority or low-income populations. In addition, this supplement assesses the potential for cumulative impacts that may be associated with other past, present, or reasonably foreseeable future actions. The NRC staff finds that all of the impacts on the resources evaluated in this supplement would be SMALL.

III. Availability of Documents

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

Document	Adams accession No.
NRC Staff's Draft ''Supplement to the U.S. Department of Energy's Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada,'' NUREG–2184	ML15223B243
NRC Staff's Adoption Determination Report	ML082420342
NRC **Federal Register** notice of intent to prepare a supplement to a final supplemental environmental impact statement	ML15058A595
DOE ''Final Supplemental Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada''	ML081750191

Document	Adams accession No.
DOE "Final Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada"	ML032690321

IV. Public Meetings

The NRC staff will hold a public conference call on August 26, 2015, from 2:00 p.m. until 3:00 p.m. Eastern Time. During this call, the NRC staff will provide information on how to submit comments on the draft supplement and answer any questions related to the public comment process. The staff will not be accepting comments on the draft supplement during this call. The teleconference number and passcode for this call will be made available on the NRC's public Web site, or you may call 301–415–6789 or email *YMEIS_Supplement@nrc.gov*.

In addition, the NRC staff plans to hold the following public meetings during the public comment period to present an overview of the supplement and to accept public comments on the document.

- September 3, 2015: NRC Headquarters, One White Flint North, First Floor Commission Hearing Room, 11555 Rockville Pike, Maryland 20852. This meeting will start at 3:00 p.m. Eastern Time and continue until 5:00 p.m.
- September 15, 2015: Embassy Suites Convention Center, 3600 Paradise Rd., Las Vegas, Nevada 89169. This meeting will start at 7:00 p.m. Pacific Time and continue until 9:00 p.m.
- September 17, 2015: Amargosa Community Center, 821 E. Amargosa Farm Road, Amargosa Valley, Nevada 89020. This meeting will start at 7:00 p.m. Pacific Time and continue until 9:00 p.m.
- October 15, 2015: Public meeting via conference call, from 2:00 p.m. Eastern Time until 4:00 p.m.

Additionally, at each of the meeting locations in Nevada, the NRC staff will host informal discussions during an open house for one hour prior to the meeting start time. Open houses will begin at 6:00 p.m. Pacific Time.

The public meetings will be transcribed and will include: (1) A presentation of the contents of the draft supplement; and (2) the opportunity for interested government agencies, organizations, and individuals to provide comments on the draft supplement. No oral comments will be accepted during the open house sessions prior to the public meetings in Nevada. To be considered, oral comments must be presented during the transcribed portion of the public meeting. Written comments can be submitted to the NRC staff at any time during the public meetings. Persons interested in attending or presenting oral comments at any of the public meetings are encouraged to pre-register. Persons may pre-register to attend or present oral comments by calling 301–415–6789 or by emailing *YMEIS_Supplement@nrc.gov* no later than 3 days prior to the meeting. To provide oral comments, members of the public may also register in person at each meeting. Individual oral comments may be limited by the time available, depending on the number of persons who register. If special equipment or accommodations are needed to attend or present information at a public meeting, the need should be brought to the NRC's attention no later than 10 days prior to the meeting to provide the NRC staff adequate notice to determine whether the request can be accommodated. To maximize public participation, the NRC headquarters meeting on September 3, 2015, will be Web-streamed via the NRC's public Web site. On the meeting date, interested persons should go to the NRC's Live Meeting Webcast page to participate: *http://video.nrc.gov/*. The NRC headquarters meeting will also feature a moderated teleconference line so remote attendees will have the opportunity to present oral comments. To receive the teleconference number and passcode for the September 3 meeting or for the October 6 conference call, call 301–415–6789 or email *YMEIS_Supplement@nrc.gov*. Meeting agendas and participation details will be available on the NRC's Public Meeting Schedule Web site at *http://www.nrc.gov/publicinvolve/public-meetings/index.cfm* no later than 10 days prior to the meetings.

Dated at Rockville, Maryland, this 12th day of August 2015.

For the Nuclear Regulatory Commission.

James Rubenstone,

Acting Director, Yucca Mountain Directorate, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2015–20638 Filed 8–20–15; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2015–0032]

Information Collection: Requests to Agreement States for Information

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, "Requests to Agreement States for Information."

DATES: Submit comments by September 21, 2015.

ADDRESSES: Submit comments directly to the OMB reviewer at: Vlad Dorjets, Desk Officer, Office of Information and Regulatory Affairs (3150–0029) NEOB–10202, Office of Management and Budget, Washington, DC 20503; telephone: 202–395–7315, email: *oira_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Tremaine Donnell, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6258; email: *INFOCOLLECTS.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2015–0032 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- Federal rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0032.
- 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 supporting statement is available in ADAMS under Accession No. ML151979A054.

• 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.

• NRC's Clearance Officer: A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, Tremaine Donnell, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6258; email: *INFOCOLLECTS.Resource@NRC.GOV.*

B. Submitting Comments

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *http://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, ''Requests to Agreement States for Information.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on April 27, 2015 (80 FR 23306).

1. *The title of the information collection:* Requests to Agreement States for Information.

2. *OMB approval number:* 3150–0029.

3. *Type of submission:* Revision.

4. *The form number if applicable:* Not applicable.

5. *How often the collection is required or requested:* On occasion.

6. *Who will be required or asked to respond:* Thirty-Seven Agreement States who have signed Section 274(b) Agreements with the NRC.

7. *The estimated number of annual responses:* 421.8 responses.

8. *The estimated number of annual respondents:* 37.

9. *An estimate of the total number of hours needed annually to comply with the information collection requirement or request:* 3,374.4 hours.

10. *Abstract:* The NRC is seeking to revise this information collection to be a plan for a generic collection of information. The need and practicality of the collection can be evaluated, but the details of the specific individual collections will not be known until a later time. The Agreement States will be asked on a one-time or as-needed basis to respond to a specific incident, to gather information on licensing and inspection practices or other technical information. The results of such information requests, which are authorized under Section 274(b) of the Atomic Energy Act, will be utilized in part by the NRC in preparing responses to Congressional inquiries.

Dated at Rockville, Maryland, this 17th day of August 2015.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2015–20665 Filed 8–20–15; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[FEMA–2012–0026, NRC–2015–0133]

Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft NUREG; extension of comment period.

SUMMARY: On May 29, 2015, the U.S. Nuclear Regulatory Commission (NRC) issued and requested comments on draft NUREG–0654/FEMA–REP–1, Revision 2, ''Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants.'' The public comment period was originally scheduled to close on August 27, 2015. The NRC has decided to extend the public comment period to allow more time for members of the public to develop and submit their comments.

DATES: The due date for comments on the document published on May 29, 2015 (80 FR 30739) is extended. Comments should be filed no later than October 13, 2015. Comments received after this date will be considered, if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

ADDRESSES: In order to avoid the receipt and review of duplicate submissions, please submit your comments and any supporting material by only one of the following means:

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID FEMA–2012–0026. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *Mail comments to:* Regulatory Affairs Division, Office of Chief Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472–3100.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Don Tailleart, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–287–9257; email: *Don.Tailleart@nrc.gov* or William Eberst, Technological Hazards Division, National Preparedness Directorate, Federal Emergency Management Agency, Washington, DC 20472–3100; telephone: 202–341–4917; email: *William.Eberst@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID FEMA–2012–0026 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID FEMA–2012–0026.

• *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 guidance document is available in ADAMS under Accession No. ML14246A519.

- *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.

Submitted comments may also be inspected at the Federal Emergency Management Agency (FEMA), Office of Chief Counsel, 500 C Street SW., Washington, DC 20472–3100.

B. Submitting Comments

Please include Docket ID FEMA–2012–0026 in the subject line of your comment submission, in order to ensure that FEMA is able to make your comment submission available to the public in this docket.

All submissions received must include the agency name (FEMA) and docket ID. Regardless of the method used for submitting comments or material, FEMA will post all submissions, without change, to *www.regulations.gov* and will include any personal information that you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice, which can be viewed by clicking on the ''Privacy Notice'' link on the homepage of *www.regulations.gov.*

II. Discussion

On May 29, 2015, the NRC requested comments on draft NUREG–0654/FEMA–REP–1, Revision 2, ''Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants.'' Comments on the draft document were also requested by FEMA on the same date (80 FR 30697). The public comment period was originally scheduled to close on August 27, 2015. On June 23, 2015, the Nuclear Energy Institute submitted a request to the NRC and FEMA to extend the public comment period an additional 90 days (ADAMS Accession No. ML15205A187). The NRC, in conjunction with FEMA, has decided to extend the public comment period on this document until October 13, 2015, to allow more time for members of the public to submit their comments. This represents a 45-day extension, rather than 90 days as requested, in consideration of the extensive public outreach and stakeholder engagement throughout the development of the draft document, which provided opportunities for reviewing and providing feedback on preliminary versions of the document. A 45-day extension should provide sufficient additional time for comments to be provided.

Dated at Rockville, Maryland, this 13th day of August, 2015.

For the U.S. Nuclear Regulatory Commission.

Brian E. Holian,

Director, Office of Nuclear Security and Incident Response.

[FR Doc. 2015–20637 Filed 8–20–15; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. R2015–6; Order No. 2669]

International Mail Contract

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning a Type 2 rate adjustment and the filing of a related negotiated service agreement with China Post Group. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* September 17, 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:

Table of Contents

I. Introduction
II. Contents of Filing
III. Commission Action
IV. Ordering Paragraphs

I. Introduction

On August 14, 2015, the Postal Service filed a notice, pursuant to 39 CFR 3010.40 *et seq.,* announcing a Type 2 rate adjustment to improve default rates established under the Universal Postal Union Acts.[1] The Notice concerns the inbound portion of a Multi-Product Bilateral Agreement with China Post Group (Agreement).[2] In accordance with Order No. 2148,[3] the Postal Service claims the Agreement is functionally equivalent to the agreement with China Post filed in Docket No. R2010–6 (China Post 2010 Agreement), with inbound small packets with delivery scanning pricing similar to that in the China Post 2010, China Post 2011, China Post 2013, and China Post 2014 agreements. *Id.* at 1, 4. The Postal Service seeks to include the Agreement within the Inbound Market-Dominant Multi-Service Agreements with Foreign Postal Operators 1 product, in the market dominant product list of the Mail Classification Schedule. *Id.* at 1.

II. Contents of Filing

The Postal Service's filing consists of the Notice, two attachments, and redacted and unredacted versions of an Excel file with supporting financial workpapers. *Id.* at 2. Attachment 1 is an application for non-public treatment of material filed under seal with the Commission. *Id.* Attachment 2 is a redacted copy of the Agreement. *Id.* The Postal Service includes a redacted version of the financial workpapers with its filing as a separate public Excel file. *Id.*

The Postal Service states that the intended effective date of the Agreement's inbound market dominant rates is October 1, 2015;[4] asserts that it is providing at least the 45 days advance notice required under 39 CFR 3010.41; and identifies the parties to the Agreement as the United States Postal Service and China Post Group, the postal operator for China. *Id.* at 3.

Reporting requirements. 39 CFR 3010.43 requires the Postal Service to submit a detailed data collection plan. In lieu of a special data collection plan for the Agreement, the Postal Service proposes to report information on the Agreement through the Annual Compliance Report. *Id.* at 6. The Postal Service also invokes, with respect to service performance measurement

[1] Notice of United States Postal Service of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Agreement, August 14, 2015, at 1 (Notice).

[2] Notice at 1. The Agreement's inbound competitive rates will be filed with the Commission in a separate docket. *Id.* at 3.

[3] *See* Docket No. R2013–9, Order Granting, in Part, Motion for Partial Reconsideration of Order No. 1864 and Modifying, in Part, Order No. 1864, August 11, 2014 (Order No. 2148).

[4] Although the copy of the Agreement filed under seal has yet to be signed by both parties, the Postal Service anticipates updating this docket with a signed version, soon. *Id.* at 3 n.3.

reporting under 39 CFR 3055.3(a)(3), the standing exception in Order No. 996 for all agreements filed in the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product grouping.[5]

Consistency with applicable statutory criteria. The Postal Service observes that Commission review of a negotiated service agreement addresses three statutory criteria under 39 U.S.C. 3622(c)(10), whether the agreement: (1) Improves the Postal Service's net financial position or enhances the performance of operational functions; (2) will not cause unreasonable harm to the marketplace; and (3) will be available on public and reasonable terms to similarly situated mailers. Notice at 7. The Postal Service asserts that it addresses the first two criteria in its Notice and that the third is inapplicable, as there are no entities similarly situated to China Post Group in terms of their ability to tender small packet with delivery scanning flows from China or serve as a designated operator for letter post originating in China. *Id.*

Functional equivalence. The Postal Service addresses reasons why it considers the Agreement functionally equivalent to the China Post 2010 Agreement filed in Docket No. R2010–6.[6] The Postal Service asserts that it does not consider that the specified differences detract from the conclusion that the Agreement is functionally equivalent to the baseline China Post 2010 Agreement. Notice at 11.

III. Commission Action

The Commission, in conformance with rule 3010.44, establishes Docket No. R2015–6 to consider issues raised in the Notice. The Commission invites comments from interested persons on whether the Agreement is consistent with 39 U.S.C. 3622 and the requirements of 39 CFR part 3010. Comments are due no later than September 17, 2015. The public portions of this filing can be accessed via the Commission's Web site (*http://www.prc.gov*). Information on how to obtain access to non-public material appears in 39 CFR part 3007.

The Commission appoints James F. Callow to represent the interests of the general public (Public Representative) in this docket.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. R2015–6 for consideration of matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, James F. Callow is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

3. Comments by interested persons in this proceeding are due no later than September 17, 2015.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2015–20648 Filed 8–20–15; 8:45 am]

BILLING CODE 7710–FW–P

[5] *Id.* at 7, citing Docket No. R2012–2, Order Concerning an Additional Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement, November 23, 2011, at 7 (Order No. 996).

[6] *Id.* at 8–9; *see also* Docket Nos. MC2010–35, R2010–5, and R2010–6, Order No. 549, Order Adding Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 to the Market Dominant Product List and Approving Included Agreements, September 30, 2010.

POSTAL REGULATORY COMMISSION

[Docket No. CP2015–127; Order No. 2667]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning an additional Global Reseller Expedited Package Contracts 2 negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* August 24, 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:

Table of Contents

I. Introduction
II. Notice of Commission Action
III. Ordering Paragraphs

I. Introduction

On August 14, 2015, the Postal Service filed notice that it has entered into an additional Global Reseller Expedited Package Contracts 2 (GREP 2) 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. CP2015–127 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 August 24, 2015. The public portions of the filing can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints John P. Klingenberg to serve as Public Representative in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2015–127 for consideration of the matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, John P. Klingenberg 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 August 24, 2015.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2015–20634 Filed 8–20–15; 8:45 am]

BILLING CODE 7710–FW–P

[1] Notice of United States Postal Service of Filing a Functionally Equivalent Global Reseller Expedited Package 2 Negotiated Service Agreement, August 14, 2015 (Notice).

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2015–79 and CP2015–126; Order No. 2668]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning

the addition of Priority Mail Contract 140 negotiated service agreement to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* August 24, 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:

Table of Contents

I. Introduction
II. Notice of Commission Action
III. Ordering Paragraphs

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a formal request and associated supporting information to add Priority Mail Contract 140 to the competitive product list.[1]

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, 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 Nos. MC2015–79 and CP2015–126 to consider the Request pertaining to the proposed Priority Mail Contract 140 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 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 August 24, 2015. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Lyudmila Y. Bzhilyanskaya to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2015–79 and CP2015–126 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Lyudmila Y. Bzhilyanskaya is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than August 24, 2015.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2015–20635 Filed 8–20–15; 8:45 am]

BILLING CODE 7710–FW–P

[1] Request of the United States Postal Service to Add Priority Mail Contract 140 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, August 14, 2015 (Request).

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, Washington, DC 20549–2736.

Extension:

Form 12b–25; OMB Control No. 3235–0058, SEC File No. 270–71.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

The purpose of Form 12b–25 (17 CFR 240.12b–25) is to provide notice to the Commission and the marketplace that a registrant will be unable to timely file a required periodic or transition report pursuant to the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) or the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*). If all the filing conditions of the form are satisfied, the registrant is granted an automatic filing extension. The information required is filed on occasion and is mandatory. All information is available to the public for review. Approximately 4,456 registrants file Form 12b–25 and it takes approximately 2.5 hours per response for a total of 11,140 burden hours.

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 control number.

Written comments regarding the above information should be directed to the following persons: (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; and 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 send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: August 17, 2015.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–20658 Filed 8–20–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75712; File No. SR–EDGA–2015–31]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 13.8 To Describe the Market Data Product EDGA Book Viewer

August 17, 2015.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 7, 2015, EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii)

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend Rule 13.8 to describe a market data product known as EDGA Book Viewer.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add language to Rule 13.8 describing a market data product known as EDGA Book Viewer. The proposal memorializes in the Exchange's rules a data feed that is currently available through the Exchange's public Web site free of charge. EDGA Book Viewer is a data feed that disseminates, on a real-time basis, the aggregated two-side quotations for up to five (5) price levels for all displayed orders for securities traded on the Exchange and for which the Exchanges reports quotes under the Consolidated Tape Association (''CTA'') Plan or the Nasdaq/UTP Plan. EDGA Book Viewer also contains the last ten (10) trades including time of trade, price and share quantity. EDGA Book Viewer is currently available via *www.batstrading.com* without charge. The Exchange will file a separate proposed rule change with the Commission proposing fees to be charged for certain types of access to EDGA Book Viewer as of September 1, 2015.[5]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[6] in general, and furthers the objectives of section 6(b)(5) of the Act,[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and that it is not designed to permit unfair discrimination among customers, brokers, or dealers. This proposal is in keeping with those principles in that it promotes increased transparency through the dissemination of EDGA Book Viewer. The Exchange also believes this proposal is consistent with section 6(b)(5) of the Act because it protects investors and the public interest and promotes just and equitable principles of trade by providing investors with an alternative for receiving market data as requested by market data vendors and purchasers that expressed an interest in exchange-only data for instances where consolidated data is no longer required to be purchased and displayed. The proposed rule change would benefit investors by facilitating their prompt access to real-time depth-of-book information contained in EDGA Book Viewer. The proposed rule change also removes impediments to and perfect the mechanism of a free and open market and a national market system by memorializing in the Exchange's rules a data feed that is currently available through the Exchange's public Web site free of charge.

The Exchange also believes that the proposed rule change is consistent with section 11(A) of the Act[8] in that it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,[9] which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory. EDGA Book Viewer is accessed and subscribed to on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation to make this data available. Accordingly, distributors and subscribers can discontinue use at any time and for any reason.

In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to consumers of such data. It was believed that this authority would expand the amount of data available to users and consumers of such data and also spur innovation and competition for the provision of market data. The Exchange believes that the data products proposed herein are precisely the sort of market data products that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS—by lessening regulation of 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.[10]

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.

In addition, EDGA Book Viewer removes impediments to and perfects the mechanism of a free and open market and a national market system because EDGA Book Viewer provides investors with alternative market data and competes with similar market data product currently offered by the New York Stock Exchange, Inc. (''NYSE'') and the Nasdaq Stock Market LLC

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] The Exchange understands that its affiliated exchanges intend to file identical proposed rule changes to adopt rules and fees for the Book Viewer data feed with the Commission. The Exchange's affiliates are EDGX Exchange, Inc., BATS Exchange, Inc. and BATS Y-Exchange, Inc.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78k–1.

[9] *See* 17 CFR 242.603.

[10] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (File No. S7–10–04).

(''Nasdaq'').[11] The provision of new options for investors to receive market data was a primary goal of the market data amendments adopted by Regulation NMS.[12] EDGA Book Viewer is precisely the sort of market data product that the Commission envisioned when it adopted Regulation NMS.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal is not intended to address any competitive issues, but rather to memorialize in the Exchange's rules a data feed that is currently available through the Exchange's public Web site free of charge. Nonetheless, the Exchange believes that the proposal will promote competition by the Exchange offering a service similar to that offered by the NYSE and Nasdaq.[13] Thus, the Exchange believes this proposed rule change is necessary to permit fair competition among national securities exchanges. Therefore, the Exchange does not believe 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.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

[11] *See* Nasdaq Rule 7023(a)(1)(C) (describing Nasdaq TotalView is a depth-of-book data feed that includes all orders and quotes from all Nasdaq members displayed in the Nasdaq Market Center as well as the aggregate size of such orders and quotes at each price level in the execution functionality of the Nasdaq Market Center). *See also* Nasdaq Book Viewer, a description of which is *available at https://data.nasdaq.com/Book* Viewer.aspx (last visited July 29, 2015). *See* NYSE OpenBook *available at http://www.nyxdata.com/openbook* (last visited July 29, 2015) (providing real-time view of the NYSE limit order book). *See e.g.,* Securities Exchange Act Release No. 71775 (March 24, 2014), 79 FR 17627 (March 28, 2014) (SR–CBOE–2014–021) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to the CBSX BBO Data Feed and the New CBSX Book Depth Data Feed).

[12] *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 11.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated this rule filing as non-controversial under section 19(b)(3)(A) of the Act[14] and paragraph (f)(6) of Rule 19b–4 thereunder.[15] The proposed rule change effects a change that: (A) Does not significantly affect the protection of investors or the public interest; (B) does not impose any significant burden on competition; and (C) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (1) Necessary or appropriate in the public interest; (2) for the protection of investors; or (3) 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–EDGA–2015–31 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–EDGA–2015–31. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–EDGA–2015–31 and should be submitted on or before September 11, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–20654 Filed 8–20–15; 8:45 am]

BILLING CODE 8011–01–P

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4.

[16] The Exchange has fulfilled this requirement.

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75714]

Designation of the Financial Industry Regulatory Authority To Administer Professional Qualification Tests for Associated Persons of Registered Municipal Advisors

AGENCY: Securities and Exchange Commission.

ACTION: Order.

SUMMARY: The Commission is designating the Financial Industry Regulatory Authority (''FINRA'') to administer professional qualification tests for associated persons of registered municipal advisors.

DATES: *Effective Date:* August 17, 2015.

FOR FURTHER INFORMATION CONTACT: Jessica Kane, Director; Rebecca Olsen, Deputy Director; Mary Simpkins, Senior Special Counsel; Edward Fierro, Attorney-Adviser; at (202) 551–5680, Office of Municipal Securities, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–7010.

Discussion

Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'') [1] amended Section 15B of the Securities Exchange Act of 1934 (''Exchange Act'') to, among other things, make it unlawful for a municipal advisor to provide certain advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, or to undertake a solicitation of a municipal entity or obligated person, unless the municipal advisor is registered with the Commission.[2] The registration requirement for municipal advisors established by the Dodd-Frank Act became effective on October 1, 2010.[3] On September 20, 2013, the Commission adopted the final rules for the permanent registration of municipal advisors (the ''Final Rules'').[4] Municipal advisors were required to comply with the Final Rules as of July 1, 2014, and to register with the Commission under the Final Rules pursuant to a four-month phased-in compliance period, which began on July 1, 2014.[5]

Exchange Act Section 15B(b)(2) provides that the MSRB shall propose and adopt rules to effect the purposes of the Exchange Act with respect to, among other things, advice provided to or on behalf of municipal entities or obligated persons by brokers, dealers, municipal securities dealers, and municipal advisors with respect to municipal financial products, the issuance of municipal securities, and solicitations of municipal entities or obligated persons undertaken by brokers, dealers, municipal securities dealers, and municipal advisors.[6]

Specifically, Exchange Act Section 15B(b)(2)(A) requires, among other things, that the MSRB have rules that provide that no broker, dealer, municipal securities dealer, or municipal advisor shall provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, unless, among other things, such municipal securities broker or municipal securities dealer and every natural person associated with such municipal securities broker or municipal securities dealer meets such standards of training, experience, competence, and such other qualifications as the MSRB finds necessary or appropriate in the public interest or for the protection of investors and municipal entities or obligated persons.[7] Further, Section 15B(b)(2)(A) provides that, in connection with the definition and application of such standards, the MSRB may: (i) Appropriately classify municipal securities brokers, municipal securities dealers, and municipal advisors (taking into account certain relevant matters), and persons associated with municipal securities brokers, municipal securities dealers, and municipal advisors; (ii) specify that all or any portion of such standards shall be applicable to any such class; and (iii) require persons in any such class to pass tests administered in accordance with Exchange Act Section 15B(c)(7).[8]

Exchange Act Section 15B(c)(7)(A) provides that the tests pursuant to Section 15B(b)(2)(A)(iii) shall be administered by, or on behalf of, the Commission or its designee, in the case of municipal advisors.[9] The Commission designates FINRA to administer professional qualification tests for associated persons of registered municipal advisors who engage in municipal advisory activities or engage in the management, direction or supervision of municipal advisory activities, pursuant to the Commission's authority under Exchange Act Section 15B(c)(7)(A)(iii).[10]

The Commission notes that FINRA has responsibility to enforce compliance by its members and persons associated with its members with the rules of the MSRB [11] and currently administers all professional qualification tests developed, maintained, and owned by the MSRB, which are intended to ensure that municipal professionals demonstrate a basic competence in the subject matter related to the professional qualification classification in compliance with MSRB professional qualification requirement rules.[12] FINRA currently has technical systems and procedures in place for scheduling examinations, collecting fees, administering examinations, and maintaining examination records and testing centers operated by vendors located throughout the country.[13] In addition, FINRA has extensive experience in administering

[1] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

[2] *See* 15 U.S.C. 78*o*–4(a).

[3] *See supra* note 1.

[4] *See* Securities Exchange Act Release No. 70462 (September 20, 2013), 78 FR 67468 (November 12, 2013).

[5] *See* Securities Exchange Act Release No. 71288 (January 13, 2014), 79 FR 2777 (January 16, 2014).

[6] *See* 15 U.S.C. 78*o*–4(b)(2).

[7] *See* 15 U.S.C. 78*o*–4(b)(2)(A).

[8] *See id.* MSRB Rule G–2 sets forth standards of professional qualification and MSRB Rule G–3 sets forth professional qualification requirements for municipal advisors and their associated persons. *See* Securities Exchange Act Release No. 74384 (February 26, 2015), 80 FR 11706 (March 4, 2015). MSRB Rule G–3 includes two registration classifications for municipal advisors: municipal advisor representative and municipal advisor principal. *See* MSRB Rule G–3. Qualification as a municipal advisor representative is a prerequisite to qualification as a municipal advisor principal. *See id.* Under MSRB Rule G–3, a natural person associated with a municipal advisor who engages in municipal advisory activities on the municipal advisor's behalf (other than a person performing only clerical, administrative, support or similar functions) must take and pass the Municipal Advisor Representative Qualification Examination prior to being qualified as a municipal advisor representative. *See* MSRB Rule G–3(d). The MSRB developed a content outline and specifications for the selection of examination questions for the Municipal Advisor Representative Qualification Examination, which were filed with the Commission on April 22, 2015 and became operative upon filing. *See* Securities Exchange Act Release No. 74858 (May 1, 2015), 80 FR 26310 (May 7, 2015). The MSRB will consider an examination for municipal advisor principals who are engaged in the management, direction or supervision of municipal advisory activities at a later date. *See* Securities Exchange Act Release No. 73708 (December 1, 2014), 79 FR 72225 (December 5, 2014).

[9] *See* 15 U.S.C. 78*o*–4(c)(7)(A)(iii).

[10] The Dodd-Frank Act also amended Exchange Act Section 15B to expressly provide that ''the Commission, or its designee, in the case of municipal advisors,'' conduct periodic examinations pursuant to Exchange Act Section 15B(b)(2)(E). *See* Exchange Act Section 15B(c)(7)(A). In the Final Rules, the Commission designated FINRA as a designee to examine its members' activities as registered municipal advisors and evaluate compliance by such members with federal securities laws, Commission rules and regulations, and MSRB rules applicable to municipal advisors. *See* Securities Exchange Act Release No. 70462 (September 20, 2013), 78 FR 67468 (November 12, 2013).

[11] *See* 15 U.S.C. 78*o*–3(b)(2).

[12] *See* Securities Exchange Act Release No. 74561 (March 23, 2015), 80 FR 16485 (March 27, 2015). These professional qualification tests are Series 51 (Municipal Fund Securities Limited Principal Qualification Examination); Series 52 (Municipal Securities Representative Qualification Examination); and Series 53 (Municipal Securities Principal Qualification Examination). The Commission is responsible for oversight of FINRA and the MSRB to ensure they comply with their respective rules and applicable federal securities laws. *See* Exchange Act Section 19. FINRA and the MSRB are also subject to various requirements under the Exchange Act, including the requirements in Section 19(b) and Rule 19b–4 thereunder to file proposed rule changes with the Commission (including proposed rule changes related to fees and professional qualification standards and requirements). No proposed rule change will take effect unless approved by the Commission or otherwise permitted in accordance with the provisions of Exchange Act Section 19(b). *See* Exchange Act Section 19(b).

[13] *See https://www.finra.org/industry/qualification-exams.*

professional qualification tests for its broker-dealer members (which include municipal securities brokers and dealers) and other securities professionals.[14] These qualification tests cover a broad range of subjects on the markets, the securities industry and its regulatory structure, including knowledge of FINRA rules and the rules of other self-regulatory organizations, such as the MSRB.[15]

IT IS THEREFORE ORDERED, pursuant to Exchange Act Section 15B(c)(7)(A), that FINRA is designated to administer professional qualification tests for associated persons of registered municipal advisors who engage in municipal advisory activities or engage in the management, direction or supervision of municipal advisory activities.

By the Commission.

Dated: August 17, 2015.

Brent J. Fields,

Secretary.

[FR Doc. 2015–20652 Filed 8–20–15; 8:45 am]

BILLING CODE 8011–01–P

[14] *See id.* These professional qualification tests are Series 3 (National Commodities Futures Exam); Series 4 (Registered Options Principal); Series 6 (Investment Company and Variable Contracts Products Representative); Series 7 (General Securities Representative Examination); Series 9 and 10 (General Securities Sales Supervisor); Series 11 (Assistant Representative—Order Processing Exam); Series 14 (Compliance Official Exam); Series 16 (Supervisory Analysts Exam); Series 17 (United Kingdom Securities Representative); Series 22 (Direct Participation Representative); Series 23 (General Securities Principal Exam—Sales Supervisor Module); Series 24 (General Securities Principal); Series 26 (Investment Company and Variable Contracts Products Principal); Series 27 (Financial and Operations Principal Exam); Series 28 (Introducing Broker-Dealer Financial and Operations Principal Exam); Series 30 (NFA Branch Managers Exam); Series 31 (Futures Managed Funds Exam); Series 32 (Limited Futures Exam—Regulations); Series 34 (Retail Off-Exchange Forex Exam); Series 37 (Canada Securities Representative Exam); Series 38 (Canada Securities Representative Exam); Series 39 (Direct Participation Programs Principal Exam); Series 42 (Registered Options Representative); Series 55 (Equity Trader Exam); Series 56 (Proprietary Trader Examination); Series 62 (Corporate Securities Representative Exam); Series 63 (Uniform Securities State Law Examination); Series 65 (NASAA Investment Advisors Law Examination); Series 66 (NASAA Uniform Combined State Law Examination); Series 72 (Government Securities Representative Exam); Series 79 (Investment Banking Representative Exam); Series 82 (Private Securities Offerings Representative Exam); Series 86 and 87 (Research Analyst Exam); Series 91 (FDIC Safety and Soundness Technical Evaluation); Series 92 (FDIC Compliance Technical Evaluation); Series 93 (FDIC Division of Resolutions and Receiverships Technical Evaluation); and Series 99 (Operations Professional Exam).

[15] *Id.*

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75716; File No. SR–BX–2015–052)

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Verifiable Disruption or Malfunction of Exchange Systems

August 17, 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 August 13, 2015, NASDAQ OMX BX, Inc. (''Exchange'' or ''BX'') 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

BX is filing with the Commission a proposal to amend Chapter V, Section 6 (Nullification and Adjustment of Options Transactions including Obvious Errors) of the rules of the BX Options Market (''BX Options'') related to a verifiable disruption or malfunction of Exchange systems.

The text of the amended Exchange rule is set forth immediately below.

Proposed new language is *italicized* and proposed deleted language is [bracketed].

NASDAQ OMX BX Rules

Options Rules

* * * * *

Chapter V Regulation of Trading on BX Options

* * * * *

Sec. 6 Nullification and Adjustment of Options Transactions Including Obvious Errors

The Exchange may nullify a transaction or adjust the execution price of a transaction in accordance with this Rule. However, the determination as to whether a trade was executed at an erroneous price may be made by mutual agreement of the affected parties to a particular transaction. A trade may be nullified or adjusted on the terms that all parties to a particular transaction agree, provided, however, that such agreement to nullify or adjust must be conveyed to the Exchange in a manner prescribed by the Exchange prior to 8:30 a.m. Eastern Time on the first trading day following the execution. It is considered conduct inconsistent with just and equitable principles of trade for any Participant to use the mutual adjustment process to circumvent any applicable Exchange rule, the Act or any of the rules and regulations thereunder.

(a)–(j) No Change.

(k) *Verifiable Disruption or Malfunction of Exchange Systems. Parties to a trade may have a trade nullified or its price adjusted if it resulted from a verifiable disruption or malfunction of Exchange execution, dissemination, or communication systems that caused a quote/order to trade in excess of its disseminated size (e.g. a quote/order that is frozen, because of an Exchange system error, and repeatedly traded). Parties to a trade may have a trade nullified or its price adjusted if it resulted from a verifiable disruption or malfunction of an Exchange dissemination or communication system that prevented a member from updating or canceling a quote/order for which the member is responsible where there is Exchange documentation providing that the member sought to update or cancel the quote/order.*

([k]*l*) *Appeals.* A party to a transaction affected by a decision made under this section may appeal that decision to the Exchange Review Council. An appeal must be made in writing, and must be received by BX within thirty (30) minutes after the person making the appeal is given the notification of the determination being appealed. The Exchange Review Council may review any decision appealed, including whether a complaint was timely, whether an Obvious Error or Catastrophic Error occurred, whether the correct Theoretical Price was used, and whether an adjustment was made at the correct price.

* * * * *

The text of the proposed rule change is also available on the Exchange's Web site at *http://nasdaqomxbx.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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is seeking to amend its rules related to obvious errors. Specifically, the Exchange is seeking to amend Chapter V, Section 6 (Nullification and Adjustment of Options Transactions including Obvious Errors) of the rules of BX Options related to a verifiable disruption or malfunction of Exchange systems.

Similar to NASDAQ OMX PHLX LLC (''Phlx'') Rule 1092(k), proposed BX Options Chapter V, Section 6(k) would indicate that parties to a trade may have a trade nullified or its price adjusted if it resulted from a verifiable disruption or malfunction of Exchange execution, dissemination, or communication systems that caused a quote/order to trade in excess of its disseminated size (*e.g.,* a quote/order that is frozen, because of an Exchange system error, and repeatedly traded).[3] Parties to a trade may have a trade nullified or its price adjusted if it resulted from a verifiable disruption or malfunction of an Exchange dissemination or communication system that prevented a member from updating or canceling a quote/order for which the member is responsible where there is Exchange documentation providing that the member sought to update or cancel the quote/order. The Exchange notes that the proposed BX Options Chapter V, Section 6(k) language is identical to that of Phlx Rule 1092(k). Per BX Options Chapter V, Section 6, transactions that qualify for price adjustment will be adjusted to Theoretical Price, as defined in paragraph (b) of Section 6.

The Exchange believes that it is appropriate to provide the flexibility and authority provided for in the proposed rule so as not to limit the Exchange's ability to plan for and respond to unforeseen systems problems or malfunctions. The proposed rule change would provide the Exchange with the same authority that Phlx and other exchanges have to nullify or adjust trades in the event of a ''verifiable disruption or malfunction'' in the use or operation of its systems. [4] For this reason, the Exchange believes that, in the interest of maintaining a fair and orderly market and for the protection of investors, authority to nullify or adjust trades in these circumstances, consistent with the authority on other exchanges, is warranted.

By way of housekeeping, the Exchange proposes to renumber current Section 6(k) of BX Options Chapter V to Section 6(l). There are no other changes to Section 6(l), which deals with appeals regarding decisions pursuant to BX Options Chapter V, Section 6.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [6] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and national market system and promote a fair and orderly market because it would provide authority for the Exchange to nullify or adjust trades that may have resulted from a verifiable systems disruption or malfunction. The Exchange believes that it is appropriate to provide the flexibility and authority provided for in the proposed rule so as not to limit the Exchange's ability to plan for and respond to unforeseen systems problems or malfunctions that may result in harm to the public. Allowing for the nullification or modification of transactions that result from verifiable disruptions and/or malfunctions of the Exchange's systems will offer market participants on BX Options a level of relief presently not available. The Exchange notes that the proposed rule change is the same as the equivalent Phlx rule and substantially similar to the equivalent CBOE, C2, and Arca rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposed rule change is pro-competitive because it will align the BX Option rules with the rules of other markets, including Phlx, CBOE, C2, and Arca. By adopting the proposed rule, the Exchange will be in a position to treat transactions that are a result of a verifiable systems issue or malfunction in a manner similar to other exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) [7] of the Act and subparagraph (f)(6) of Rule 19b–4 thereunder.[8]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

[3] There is no reference to open outcry as BX Options is all-electronic.

[4] *See, e.g.,* Phlx Rule 1092(k), Chicago Board Options Exchange (''CBOE'') Rule 6.25.05, CBOE C2 (''C2'') Rule 6.15.06, and NYSE Arca, Inc. (''Arca'') Rule 6.89.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

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–BX–2015–052 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2015–052. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2015–052, and should be submitted on or before September 11, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–20657 Filed 8–20–15; 8:45 am]

BILLING CODE 8011–01–P

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 31764; File No. 812–14424]

Amplify Investments LLC and Amplify ETF Trust; Notice of Application

August 17, 2015.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

Summary of Application: Applicants request an order that would permit (a) series of certain open-end management investment companies to issue shares (''Shares'') redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Shares to occur at negotiated market prices rather than at net asset value (''NAV''); (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days after the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the Underlying Funds (defined below) to acquire shares of the Underlying Funds.

Applicants: Amplify ETF Trust (the ''Trust'') and Amplify Investments LLC (the ''Initial Adviser'').

Filing Dates: The application was filed on February 20, 2015, and amended on June 30, 2015.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 11, 2015, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants, 3250 Lacey Road, Suite 130, Downers Grove, IL 60515, Attn: Christian Magoon.

FOR FURTHER INFORMATION CONTACT: Christine Y. Greenlees, Senior Counsel at (202) 551–6879, or David P. Bartels, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust is a business trust organized under the laws of the Commonwealth of Massachusetts and is, or will be prior to the commencement of operation of the Initial Fund (defined below), registered under the Act as an open-end management investment company with multiple series.

2. The Initial Adviser is registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act'') and will be the investment adviser to the Funds (defined below). Any other Adviser (defined below) will also be registered as an investment adviser under the Advisers Act. The Adviser may enter into sub-advisory agreements with one or more investment advisers to act as sub-advisers to particular Funds (each, a ''Sub-Adviser''). Any Sub-Adviser will either be registered under the Advisers Act or will not be required to register thereunder.

3. The Trust will enter into a distribution agreement with one or more distributors (each, a ''Distributor''). Each Distributor will be a broker-dealer (''Broker'') registered under the

Securities Exchange Act of 1934 (the ''Exchange Act'') and will act as distributor and principal underwriter of one or more of the Funds. The Distributor of any Fund may be an affiliated person, as defined in section 2(a)(3) of the Act (''Affiliated Person''), or an affiliated person of an Affiliated Person (''Second-Tier Affiliate''), of that Fund's Adviser and/or Sub-Advisers. No Distributor will be affiliated with any Exchange (defined below).

4. Applicants request that the order apply to the initial series of the Trust described in the application (''Initial Fund''), as well as any additional series of the Trust and other open-end management investment companies, or series thereof, that may be created in the future (''Future Funds''), each of which will operate as an exchanged-traded fund (''ETF'') and will track a specified index comprised solely of domestic or foreign equity and/or fixed income securities (each, an ''Underlying Index''). Any Future Fund will (a) be advised by the Initial Adviser or an entity controlling, controlled by, or under common control with the Initial Adviser (each, an ''Adviser'') and (b) comply with the terms and conditions of the application. The Initial Fund and Future Funds, together, are the ''Funds.'' [1]

5. Each Fund will hold certain securities, currencies, other assets and other investment positions (''Portfolio Holdings'') selected to correspond generally to the performance of its Underlying Index. Certain Funds will be based on Underlying Indexes that will be comprised of equity and/or fixed income securities issued by one or more of the following categories of issuers: (i) Domestic issuers; and (ii) non-domestic issuers meeting the requirements for trading in U.S. markets. Other Funds will be based on Underlying Indexes that will be comprised of foreign and domestic or solely foreign equity and/or fixed income securities (''Foreign Funds'').

6. Applicants represent that each Fund will invest at least 80% of its assets (excluding securities lending collateral) in the component securities of its respective Underlying Index (''Component Securities'') and TBA Transactions,[2] and in the case of Foreign Funds, Component Securities and Depositary Receipts [3] representing Component Securities. Each Fund may also invest up to 20% of its assets in certain index futures, options, options on index futures, swap contracts or other derivatives, as related to its respective Underlying Index and its Component Securities, cash and cash equivalents, other investment companies, as well as in securities and other instruments not included in its Underlying Index but which the Adviser or Sub-Adviser believes will help the Fund track its Underlying Index. A Fund may also engage in short sales in accordance with its investment objective.

7. The Trust may offer Funds that seek to track Underlying Indexes constructed using 130/30 investment strategies (''130/30 Funds'') or other long/short investment strategies (''Long/Short Funds''). Each Long/Short Fund will establish (i) exposures equal to approximately 100% of the long positions specified by the Long/Short Index [4] and (ii) exposures equal to approximately 100% of the short positions specified by the Long/Short Index. Each 130/30 Fund will include strategies that: (i) Establish long positions in securities so that total long exposure represents approximately 130% of a Fund's net assets; and (ii) simultaneously establish short positions in other securities so that total short exposure represents approximately 30% of such Fund's net assets. Each Business Day (defined below), for each Long/Short Fund and 130/30 Fund, the Adviser will provide full portfolio transparency on the Fund's publicly available Web site (''Web site'') by making available the Fund's Portfolio Holdings before the commencement of trading of Shares on the Listing Exchange (defined below).[5] The information provided on the Web site will be formatted to be reader-friendly.

8. A Fund will utilize either a replication or representative sampling strategy to track its Underlying Index. A Fund using a replication strategy will invest in the Component Securities of its Underlying Index in the same approximate proportions as in such Underlying Index. A Fund using a representative sampling strategy will hold some, but not necessarily all of the Component Securities of its Underlying Index. Applicants state that a Fund using a representative sampling strategy will not be expected to track the performance of its Underlying Index with the same degree of accuracy as would an investment vehicle that invested in every Component Security of the Underlying Index with the same weighting as the Underlying Index. Applicants expect that each Fund will have an annual tracking error relative to the performance of its Underlying Index of less than 5%.

9. Each Fund will be entitled to use its Underlying Index pursuant to either a licensing agreement with the entity that compiles, creates, sponsors or maintains the Underlying Index (each, an ''Index Provider'') or a sub-licensing arrangement with the Adviser, which will have a licensing agreement with such Index Provider.[6] A ''Self-Indexing Fund'' is a Fund for which an Affiliated Person, or a Second-Tier Affiliate, of the Trust or a Fund, of the Adviser, of any Sub-Adviser to or promoter of a Fund, or of the Distributor (each, an ''Affiliated Index Provider'') [7] will serve as the Index Provider. In the case of Self-Indexing Funds, an Affiliated Index Provider will create a proprietary, rules-based methodology to create Underlying Indexes (each an ''Affiliated Index'').[8]

[1] All existing entities that intend to rely on the requested order have been named as applicants. Any other existing or future entity that subsequently relies on the order will comply with the terms and conditions of the order. A Fund of Funds (as defined below) may rely on the order only to invest in Funds and not in any other registered investment company.

[2] A ''to-be-announced transaction'' or ''TBA Transaction'' is a method of trading mortgage-backed securities. In a TBA Transaction, the buyer and seller agree upon general trade parameters such as agency, settlement date, par amount and price. The actual pools delivered generally are determined two days prior to settlement date.

[3] Depositary receipts representing foreign securities (''Depositary Receipts'') include American Depositary Receipts and Global Depositary Receipts. The Funds may invest in Depositary Receipts representing foreign securities in which they seek to invest. Depositary Receipts are typically issued by a financial institution (a ''depositary bank'') and evidence ownership interests in a security or a pool of securities that have been deposited with the depositary bank. A Fund will not invest in any Depositary Receipts that the Adviser or any Sub-Adviser deems to be illiquid or for which pricing information is not readily available. No affiliated person of a Fund, the Adviser or any Sub-Adviser will serve as the depositary bank for any Depositary Receipts held by a Fund.

[4] Underlying Indexes that include both long and short positions in securities are referred to as ''Long/Short Indexes.''

[5] Under accounting procedures followed by each Fund, trades made on the prior Business Day (''T'') will be booked and reflected in NAV on the current Business Day (T+1). Accordingly, the Funds will be able to disclose at the beginning of the Business Day the portfolio that will form the basis for the NAV calculation at the end of the Business Day.

[6] The licenses for the Self-Indexing Funds will specifically state that the Affiliated Index Provider (or in case of a sub-licensing agreement, the Adviser) must provide the use of the Underlying Indexes and related intellectual property at no cost to the Trust and the Self-Indexing Funds.

[7] In the event that an Adviser or Sub-Adviser serves as the Affiliated Index Provider for a Self-Indexing Fund, the terms ''Affiliated Index Provider'' or ''Index Provider,'' with respect to that Self-Indexing Fund, will refer to the employees of the applicable Adviser or Sub-Adviser that are responsible for creating, compiling and maintaining the relevant Underlying Index.

[8] The Affiliated Indexes may be made available to registered investment companies, as well as separately managed accounts of institutional investors and privately offered funds that are not

Except with respect to the Self-Indexing Funds, no Index Provider is or will be an Affiliated Person, or a Second-Tier Affiliate, of the Trust or a Fund, of the Adviser, of any Sub-Adviser to or promoter of a Fund, or of the Distributor.

10. Applicants recognize that Self-Indexing Funds could raise concerns regarding the ability of the Affiliated Index Provider to manipulate the Underlying Index to the benefit or detriment of the Self-Indexing Fund. Applicants further recognize the potential for conflicts that may arise with respect to the personal trading activity of personnel of the Affiliated Index Provider who have knowledge of changes to an Underlying Index prior to the time that information is publicly disseminated.

11. Applicants propose that each day that a Fund, the NYSE and the national securities exchange (as defined in section 2(a)(26) of the Act) (an ''Exchange'') on which the Fund's Shares are primarily listed (''Listing Exchange'') are open for business, including any day that a Fund is required to be open under section 22(e) of the Act (a ''Business Day''), each Self-Indexing Fund will post on its Web site, before commencement of trading of Shares on the Listing Exchange, the identities and quantities of the Portfolio Holdings held by the Fund that will form the basis for the Fund's calculation of its NAV at the end of the Business Day. Applicants believe that requiring Self-Indexing Funds to maintain full portfolio transparency will provide an effective additional mechanism for addressing any such potential conflicts of interest.

12. In addition, applicants do not believe the potential for conflicts of interest raised by the Adviser's use of the Underlying Indexes in connection with the management of the Self Indexing Funds and the Affiliated Accounts will be substantially different from the potential conflicts presented by an adviser managing two or more registered funds. Both the Act and the Advisers Act contain various protections to address conflicts of interest where an adviser is managing two or more registered funds and these protections will also help address these conflicts with respect to the Self-Indexing Funds.[9]

13. The Adviser and any Sub-Adviser have adopted or will adopt, pursuant to rule 206(4)–7 under the Advisers Act, written policies and procedures designed to prevent violations of the Advisers Act and the rules thereunder. These include policies and procedures designed to minimize potential conflicts of interest among the Self-Indexing Funds and the Affiliated Accounts, such as cross trading policies, as well as those designed to ensure the equitable allocation of portfolio transactions and brokerage commissions. In addition, the Adviser has adopted or will adopt policies and procedures as required under section 204A of the Advisers Act, which are reasonably designed in light of the nature of its business to prevent the misuse, in violation of the Advisers Act or the Exchange Act or the rules thereunder, of material non-public information by the Adviser or an associated person (''Inside Information Policy''). Any Sub-Adviser will be required to adopt and maintain a similar Inside Information Policy. In accordance with the Code of Ethics[10] and Inside Information Policy of the Adviser and Sub-Advisers, personnel of those entities with knowledge about the composition of the Portfolio Deposit[11] will be prohibited from disclosing such information to any other person, except as authorized in the course of their employment, until such information is made public. In addition, an Index Provider will not provide any information relating to changes to an Underlying Index's methodology for the inclusion of component securities, the inclusion or exclusion of specific component securities, or methodology for the calculation of the return of component securities, in advance of a public announcement of such changes by the Index Provider. The Adviser will also include under Item 10.C. of Part 2 of its Form ADV a discussion of its relationship to any Affiliated Index Provider and any material conflicts of interest resulting therefrom, regardless of whether the Affiliated Index Provider is a type of affiliate specified in Item 10.

14. To the extent the Self-Indexing Funds transact with an Affiliated Person of the Adviser or Sub-Adviser, such transactions will comply with the Act, the rules thereunder and the terms and conditions of the requested order. In this regard, each Self-Indexing Fund's board of directors or trustees (''Board'') will periodically review the Self-Indexing Fund's use of an Affiliated Index Provider. Subject to the approval of the Self-Indexing Fund's Board, the Adviser, Affiliated Persons of the Adviser (''Adviser Affiliates'') and Affiliated Persons of any Sub-Adviser (''Sub-Adviser Affiliates'') may be authorized to provide custody, fund accounting and administration and transfer agency services to the Self-Indexing Funds. Any services provided by the Adviser, Adviser Affiliates, Sub-Adviser and Sub-Adviser Affiliates will be performed in accordance with the provisions of the Act, the rules under the Act and any relevant guidelines from the staff of the Commission.

15. The Shares of each Fund will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified below, purchasers will be required to purchase Creation Units by making an in-kind deposit of specified instruments (''Deposit Instruments''), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments (''Redemption Instruments'').[12] On any given Business Day, the names and quantities of the instruments that constitute the Deposit Instruments and the names and quantities of the instruments that constitute the Redemption Instruments will be identical, unless the Fund is Rebalancing (as defined below). In addition, the Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund's portfolio (including cash

deemed to be ''investment companies'' in reliance on section 3(c)(1) or 3(c)(7) of the Act for which the Adviser acts as adviser or sub-adviser (''Affiliated Accounts'') as well as other such registered investment companies, separately managed accounts and privately offered funds for which it does not act either as adviser or sub-adviser (''Unaffiliated Accounts''). The Affiliated Accounts and the Unaffiliated Accounts, like the Funds, would seek to track the performance of one or more Underlying Index(es) by investing in the constituents of such Underlying Indexes or a representative sample of such constituents of the Underlying Index. Consistent with the relief requested from section 17(a), the Affiliated Accounts will not engage in Creation Unit transactions with a Fund.

[9] *See, e.g.,* rule 17j–1 under the Act and section 204A under the Advisers Act and rules 204A–1 and 206(4)–7 under the Advisers Act.

[10] The Adviser has also adopted or will adopt a code of ethics pursuant to rule 17j–1 under the Act and rule 204A–1 under the Advisers Act, which contains provisions reasonably necessary to prevent Access Persons (as defined in rule 17j–1) from engaging in any conduct prohibited in rule 17j–1 (''Code of Ethics'').

[11] The instruments and cash that the purchaser is required to deliver in exchange for the Creation Units it is purchasing is referred to as the ''Portfolio Deposit.''

[12] The Funds must comply with the federal securities laws in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the Securities Act of 1933 (''Securities Act''). In accepting Deposit Instruments and satisfying redemptions with Redemption Instruments that are restricted securities eligible for resale pursuant to rule 144A under the Securities Act, the Funds will comply with the conditions of rule 144A.

positions)[13] except: (a) In the case of bonds, for minor differences when it is impossible to break up bonds beyond certain minimum sizes needed for transfer and settlement; (b) for minor differences when rounding is necessary to eliminate fractional shares or lots that are not tradeable round lots;[14] (c) TBA Transactions, short positions, derivatives and other positions that cannot be transferred in kind[15] will be excluded from the Deposit Instruments and the Redemption Instruments;[16] (d) to the extent the Fund determines, on a given Business Day, to use a representative sampling of the Fund's portfolio;[17] or (e) for temporary periods, to effect changes in the Fund's portfolio as a result of the rebalancing of its Underlying Index (any such change, a ''Rebalancing''). If there is a difference between the NAV attributable to a Creation Unit and the aggregate market value of the Deposit Instruments or Redemption Instruments exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the ''Cash Amount'').

16. Purchases and redemptions of Creation Units may be made in whole or in part on a cash basis, rather than in kind, solely under the following circumstances: (a) To the extent there is a Cash Amount; (b) if, on a given Business Day, the Fund announces before the open of trading that all purchases, all redemptions or all purchases and redemptions on that day will be made entirely in cash; (c) if, upon receiving a purchase or redemption order from an Authorized Participant, the Fund determines to require the purchase or redemption, as applicable, to be made entirely in cash;[18] (d) if, on a given Business Day, the Fund requires all Authorized Participants purchasing or redeeming Shares on that day to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are not eligible for transfer through either the NSCC or DTC (defined below); or (ii) in the case of Foreign Funds holding non-U.S. investments, such instruments are not eligible for trading due to local trading restrictions, local restrictions on securities transfers or other similar circumstances; or (e) if the Fund permits an Authorized Participant to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are, in the case of the purchase of a Creation Unit, not available in sufficient quantity; (ii) such instruments are not eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting; or (iii) a holder of Shares of a Foreign Fund holding non-U.S. investments would be subject to unfavorable income tax treatment if the holder receives redemption proceeds in kind.[19]

17. Creation Units will consist of specified large aggregations of Shares, *e.g.,* at least 25,000 Shares, and it is expected that the initial price of a Creation Unit will range from $500,000 to $25 million. All orders to purchase Creation Units must be placed with the Distributor by or through an ''Authorized Participant'' which is either (1) a ''Participating Party,'' *i.e.,* a broker-dealer or other participant in the Continuous Net Settlement System of the NSCC, a clearing agency registered with the Commission, or (2) a participant in The Depository Trust Company (''DTC'') (''DTC Participant''), which, in either case, has signed a participant agreement with the Distributor. The Distributor will be responsible for transmitting the orders to the Funds and will furnish to those placing such orders confirmation that the orders have been accepted, but applicants state that the Distributor may reject any order which is not submitted in proper form.

18. Each Business Day, before the open of trading on the Listing Exchange, each Fund will cause to be published through the NSCC the names and quantities of the instruments comprising the Deposit Instruments and the Redemption Instruments, as well as the estimated Cash Amount (if any), for that day. The list of Deposit Instruments and Redemption Instruments will apply until a new list is announced on the following Business Day, and there will be no intra-day changes to the list except to correct errors in the published list. Each Listing Exchange will disseminate, every 15 seconds during regular Exchange trading hours, through the facilities of the Consolidated Tape Association, an amount for each Fund stated on a per individual Share basis representing the sum of (i) the estimated Cash Amount and (ii) the current value of the Deposit Instruments.

19. Transaction expenses, including operational processing and brokerage costs, will be incurred by a Fund when investors purchase or redeem Creation Units in-kind and such costs have the potential to dilute the interests of the Fund's existing shareholders. Each Fund will impose purchase or redemption transaction fees (''Transaction Fees'') in connection with effecting such purchases or redemptions of Creation Units. In all cases, such Transaction Fees will be limited in accordance with requirements of the Commission applicable to management investment companies offering redeemable securities. Since the Transaction Fees are intended to defray the transaction expenses as well as to prevent possible shareholder dilution resulting from the purchase or redemption of Creation Units, the Transaction Fees will be borne only by such purchasers or redeemers.[20] The Distributor will be responsible for delivering the Fund's prospectus to those persons acquiring Shares in Creation Units and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it. In addition, the Distributor will maintain a record of the instructions given to the applicable

[13] The portfolio used for this purpose will be the same portfolio used to calculate the Fund's NAV for the Business Day.

[14] A tradeable round lot for a security will be the standard unit of trading in that particular type of security in its primary market.

[15] This includes instruments that can be transferred in kind only with the consent of the original counterparty to the extent the Fund does not intend to seek such consents.

[16] Because these instruments will be excluded from the Deposit Instruments and the Redemption Instruments, their value will be reflected in the determination of the Cash Amount (as defined below).

[17] A Fund may only use sampling for this purpose if the sample: (i) Is designed to generate performance that is highly correlated to the performance of the Fund's portfolio; (ii) consists entirely of instruments that are already included in the Fund's portfolio; and (iii) is the same for all Authorized Participants (defined below) on a given Business Day.

[18] In determining whether a particular Fund will sell or redeem Creation Units entirely on a cash or in-kind basis (whether for a given day or a given order), the key consideration will be the benefit that would accrue to the Fund and its investors. For instance, in bond transactions, the Adviser may be able to obtain better execution than Share purchasers because of the Adviser's size, experience and potentially stronger relationships in the fixed income markets. Purchases of Creation Units either on an all cash basis or in-kind are expected to be neutral to the Funds from a tax perspective. In contrast, cash redemptions typically require selling portfolio holdings, which may result in adverse tax consequences for the remaining Fund shareholders that would not occur with an in-kind redemption. As a result, tax consideration may warrant in-kind redemptions.

[19] A ''custom order'' is any purchase or redemption of Shares made in whole or in part on a cash basis in reliance on clause (e)(i) or (e)(ii).

[20] Where a Fund permits an in-kind purchaser to substitute cash-in-lieu of depositing one or more of the requisite Deposit Instruments, the purchaser may be assessed a higher Transaction Fee to cover the cost of purchasing such Deposit Instruments.

Fund to implement the delivery of its Shares.

20. Shares of each Fund will be listed and traded individually on an Exchange. It is expected that one or more member firms of an Exchange will be designated to act as a market maker (each, a ''Market Maker'') and maintain a market for Shares trading on the Exchange. Prices of Shares trading on an Exchange will be based on the current bid/offer market. Transactions involving the sale of Shares on an Exchange will be subject to customary brokerage commissions and charges.

21. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs. Market Makers, acting in their roles to provide a fair and orderly secondary market for the Shares, may from time to time find it appropriate to purchase or redeem Creation Units. Applicants expect that secondary market purchasers of Shares will include both institutional and retail investors.[21] The price at which Shares trade will be disciplined by arbitrage opportunities created by the option continually to purchase or redeem Shares in Creation Units, which should help prevent Shares from trading at a material discount or premium in relation to their NAV.

22. Shares will not be individually redeemable, and owners of Shares may acquire those Shares from the Fund, or tender such Shares for redemption to the Fund, in Creation Units only. To redeem, an investor must accumulate enough Shares to constitute a Creation Unit. Redemption requests must be placed through an Authorized Participant. A redeeming investor may pay a Transaction Fee, calculated in the same manner as a Transaction Fee payable in connection with purchases of Creation Units.

23. Neither the Trust nor any Fund will be advertised or marketed or otherwise held out as a traditional open-end investment company or a ''mutual fund.'' Instead, each such Fund will be marketed as an ''ETF.'' All marketing materials that describe the features or method of obtaining, buying or selling Creation Units, or Shares traded on an Exchange, or refer to redeemability, will prominently disclose that Shares are not individually redeemable and will disclose that the owners of Shares may acquire those Shares from the Fund or tender such Shares for redemption to the Fund in Creation Units only. The Funds will provide copies of their annual and semi-annual shareholder reports to DTC Participants for distribution to beneficial owners of Shares.

[21] Shares will be registered in book-entry form only. DTC or its nominee will be the record or registered owner of all outstanding Shares. Beneficial ownership of Shares will be shown on the records of DTC or the DTC Participants.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provisions of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an ''open-end company'' as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the owner, upon its presentation to the issuer, is entitled to receive approximately a proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit the Funds to register as open-end management investment companies and issue Shares that are redeemable in Creation Units only. Applicants state that investors may purchase Shares in Creation Units and redeem Creation Units from each Fund. Applicants further state that because Creation Units may always be purchased and redeemed at NAV, the price of Shares on the secondary market should not vary materially from NAV.

Section 22(d) of the Act and Rule 22c–1 under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is currently being offered to the public by or through an underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers, and (c) ensure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not involve a Fund as a party and will not result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to

discrimination or preferential treatment among purchasers. Finally, applicants contend that the price at which Shares trade will be disciplined by arbitrage opportunities created by the option continually to purchase or redeem Shares in Creation Units, which should help prevent Shares from trading at a material discount or premium in relation to their NAV.

Section 22(e)

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants state that settlement of redemptions for Foreign Funds will be contingent not only on the settlement cycle of the United States market, but also on current delivery cycles in local markets for underlying foreign securities held by a Foreign Fund. Applicants state that the delivery cycles currently practicable for transferring Redemption Instruments to redeeming investors, coupled with local market holiday schedules, may require a delivery process of up to fifteen (15) calendar days.[22] Accordingly, with respect to Foreign Funds only, applicants hereby request relief under section 6(c) from the requirement imposed by section 22(e) to allow Foreign Funds to pay redemption proceeds within fifteen (15) calendar days following the tender of Creation Units for redemption.[23]

8. Applicants believe that Congress adopted section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds. Applicants propose that allowing redemption payments for Creation Units of a Foreign Fund to be made within fifteen calendar days would not be inconsistent with the spirit and intent of section 22(e). Applicants suggest that a redemption payment occurring within fifteen calendar days following a redemption request would adequately afford investor protection.

9. Applicants are not seeking relief from section 22(e) with respect to Foreign Funds that do not effect creations and redemptions of Creation Units in-kind.

Section 12(d)(1)

10. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring securities of an investment company if such securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter and any other broker-dealer from knowingly selling the investment company's shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

11. Applicants request an exemption to permit registered management investment companies and unit investment trusts (''UITs'') that are not advised or sponsored by the Adviser, and not part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act as the Underlying Funds (such management investment companies are referred to as ''Investing Management Companies,'' such UITs are referred to as ''Investing Trusts,'' and Investing Management Companies and Investing Trusts are collectively referred to as ''Funds of Funds''),[24] to acquire Underlying Fund Shares beyond the limits of section 12(d)(1)(A) of the Act; and the Underlying Funds, and any principal underwriter for the Underlying Funds, and/or any Broker registered under the Exchange Act, to sell Underlying Fund Shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act. The ''Underlying Funds'' are (a) the Funds and (b) any registered open-end management investment company or any series thereof that is advised by an Adviser and that, pursuant to a separate order of the Commission, in general terms, operates as an ETF that utilizes active management investment strategies. Shares of an Underlying Fund are referred to as ''Underlying Fund Shares.''

12. Each Investing Management Company will be advised by an investment adviser within the meaning of section 2(a)(20)(A) of the Act (the ''Fund of Funds Adviser'') and may be sub-advised by investment advisers within the meaning of section 2(a)(20)(B) of the Act (each a ''Fund of Funds Sub-Adviser''). Any investment adviser to an Investing Management Company will be registered under the Advisers Act. Each Investing Trust will be sponsored by a sponsor (''Sponsor'').

13. Applicants submit that the proposed conditions to the requested relief adequately address the concerns underlying the limits in sections 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees and overly complex fund structures. Applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

14. Applicants believe that neither a Fund of Funds nor a Fund of Funds Affiliate would be able to exert undue influence over an Underlying Fund.[25] To limit the control that a Fund of Funds may have over an Underlying Fund, applicants propose a condition prohibiting a Fund of Funds Adviser or Sponsor, any person controlling, controlled by, or under common control with a Fund of Funds Adviser or Sponsor, and any investment company and any issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by a Fund of Funds Adviser or Sponsor, or any person controlling, controlled by, or under common control with a Fund of Funds Adviser or Sponsor (''Fund of Funds Advisory Group'') from controlling (individually or in the aggregate) an Underlying Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any Fund of Funds Sub-Adviser, any person controlling, controlled by or under common control with the Fund of Funds Sub-Adviser, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Fund of Funds Sub-Adviser or any person controlling, controlled by or under common control with the Fund of Funds Sub-Adviser (''Fund of Funds Sub-Advisory Group'').

15. Applicants propose other conditions to limit the potential for

[22] Applicants state that certain countries in which a Fund may invest have historically had settlement periods of up to fifteen (15) calendar days.

[23] Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations applicants may otherwise have under rule 15c6–1 under the Exchange Act requiring that most securities transactions be settled within three business days of the trade date.

[24] Funds of Funds do not include the Underlying Funds.

[25] A ''Fund of Funds Affiliate'' is a Fund of Funds Adviser, Fund of Funds Sub-Adviser, Sponsor, promoter, and principal underwriter of a Fund of Funds, and any person controlling, controlled by, or under common control with any of those entities. An ''Underlying Fund Affiliate'' is an investment adviser, promoter, or principal underwriter of an Underlying Fund and any person controlling, controlled by or under common control with any of these entities.

undue influence over the Underlying Funds, including that no Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Underlying Fund) will cause an Underlying Fund to purchase a security in an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (''Affiliated Underwriting''). An ''Underwriting Affiliate'' is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Fund of Funds Adviser, Fund of Funds Sub-Adviser, employee or Sponsor of the Fund of Funds, or a person of which any such officer, director, member of an advisory board, Fund of Funds Adviser or Fund of Funds Sub-Adviser, employee or Sponsor is an affiliated person (except that any person whose relationship to the Underlying Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

16. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. The board of directors or trustees of any Investing Management Company, including a majority of the directors or trustees who are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (''disinterested directors or trustees''), will find that the advisory fees charged under the contract are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract of any Underlying Fund in which the Investing Management Company may invest. In addition, under condition B.5., a Fund of Funds Adviser, or a Fund of Funds' trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b–1 under the Act) received from an Underlying Fund by the Fund of Funds Adviser, trustee or Sponsor or an affiliated person of the Fund of Funds Adviser, trustee or Sponsor, other than any advisory fees paid to the Fund of Funds Adviser, trustee or Sponsor or its affiliated person by an Underlying Fund, in connection with the investment by the Fund of Funds in the Underlying Fund. Applicants state that any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.[26]

17. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that no Underlying Fund will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Underlying Fund to purchase shares of other investment companies for short-term cash management purposes. To ensure a Fund of Funds is aware of the terms and conditions of the requested order, the Fund of Funds will enter into an agreement with the Underlying Fund (''FOF Participation Agreement''). The FOF Participation Agreement will include an acknowledgement from the Fund of Funds that it may rely on the order only to invest in the Underlying Funds and not in any other investment company.

18. Applicants also note that an Underlying Fund may choose to reject a direct purchase of Underlying Fund Shares in Creation Units by a Fund of Funds. To the extent that a Fund of Funds purchases Underlying Fund Shares in the secondary market, an Underlying Fund would still retain its ability to reject any initial investment by a Fund of Funds in excess of the limits of section 12(d)(1)(A) by declining to enter into a FOF Participation Agreement with the Fund of Funds.

Sections 17(a)(1) and (2) of the Act

19. Sections 17(a)(1) and (2) of the Act generally prohibit an affiliated person of a registered investment company, or an affiliated person of such a person, from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines ''affiliated person'' of another person to include (a) any person directly or indirectly owning, controlling or holding with power to vote 5% or more of the outstanding voting securities of the other person, (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with the power to vote by the other person, and (c) any person directly or indirectly controlling, controlled by or under common control with the other person. Section 2(a)(9) of the Act defines ''control'' as the power to exercise a controlling influence over the management or policies of a company, and provides that a control relationship will be presumed where one person owns more than 25% of a company's voting securities. The Funds may be deemed to be controlled by the Adviser or an entity controlling, controlled by or under common control with the Adviser and hence affiliated persons of each other. In addition, the Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by an Adviser or an entity controlling, controlled by or under common control with an Adviser (an ''Affiliated Fund''). Any investor, including Market Makers, owning 5% or holding in excess of 25% of the Trust or such Funds, may be deemed affiliated persons of the Trust or such Funds. In addition, an investor could own 5% or more, or in excess of 25% of the outstanding shares of one or more Affiliated Funds making that investor a Second-Tier Affiliate of the Funds.

20. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act pursuant to sections 6(c) and 17(b) of the Act to permit persons that are Affiliated Persons of the Funds, or Second-Tier Affiliates of the Funds, solely by virtue of one or more of the following: (a) Holding 5% or more, or in excess of 25%, of the outstanding Shares of one or more Funds; (b) an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25%, of the shares of one or more Affiliated Funds, to effectuate purchases and redemptions ''in-kind.''

21. Applicants assert that no useful purpose would be served by prohibiting such affiliated persons from making ''in-kind'' purchases or ''in-kind'' redemptions of Shares of a Fund in Creation Units. Both the deposit procedures for ''in-kind'' purchases of Creation Units and the redemption procedures for ''in-kind'' redemptions of Creation Units will be effected in exactly the same manner for all purchases and redemptions, regardless of size or number. There will be no discrimination between purchasers or redeemers. Deposit Instruments and Redemption Instruments for each Fund will be valued in the identical manner as those Portfolio Holdings currently held by such Fund and the valuation of the Deposit Instruments and Redemption Instruments will be made in an identical manner regardless of the identity of the purchaser or redeemer. Applicants do not believe that ''in-kind'' purchases and redemptions will result in abusive self-dealing or overreaching, but rather assert that such procedures will be implemented consistently with

[26] Any references to NASD Conduct Rule 2830 include any successor or replacement FINRA rule to NASD Conduct Rule 2830.

each Fund's objectives and with the general purposes of the Act. Applicants believe that ''in-kind'' purchases and redemptions will be made on terms reasonable to applicants and any affiliated persons because they will be valued pursuant to verifiable objective standards. The method of valuing Portfolio Holdings held by a Fund is identical to that used for calculating ''in-kind'' purchase or redemption values and therefore creates no opportunity for affiliated persons or Second-Tier Affiliates of applicants to effect a transaction detrimental to the other holders of Shares of that Fund. Similarly, applicants submit that, by using the same standards for valuing Portfolio Holdings held by a Fund as are used for calculating ''in-kind'' redemptions or purchases, the Fund will ensure that its NAV will not be adversely affected by such securities transactions. Applicants also note that the ability to take deposits and make redemptions ''in-kind'' will help each Fund to track closely its Underlying Index and therefore aid in achieving the Fund's objectives.

22. Applicants also seek relief under sections 6(c) and 17(b) from section 17(a) to permit an Underlying Fund that is an affiliated person, or an affiliated person of an affiliated person, of a Fund of Funds to sell its Underlying Fund Shares to and redeem its Underlying Fund Shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.[27] Applicants state that the terms of the transactions are fair and reasonable and do not involve overreaching. Applicants note that any consideration paid by a Fund of Funds for the purchase or redemption of Underlying Fund Shares directly from an Underlying Fund will be based on the NAV of the Underlying Fund.[28] Applicants believe that any proposed transactions directly between the Underlying Funds and Funds of Funds will be consistent with the policies of each Fund of Funds. The purchase of Creation Units by a Fund of Funds directly from an Underlying Fund will be accomplished in accordance with the investment restrictions of any such Fund of Funds and will be consistent with the investment policies set forth in the Fund of Funds' registration statement. Applicants also state that the proposed transactions are consistent with the general purposes of the Act and are appropriate in the public interest.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

A. ETF Relief

1. The requested relief to permit ETF operations will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of index-based ETFs.

2. As long as a Fund operates in reliance on the requested order, Shares of such Fund will be listed on an Exchange.

3. Neither the Trust nor any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that Shares are not individually redeemable and that owners of Shares may acquire those Shares from the Fund and tender those Shares for redemption to a Fund in Creation Units only.

4. The Web site, which is and will be publicly accessible at no charge, will contain, on a per Share basis for each Fund, the prior Business Day's NAV and the market closing price or the midpoint of the bid/ask spread at the time of the calculation of such NAV (''Bid/Ask Price''), and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV.

5. Each Self-Indexing Fund, Long/Short Fund and 130/30 Fund will post on the Web site on each Business Day, before commencement of trading of Shares on the Exchange, the Fund's Portfolio Holdings.

6. No Adviser or any Sub-Adviser to a Self-Indexing Fund, directly or indirectly, will cause any Authorized Participant (or any investor on whose behalf an Authorized Participant may transact with the Self-Indexing Fund) to acquire any Deposit Instrument for a Self-Indexing Fund through a transaction in which the Self-Indexing Fund could not engage directly.

B. Section 12(d)(1) Relief

1. The members of a Fund of Funds' Advisory Group will not control (individually or in the aggregate) an Underlying Fund within the meaning of section 2(a)(9) of the Act. The members of a Fund of Funds' Sub-Advisory Group will not control (individually or in the aggregate) an Underlying Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of an Underlying Fund, the Fund of Funds' Advisory Group or the Fund of Funds' Sub-Advisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of an Underlying Fund, it will vote its Underlying Fund Shares of the Underlying Fund in the same proportion as the vote of all other holders of the Underlying Fund's Shares. This condition does not apply to the Fund of Funds' Sub-Advisory Group with respect to an Underlying Fund for which the Fund of Funds' Sub-Adviser or a person controlling, controlled by or under common control with the Fund of Funds' Sub-Adviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

2. No Fund of Funds or Fund of Funds Affiliate will cause any existing or potential investment by the Fund of Funds in an Underlying Fund to influence the terms of any services or transactions between the Fund of Funds or Fund of Funds Affiliate and the Underlying Fund or an Underlying Fund Affiliate.

3. The board of directors or trustees of an Investing Management Company, including a majority of the disinterested directors or trustees, will adopt procedures reasonably designed to ensure that the Fund of Funds Adviser and Fund of Funds Sub-Adviser are conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or a Fund of Funds Affiliate from an Underlying Fund or Underlying Fund Affiliate in

[27] Although applicants believe that most Funds of Funds will purchase Underlying Fund Shares in the secondary market and will not purchase Creation Units directly from an Underlying Fund, a Fund of Funds might seek to transact in Creation Units directly with an Underlying Fund that is an affiliated person of a Fund of Funds. To the extent that purchases and sales of Underlying Fund Shares occur in the secondary market and not through principal transactions directly between a Fund of Funds and an Underlying Fund, relief from section 17(a) would not be necessary. However, the requested relief would apply to direct sales of Underlying Fund Shares in Creation Units by an Underlying Fund to a Fund of Funds and redemptions of those Underlying Fund Shares. Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where an Underlying Fund could be deemed an affiliated person, or an affiliated person of an affiliated person of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

[28] Applicants acknowledge that the receipt of compensation by (a) an affiliated person of a Fund of Funds, or an affiliated person of such person, for the purchase by the Fund of Funds of Underlying Fund Shares of an Underlying Fund or (b) an affiliated person of an Underlying Fund, or an affiliated person of such person, for the sale by the Underlying Fund of its Underlying Fund Shares to a Fund of Funds, may be prohibited by section 17(e)(1) of the Act. The FOF Participation Agreement also will include this acknowledgment.

connection with any services or transactions.

4. Once an investment by a Fund of Funds in Underlying Fund Shares exceeds the limits in section 12(d)(1)(A)(i) of the Act, the Board of the Underlying Fund, including a majority of the disinterested directors or trustees, will determine that any consideration paid by the Underlying Fund to the Fund of Funds or a Fund of Funds Affiliate in connection with any services or transactions: (i) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Underlying Fund; (ii) is within the range of consideration that the Underlying Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (iii) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between an Underlying Fund and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

5. The Fund of Funds Adviser, or trustee or Sponsor of an Investing Trust, as applicable, will waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Underlying Fund under rule 12b-l under the Act) received from an Underlying Fund by the Fund of Funds Adviser, or trustee or Sponsor of the Investing Trust, or an affiliated person of the Fund of Funds Adviser, or trustee or Sponsor of the Investing Trust, other than any advisory fees paid to the Fund of Funds Adviser, trustee or Sponsor of an Investing Trust, or its affiliated person by the Underlying Fund, in connection with the investment by the Fund of Funds in the Underlying Fund. Any Fund of Funds Sub-Adviser will waive fees otherwise payable to the Fund of Funds Sub-Adviser, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from an Underlying Fund by the Fund of Funds Sub-Adviser, or an affiliated person of the Fund of Funds Sub-Adviser, other than any advisory fees paid to the Fund of Funds Sub-Adviser or its affiliated person by the Underlying Fund, in connection with the investment by the Investing Management Company in the Underlying Fund made at the direction of the Fund of Funds Sub-Adviser. In the event that the Fund of Funds Sub-Adviser waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

6. No Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Underlying Fund) will cause an Underlying Fund to purchase a security in any Affiliated Underwriting.

7. The Board of an Underlying Fund, including a majority of the disinterested directors or trustees, will adopt procedures reasonably designed to monitor any purchases of securities by the Underlying Fund in an Affiliated Underwriting, once an investment by a Fund of Funds in the securities of the Underlying Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board of the Underlying Fund will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Fund of Funds in the Underlying Fund. The Board of the Underlying Fund will consider, among other things: (i) Whether the purchases were consistent with the investment objectives and policies of the Underlying Fund; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Underlying Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to ensure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders of the Underlying Fund.

8. Each Underlying Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by a Fund of Funds in the securities of the Underlying Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the determinations of the Board of the Underlying Fund were made.

9. Before investing in an Underlying Fund in excess of the limit in section 12(d)(1)(A), a Fund of Funds and the Trust will execute a FOF Participation Agreement stating without limitation that their respective boards of directors or trustees and their investment advisers, or trustee and Sponsor, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in Underlying Fund Shares in excess of the limit in section 12(d)(1)(A)(i), a Fund of Funds will notify the Underlying Fund of the investment. At such time, the Fund of Funds will also transmit to the Underlying Fund a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Underlying Fund of any changes to the list of the names as soon as reasonably practicable after a change occurs. The Underlying Fund and the Fund of Funds will maintain and preserve a copy of the order, the FOF Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company including a majority of the disinterested directors or trustees, will find that the advisory fees charged under such advisory contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Underlying Fund in which the Investing Management Company may invest. These findings and their basis will be fully recorded in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

12. No Underlying Fund will acquire securities of an investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent the Underlying Fund acquires securities of another investment company pursuant to exemptive relief from the Commission

permitting the Underlying Fund to acquire securities of one or more investment companies for short term cash management purposes.

For the Commission, by the Division of Investment Management, under delegated authority.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–20660 Filed 8–20–15; 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:

Form TH; OMB Control No. 3235–0425, SEC File No. 270–377.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Form TH (17 CFR 239.65, 249.447, 269.10 and 274.404) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et seq.*) and the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) is used by registrants to notify the Commission that an electronic filer is relying on the temporary hardship exemption for the filing of a document in paper form that would otherwise be required to be filed electronically as required by Rule 201(a) of Regulation S–T. (17 CFR. 232.201(a)). Form TH is a public document and is filed on occasion. Form TH must be filed every time an electronic filer experiences unanticipated technical difficulties preventing the timely preparation and submission of a required electronic filing. Approximately 5 registrants file Form TH and it takes an estimated 0.33 hours per response for a total annual burden of 2 hours.

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 control number.

The public may view the 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 send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: August 17, 2015.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–20659 Filed 8–20–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75713; File No. SR–EDGX–2015–36]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule 13.8 To Describe the Market Data Product EDGX Book Viewer

August 17, 2015.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 7, 2015, EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend Rule 13.8 to describe a market data product known as EDGX Book Viewer.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add language to Rule 13.8 describing a market data product known as EDGX Book Viewer. The proposal memorializes in the Exchange's rules a data feed that is currently available through the Exchange's public Web site free of charge. EDGX Book Viewer is a data feed that disseminates, on a real-time basis, the aggregated two-side quotations for up to five (5) price levels for all displayed orders for securities traded on the Exchange and for which the Exchanges reports quotes under the Consolidated Tape Association (''CTA'') Plan or the Nasdaq/UTP Plan. EDGX Book Viewer also contains the last ten (10) trades including time of trade, price and share quantity. Book Viewer is currently available via *www.batstrading.com* without charge. The Exchange will file a separate proposed rule change with the Commission proposing fees to be charged for certain types of access to EDGX Book Viewer as of September 1, 2015.[5]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] The Exchange understands that its affiliated exchanges intend to file identical proposed rule changes to adopt rules and fees for the Book Viewer data feed with the Commission. The Exchange's affiliates are EDGA Exchange, Inc., BATS Exchange, Inc. and BATS Y-Exchange, Inc.

section 6(b) of the Act,[6] in general, and furthers the objectives of section 6(b)(5) of the Act,[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and that it is not designed to permit unfair discrimination among customers, brokers, or dealers. This proposal is in keeping with those principles in that it promotes increased transparency through the dissemination of EDGX Book Viewer. The Exchange also believes this proposal is consistent with section 6(b)(5) of the Act because it protects investors and the public interest and promotes just and equitable principles of trade by providing investors with an alternative for receiving market data as requested by market data vendors and purchasers that expressed an interest in exchange-only data for instances where consolidated data is no longer required to be purchased and displayed. The proposed rule change would benefit investors by facilitating their prompt access to real-time depth-of-book information contained in EDGX Book Viewer. The proposed rule change also removes impediments to and perfect the mechanism of a free and open market and a national market system by memorializing in the Exchange's rules a data feed that is currently available through the Exchange's public Web site free of charge.

The Exchange also believes that the proposed rule change is consistent with section 11(A) of the Act[8] in that it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,[9] which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory. EDGX Book Viewer is accessed and subscribed to on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation to make this data available. Accordingly, distributors and subscribers can discontinue use at any time and for any reason.

In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to consumers of such data. It was believed that this authority would expand the amount of data available to users and consumers of such data and also spur innovation and competition for the provision of market data. The Exchange believes that the data products proposed herein are precisely the sort of market data products that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS—by lessening regulation of 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.[10]

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.

In addition, EDGX Book Viewer removes impediments to and perfects the mechanism of a free and open market and a national market system because EDGX Book Viewer provides investors with alternative market data and competes with similar market data product currently offered by the New York Stock Exchange, Inc. (''NYSE'') and the Nasdaq Stock Market LLC (''Nasdaq'').[11] The provision of new options for investors to receive market data was a primary goal of the market data amendments adopted by Regulation NMS.[12] EDGX Book Viewer is precisely the sort of market data product that the Commission envisioned when it adopted Regulation NMS.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal is not intended to address any competitive issues, but rather to memorialize in the Exchange's rules a data feed that is currently available through the Exchange's public Web site free of charge. Nonetheless, the Exchange believes that the proposal will promote competition by the Exchange offering a service similar to that offered by the NYSE and Nasdaq.[13] Thus, the Exchange believes this proposed rule change is necessary to permit fair competition among national securities exchanges. Therefore, the Exchange does not believe 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.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated this rule filing as non-controversial under section 19(b)(3)(A) of the Act[14] and paragraph (f)(6) of Rule 19b–4 thereunder.[15] The proposed rule change effects a change that: (A) Does not significantly affect the protection of investors or the public interest; (B) does not impose any significant burden on competition; and (C) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78k–1.

[9] *See* 17 CFR 242.603.

[10] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (File No. S7–10–04).

[11] *See* Nasdaq Rule 7023(a)(1)(C) (describing Nasdaq TotalView is a depth-of-book data feed that includes all orders and quotes from all Nasdaq members displayed in the Nasdaq Market Center as well as the aggregate size of such orders and quotes at each price level in the execution functionality of the Nasdaq Market Center). *See also* Nasdaq Book Viewer, a description of which is *available at https://data.nasdaq.com/Book Viewer.aspx* (last visited July 29, 2015). *See* NYSE OpenBook *available at http://www.nyxdata.com/openbook* (last visited July 29, 2015) (providing real-time view of the NYSE limit order book). *See e.g.,* Securities Exchange Act Release No. 71775 (March 24, 2014), 79 FR 17627 (March 28, 2014) (SR–CBOE–2014–021) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to the CBSX BBO Data Feed and the New CBSX Book Depth Data Feed).

[12] *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 11.

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4.

Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the 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–EDGX–2015–36 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–EDGX–2015–36. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR– EDGX–2015–36 and should be submitted on or before September 11, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–20655 Filed 8–20–15; 8:45 am]

BILLING CODE 8011–01–P

[16] The Exchange has fulfilled this requirement.

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75715; File No. SR–NASDAQ–2015–100]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Verifiable Disruption or Malfunction of Exchange Systems

August 17, 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 August 13, 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 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 is filing with the Commission a proposal to amend chapter V, section 6 (Nullification and Adjustment of Options Transactions including Obvious Errors) of the rules of the NASDAQ Options Market (''NOM'') related to a verifiable disruption or malfunction of Exchange systems.

The text of the amended Exchange rule is set forth immediately below.

Proposed new language is *italicized* and proposed deleted language is [bracketed].

NASDAQ Stock Market Rules

Options Rules

* * * * *

Chapter V Regulation of Trading on NOM

* * * * *

Sec. 6 Nullification and Adjustment of Options Transactions Including Obvious Errors

The Exchange may nullify a transaction or adjust the execution price of a transaction in accordance with this Rule. However, the determination as to whether a trade was executed at an erroneous price may be made by mutual agreement of the affected parties to a particular transaction. A trade may be nullified or adjusted on the terms that all parties to a particular transaction agree, provided, however, that such agreement to nullify or adjust must be conveyed to the Exchange in a manner prescribed by the Exchange prior to 8:30 a.m. Eastern Time on the first trading day following the execution. It is considered conduct inconsistent with just and equitable principles of trade for any Participant to use the mutual adjustment process to circumvent any applicable Exchange rule, the Act or any of the rules and regulations thereunder.

(a)–(j) No Change.

(k) *Verifiable Disruption or Malfunction of Exchange Systems. Parties to a trade may have a trade nullified or its price adjusted if it resulted from a verifiable disruption or malfunction of Exchange execution, dissemination, or communication systems that caused a quote/order to trade in excess of its disseminated size (e.g. a quote/order that is frozen, because of an Exchange system error, and repeatedly traded). Parties to a trade may have a trade nullified or its price adjusted if it resulted from a verifiable disruption or malfunction of an Exchange dissemination or communication system that prevented a member from updating or canceling a quote/order for which the member is responsible where there is Exchange documentation providing that the member sought to update or cancel the quote/order.*

([k]*l*) *Appeals.* A party to a transaction affected by a decision made under this section may appeal that decision to the Nasdaq Review Council. An appeal must be made in writing, and must be

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

received by Nasdaq within thirty (30) minutes after the person making the appeal is given the notification of the determination being appealed. The Nasdaq Review Council may review any decision appealed, including whether a complaint was timely, whether an Obvious Error or Catastrophic Error occurred, whether the correct Theoretical Price was used, and whether an adjustment was made at the correct price.

* * * * *

The text of the proposed rule change is available from NASDAQ's Web site at *http://nasdaq.cchwallstreet.com,* at NASDAQ's principal office, 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, NASDAQ included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASDAQ has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is seeking to amend its rules related to obvious errors. Specifically, the Exchange is seeking to amend NOM chapter V, section 6 to add new section 6(k) and provide the Exchange the ability to nullify or adjust transactions arising out of a verifiable disruption or malfunction of Exchange systems.

Similar to NASDAQ OMX PHLX LLC (''Phlx'') Rule 1092(k), proposed NOM chapter V, section 6(k) would indicate that parties to a trade may have a trade nullified or its price adjusted if it resulted from a verifiable disruption or malfunction of Exchange execution, dissemination, or communication systems that caused a quote/order to trade in excess of its disseminated size (*e.g.* a quote/order that is frozen, because of an Exchange system error, and repeatedly traded).[3] Parties to a trade may have a trade nullified or its price adjusted if it resulted from a verifiable disruption or malfunction of an Exchange dissemination or communication system that prevented a member from updating or canceling a quote/order for which the member is responsible where there is Exchange documentation providing that the member sought to update or cancel the quote/order. The Exchange notes that the proposed NOM chapter V, section 6(k) language is identical to that of Phlx Rule 1092(k). Per NOM chapter V, section 6, transactions that qualify for price adjustment will be adjusted to Theoretical Price, as defined in paragraph (b) of section 6.

The Exchange believes that it is appropriate to provide the flexibility and authority provided for in the proposed rule so as not to limit the Exchange's ability to plan for and respond to unforeseen systems problems or malfunctions. The proposed rule change would provide the Exchange with the same authority that Phlx and other exchanges have to nullify or adjust trades in the event of a ''verifiable disruption or malfunction'' in the use or operation of its systems.[4] For this reason, the Exchange believes that, in the interest of maintaining a fair and orderly market and for the protection of investors, authority to nullify or adjust trades in these circumstances, consistent with the authority on other exchanges, is warranted.

By way of housekeeping, the Exchange proposes to renumber current section 6(k) of NOM chapter V to section 6(l). There are no other changes to section 6(l), which deals with appeals regarding decisions pursuant to NOM chapter V, section 6.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)[6] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the section 6(b)(5) requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and national market system and promote a fair and orderly market because it would provide authority for the Exchange to nullify or adjust trades that may have resulted from a verifiable systems disruption or malfunction. The Exchange believes that it is appropriate to provide the flexibility and authority provided for in the proposed rule so as not to limit the Exchange's ability to plan for and respond to unforeseen systems problems or malfunctions that may result in harm to the public. Allowing for the nullification or modification of transactions that result from verifiable disruptions and/or malfunctions of the Exchange's systems will offer market participants on NOM a level of relief presently not available. The Exchange notes that the proposed rule change is the same as the equivalent Phlx rule and substantially similar to the equivalent CBOE, C2, and Arca rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposed rule change is pro-competitive because it will align the NOM rules with the rules of other markets, including Phlx, CBOE, C2, and Arca. By adopting the proposed rule, the Exchange will be in a position to treat transactions that are a result of a verifiable systems issue or malfunction in a manner similar to other exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect

[3] There is no reference to open outcry as NOM is all-electronic.

[4] *See, e.g.,* Phlx Rule 1092(k), Chicago Board Options Exchange (''CBOE'') Rule 6.25.05, CBOE C2 (''C2'') Rule 6.15.06, and NYSE Arca, Inc. (''Arca'') Rule 6.89.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) [7] of the Act and subparagraph (f)(6) of Rule 19b–4 thereunder.[8]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2015–100 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2015–100. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2015–100, and should be submitted on or before September 11, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–20656 Filed 8–20–15; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75711; File No. SR–BATS–2015–62]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 11.22 To Describe the Market Data Product BZX Book Viewer

August 17, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 7, 2015, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend Rule 11.22 to describe a market data product known as BZX Book Viewer.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add language to Rule 11.22 describing a market data product known as BZX Book Viewer. The proposal memorializes in the Exchange's rules a data feed that is currently available through the Exchange's public Web site free of charge. BZX Book Viewer is a data feed that disseminates, on a real-time basis, the aggregated two-side quotations for up to five (5) price levels for all displayed orders for securities traded on the Exchange and for which the Exchanges reports quotes under the Consolidated Tape Association (''CTA'') Plan or the Nasdaq/UTP Plan. BZX Book Viewer also contains the last ten (10) trades including time of trade, price and share quantity. BZX Book Viewer is currently available via *www.batstrading.com* without charge. The Exchange will file a separate proposed rule change with the Commission proposing fees to be charged for certain types of access to BZX Book Viewer as of September 1, 2015.[5]

[5] The Exchange understands that its affiliated exchanges intend to file identical proposed rule changes to adopt rules and fees for the Book Viewer data feed with the Commission. The Exchange's

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and that it is not designed to permit unfair discrimination among customers, brokers, or dealers. This proposal is in keeping with those principles in that it promotes increased transparency through the dissemination of BZX Book Viewer. The Exchange also believes this proposal is consistent with Section 6(b)(5) of the Act because it protects investors and the public interest and promotes just and equitable principles of trade by providing investors with an alternative for receiving market data as requested by market data vendors and purchasers that expressed an interest in exchange-only data for instances where consolidated data is no longer required to be purchased and displayed. The proposed rule change would benefit investors by facilitating their prompt access to real-time depth-of-book information contained in BZX Book Viewer. The proposed rule change also removes impediments to and perfect the mechanism of a free and open market and a national market system by memorializing in the Exchange's rules a data feed that is currently available through the Exchange's public Web site free of charge.

The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act[8] in that it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,[9] which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory. BZX Book Viewer is accessed and subscribed to on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation to make this data available. Accordingly, distributors and subscribers can discontinue use at any time and for any reason.

In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to consumers of such data. It was believed that this authority would expand the amount of data available to users and consumers of such data and also spur innovation and competition for the provision of market data. The Exchange believes that the data products proposed herein are precisely the sort of market data products that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS—by lessening regulation of 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.[10]

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.

In addition, BZX Book Viewer removes impediments to and perfects the mechanism of a free and open market and a national market system because BZX Book Viewer provides investors with alternative market data and competes with similar market data product currently offered by the New York Stock Exchange, Inc. (''NYSE'') and the Nasdaq Stock Market LLC (''Nasdaq'').[11] The provision of new options for investors to receive market data was a primary goal of the market data amendments adopted by Regulation NMS.[12] BZX Book Viewer is precisely the sort of market data product that the Commission envisioned when it adopted Regulation NMS.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal is not intended to address any competitive issues, but rather to memorialize in the Exchange's rules a data feed that is currently available through the Exchange's public Web site free of charge. Nonetheless, the Exchange believes that the proposal will promote competition by the Exchange offering a service similar to that offered by the NYSE and Nasdaq.[13] Thus, the Exchange believes this proposed rule change is necessary to permit fair competition among national securities exchanges. Therefore, the Exchange does not believe 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.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act[14] and paragraph (f)(6) of Rule 19b–4 thereunder.[15] The proposed rule change effects a change that: (A) Does not significantly affect the protection of investors or the public interest; (B) does not impose any significant burden on competition; and (C) by its terms, does

affiliates are EDGA Exchange, Inc., EDGX Exchange, Inc. and BATS Y-Exchange, Inc.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78k–1.

[9] *See* 17 CFR 242.603.

[10] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (File No. S7–10–04).

[11] *See* Nasdaq Rule 7023(a)(1)(C) (describing Nasdaq TotalView is a depth-of-book data feed that includes all orders and quotes from all Nasdaq members displayed in the Nasdaq Market Center as well as the aggregate size of such orders and quotes at each price level in the execution functionality of the Nasdaq Market Center). *See also* Nasdaq Book Viewer, a description of which is *available at https://data.nasdaq.com/Book_Viewer.aspx* (last visited July 29, 2015). *See* NYSE OpenBook *available at http://www.nyxdata.com/openbook* (last visited July 29, 2015) (providing real-time view of the NYSE limit order book). *See e.g.*, Securities Exchange Act Release No. 71775 (March 24, 2014), 79 FR 17627 (March 28, 2014) (SR–CBOE–2014–021) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to the CBSX BBO Data Feed and the New CBSX Book Depth Data Feed).

[12] *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 11.

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4.

not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (1) Necessary or appropriate in the public interest; (2) for the protection of investors; or (3) 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–BATS–2015–62 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–BATS–2015–62. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BATS–2015–62 and should be submitted on or before September 11, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–20653 Filed 8–20–15; 8:45 am]

BILLING CODE 8011–01–P

[16] The Exchange has fulfilled this requirement.

[17] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14421 and #14422]

Kentucky Disaster #KY–00059

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 Kentucky (FEMA–4239–DR), dated 08/12/2015.

Incident: Severe Storms, Tornadoes, Straight-line Winds, Flooding, Landslides, and Mudslides.

Incident Period: 07/11/2015 through 07/20/2015.

Effective Date: 08/12/2015.

Physical Loan Application Deadline Date: 10/12/2015.

Economic Injury (EIDL) Loan Application Deadline Date: 05/12/2016.

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 08/12/2015, 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: Bracken; Breathitt; Carroll; Carter; Clay; Cumberland; Elliott; Estill; Fleming; Floyd; Henry; Jackson; Johnson; Knott; Lawrence; Lee; Leslie; Letcher; Lewis; Lincoln; Magoffin; Menifee; Montgomery; Morgan; Nicholas; Owsley; Perry; Robertson; Rockcastle; Rowan; Spencer; Trimble; Washington; Wolfe.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere ...	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14421B and for economic injury is 14422B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2015–20649 Filed 8–20–15; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14419 and #14420]

Kentucky Disaster #KY–00058

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Kentucky (FEMA–4239–DR), dated 08/12/2015.

Incident: Severe storms, tornadoes, straight-line winds, flooding, landslides, and mudslides.

Incident Period: 07/11/2015 through 07/20/2015.

DATES: *Effective Date:* 08/12/2015.

Physical Loan Application Deadline Date: 10/12/2015.

Economic Injury (EIDL) Loan Application Deadline Date: 05/12/2016.

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 08/12/2015, 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 (Physical Damage and Economic Injury Loans): Carter; Johnson; Rowan; Trimble.

Contiguous Counties (Economic Injury Loans Only):

Kentucky: Bath; Boyd; Carroll Elliott; Fleming; Floyd; Greenup; Henry; Lawrence; Lewis; Magoffin; Martin; Menifee; Morgan; Oldham.

Indiana: Clark; Jefferson.

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	6.000
Elsewhere 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 14419B and for economic injury is 14420.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2015–20641 Filed 8–20–15; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14381 and #14382]

Colorado Disaster Number CO–00016

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Colorado (FEMA—4229—DR), dated 07/16/2015.

Incident: Severe storms, tornadoes, flooding, landslides, and mudslides.

Incident Period: 05/04/2015 through 06/16/2015.

DATES: Effective Date: 08/12/2015.

Physical Loan Application Deadline Date: 09/14/2015.

Economic Injury (EIDL) Loan Application Deadline Date: 04/18/2016.

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: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Colorado, dated 07/16/2015, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Adams, Boulder, Denver, Park.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2015–20640 Filed 8–20–15; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: 30-Day notice.

SUMMARY: The Small Business Administration (SBA) is publishing this notice to comply with requirements of the Paperwork Reduction Act (PRA) (44 U.S.C. Chapter 35), which requires agencies to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. This notice also allows an additional 30 days for public comments.

DATES: Submit comments on or before September 21, 2015.

ADDRESSES: Comments should refer to the information collection by name and/or OMB Control Number and should be sent to: *Agency Clearance Officer,* Curtis Rich, Small Business Administration, 409 3rd Street SW., 5th Floor, Washington, DC 20416; and *SBA Desk Officer,* Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Curtis Rich, Agency Clearance Officer, (202) 205–7030, *curtis.rich@sba.gov*

Copies: A copy of the Form OMB 83–1, supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

SUPPLEMENTARY INFORMATION: In recognition of the small business community's contributions to the nation's economy, the President of the United States designates one week each year as Small Business Week. As part of that week's activities the Small Business Administration (SBA) issues recognition awards to various small business owners, entrepreneurs and advocates. Award nominees and nominators submit this information to SBA for use in evaluating their eligibility for an award, verifying accuracy of information submitted, and determining whether there are any actual or potential conflicts of interest.

Summary of Information Collections:

Title: Small Business Administration Award Nomination.

Description of Respondents: Small Business Owners and Advocates who have been nominated for an SBA recognition award.

Form Number: 3300–3314.

Estimated Annual Responses: 600.

Estimated Annual Hour Burden: 900.

Curtis B. Rich,

Management Analyst.

[FR Doc. 2015–20639 Filed 8–20–15; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in Pennsylvania

AGENCY: Federal Highway Administration (FHWA), DOT

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA and other Federal Agencies.

SUMMARY: This notice announces actions taken by FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(*l*)(1). The actions relate to a proposed highway project, State Route 15, section 088, Central Susquehanna Valley Transportation Project (CSVT) in Snyder, Union and Northumberland Counties, in the Commonwealth of Pennsylvania. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before January 19, 2016. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For FHWA: Ms. Renee Sigel, Division Administrator, Federal Highway Administration, 228 Walnut Street, Room 508, Harrisburg, Pennsylvania 17101–1720; Office Hours 8 a.m. to 4:30 p.m.; telephone: (717) 221–3461; email: *pennsylvania.fhwa@dot.gov.* For PennDOT: For PennDOT: Mr. Matthew Beck, P.E., Assistant Plans Engineer, Pennsylvania Department of Transportation, 715 Jordan Avenue, P.O. Box 218, Montoursville, PA 17754; Office Hours 7:30 a.m. to 3:30 p.m.; telephone: (570) 368–4256; email: *matbeck@pa.gov.*

SUPPLEMENTARY INFORMATION: On August 8, 2003, FHWA (via EPA) published a ''Environmental Impact Statements; Notice of Availability'' in the **Federal Register** at 68 FR 47309 (ER–FRL–6642–7) for the following highway project: State Route 15, section 088, Central Susquehanna Valley Transportation Project (CSVT) in Snyder, Union and Northumberland Counties. The project includes the construction of approximately 12.4 miles of new, limited access, four-lane highway extending from the existing U.S. Route 11/15 Interchange in Monroe Township (north of Selinsgrove) in Snyder County to PA Route 147 in West Chillisquaque Township (at a location just south of the PA Route 45 interchange near Montandon) in Northumberland County. The new highway includes a connector to PA Route 61 in Shamokin Dam and a new bridge crossing over the West Branch of the Susquehanna River extending from Union Township, Union County to Point Township, Northumberland County. The CSVT project will reduce congestion, provide better access to the region, improve safety by reducing traffic conflicts, and support population and economic growth that is expected in the region. The roadways in the corridor link the towns of Selinsgrove, Shamokin Dam, Sunbury, Northumberland, Milton, and Lewisburg. The CSVT Final EIS (EIS No. 030356) was published August 8, 2003, the Record of Decision was approved in October 2003, and the Re-evaluation No. 1 was approved on May 10, 2006. Notice is hereby given that, subsequent to the earlier FHWA notice, FHWA and other Federal Agencies have taken final agency actions within the meaning of 23 U.S.C. 139(*l*)(1) by approving a Re-evaluation and the associated license's, permits and approvals for the highway project. The action(s) by FHWA, associated final actions by other Federal agencies, and the laws under which such actions were taken, are described in FHWA decisions and its project records, as referenced in the Final EIS, Record of Decision, 2006 Re-evaluation No. 1 and 2015 Re-evaluation No. 2. That information is available by contacting FHWA at the address provided above.

Information about the project and project records also are available from FHWA and PennDOT at the addresses provided above. The Final EIS, Record of Decision, 2006 Re-evaluation No. 1, 2015 Re-evaluation No. 2, and FHWA decisions can be viewed and downloaded from the project Web site at *http://www.csvt.com/* (click on the Resources button) or obtained from any contact listed above. This notice applies to all Federal agency final actions taken after the issuance date of the FHWA **Federal Register** notice described above. The laws and their associated regulations under which actions were taken include, but are not limited to:

1. General: National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128].

2. Air: Clean Air Act [42 U.S.C. 7401–7671q].

3. Land: Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303; 23 U.S.C. 138]; Landscaping and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].

4. Wildlife: Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667d]; Migratory Bird Treaty Act [16 U.S.C. 703–712].

5. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470f]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470aa–470mm]; Archeological and Historic Preservation Act [16 U.S.C. 469–469c]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].

6. Social and Economic: American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

7. Wetlands and Water Resources: Clean Water Act (Section 404, Section 401, Section 319) [33 U.S.C. 1251–1387]; Land and Water Conservation Fund (LWCF) [16 U.S.C. 4601–4604]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300f–300j–26)]; Rivers and Harbors Act of 1899 [33 U.S.C. 401–406]; Wild and Scenic Rivers Act [16 U.S.C. 1271–1287]; Emergency Wetlands Resources Act, [16 U.S.C. 3901, 3921]; Wetlands Mitigation [23 U.S.C. 119(g) and 133(b)(14)]; Flood Disaster Protection Act, 42 U.S.C. 4012a, 4106].

8. Executive Orders: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(*l*)(1)

Issued on: August 12, 2015.

Renee Sigel,

Division Administrator, Harrisburg, Pennsylvania.

[FR Doc. 2015–20563 Filed 8–20–15; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–2015–0017]

Surface Transportation Project Delivery Program; TxDOT Audit Report

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; request for comment.

SUMMARY: Section 1313 of the Moving Ahead for Progress in the 21st Century Act (MAP–21) established the permanent Surface Transportation Project Delivery Program that allows a State to assume FHWA's environmental responsibilities for review, consultation, and compliance for Federal highway projects. This section mandates semiannual audits during each of the first 2 years of State participation to ensure compliance by each State participating in the Program. When a State assumes these Federal responsibilities, the State becomes solely responsible and liable for carrying out the responsibilities it has assumed, in lieu of FHWA. This notice announces and solicits comments on the first audit report for the Texas Department of Transportation (TxDOT).

DATES: Comments must be received on or before September 21, 2015.

ADDRESSES: Mail or hand deliver comments to Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590. You may also submit comments electronically at *www.regulations.gov.* All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments in any one of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, or labor union). The 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: Dr. Owen Lindauer, Office of Project Development and Environmental Review, (202) 366–2655, *owen.lindauer@dot.gov,* or Mr. Jomar Maldonado, Office of the Chief Counsel, (202) 366–1373, *jomar.maldonado@dot.gov,* Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this notice may be downloaded from the specific docket page at *www.regulations.gov.*

Background

Congress proposed and the President signed into law, MAP–21 Section 1313, establishing the Surface Transportation Project Delivery Program that allows a State to assume FHWA's environmental responsibilities for review, consultation, and compliance for Federal highway projects. This provision has been codified at 23 U.S.C. 327. When a State assumes these Federal responsibilities, the State becomes solely responsible and liable for carrying out the responsibilities it has assumed, in lieu of FHWA. This permanent program follows a pilot program established by Section 6005 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, where the State of California assumed FHWA's environmental responsibilities (from June 29, 2007). The TxDOT published its application for assumption under the National Environmental Policy Act (NEPA) Assignment Program on March 14, 2014, at Texas Register 39(11):1992 and made it available for public comment for 30 days. After considering public comments, TxDOT submitted its application to FHWA on May 29, 2014. The application served as the basis for developing the memorandum of understanding (MOU) that identifies the responsibilities and obligations TxDOT would assume. The FHWA published a notice of the draft of the MOU in the **Federal Register** on October 10, 2014, at 79 FR 61370 with a 30-day comment period to solicit the views of the public and Federal agencies. After the close of the comment period FHWA and TxDOT considered comments and proceeded to execute the MOU. Since December 16, 2014, TxDOT has assumed FHWA's responsibilities under NEPA, and the responsibilities for the NEPA-related Federal environmental laws. Section 327(g) of Title 23, United States Code, requires the Secretary to conduct semiannual audits during each of the first 2 years of State participation, and annual audits during each subsequent year of State participation to ensure compliance by each State participating in the Program. The results of each audit must be presented in the form of an audit report and be made available for public comment. This notice announces the availability of the first audit report for TxDOT and solicits public comment on same.

Authority: 23 U.S.C. 327; 49 CFR 1.48.

Issued on: August 14, 2015.

Gregory G. Nadeau,

Administrator, Federal Highway Administration.

DRAFT—Surface Transportation Project Delivery Program FHWA Audit of the Texas Department of Transportation December 16, 2014, and June 16, 2015

Executive Summary

This is the first audit conducted by a team of Federal Highway Administration (FHWA) staff of the performance of the Texas Department of Transportation (TxDOT) regarding responsibilities and obligations assigned under a memorandum of understanding (MOU) whose term began on December 16, 2014. From that date, TxDOT assumed FHWA's National Environmental Policy Act (NEPA) responsibilities and liabilities for the Federal-aid highway program funded projects in Texas (NEPA Assignment Program) and FHWA's environmental role is now limited to program oversight and review. The FHWA audit team (team) was formed in January 2015 and met regularly to prepare for conducting the audit. Prior to the on-site visit, the team performed reviews of TxDOT project file NEPA documentation in the Environmental Compliance Oversight System (ECOS, TxDOT's official project filing system), examined the TxDOT pre-audit information response, and developed interview questions. The on-site portion of this audit, when all TxDOT and other agency interviews were performed, was conducted between April 13 and 17, 2015.

As part of its review responsibilities specified in 23 U.S.C. 327, the team planned and conducted an audit of TxDOT's responsibilities assumed under the MOU. The TxDOT is still in the transition of preparing and implementing procedures and processes required for the NEPA Assignment. It was evident that TxDOT has made reasonable progress in implementing the start-up phase of the NEPA Assignment

Program and that overall the team found evidence that TxDOT is committed to establishing a successful program. This report provides the team's assessment of the current status of several aspects of the NEPA Assignment Program, including successful practices and 16 observations that represent opportunities for TxDOT to improve their program. The team identified two non-compliance observations that TxDOT will need to address as corrective actions in their self-assessment report.

The TxDOT has carried out the responsibilities it has assumed in keeping with the intent of the MOU and the Application. The team finds TxDOT to be in substantial compliance with the provisions of the MOU. By addressing the observations in this report, TxDOT will continue to move the program toward success.

Background

Congress proposed and the President signed into law, the Moving Ahead for Progress in the 21st Century Act (MAP–21) Section 1313, that established the Surface Transportation Project Delivery Program that allows a State to assume FHWA's environmental responsibilities for review, consultation, and compliance for Federal highway projects. This section is codified at 23 U.S.C. 327. When a State assumes these Federal responsibilities, the State becomes solely responsible and liable for carrying out the responsibilities it has assumed, in lieu of FHWA. This permanent program follows a pilot program established by Section 6005 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), where the State of California assumed FHWA's environmental responsibilities (from June 29, 2007).

The TxDOT published its application for assumption under the NEPA Assignment Program on March 14, 2014, and made it available for public comment for 30 days. After considering public comments, TxDOT submitted its application to FHWA on May 29, 2014. The application served as the basis for developing the MOU that identifies the responsibilities and obligations TxDOT would assume. The FHWA published a notice of the draft of the MOU in the **Federal Register** on October 10, 2014, at 79 FR 61370, with a 30-day comment period to solicit the views of the public and Federal agencies. After the close of the comment period FHWA and TxDOT considered comments and proceeded to execute the MOU. Since December 16, 2014, TxDOT has assumed FHWA's responsibilities under NEPA, and the responsibilities for the NEPA-related Federal environmental laws. These are responsibilities for (among a list of other regulatory interactions) the Endangered Species Act, Section 7 consultations with the U.S. Fish and Wildlife Service (USFWS) and the National Oceanic and Atmospheric Administration National Marine Fisheries Service, and Section 106 consultations regarding impacts to historic properties. Two Federal responsibilities were not assigned to TxDOT and remain with FHWA: (1) Making project-level conformity determinations under the Federal Clean Air Act and (2) conducting government to government consultation with federally recognized Indian tribes.

Under the NEPA Assignment Program, the State of Texas was assigned the legal responsibility for making project NEPA decisions. In enacting Texas Transportation Code, § 201.6035, the State has waived its sovereign immunity under the 11th Amendment of the U.S. Constitution and consents to Federal court jurisdiction for actions brought by its citizens for projects it has approved under the NEPA Assignment Program. As part of FHWA's oversight responsibility for the NEPA Assignment Program, FHWA is directed in 23 U.S.C. 327(g) to conduct semiannual audits during each of the first 2 years of State participation in the program; and audits annually for 2 subsequent years. The purpose of the audits is to assess a State's compliance with the provisions of the MOU as well as all applicable Federal laws and policies. The FHWA's review and oversight obligation entails the need to collect information to evaluate the success of the Project Delivery Program; to evaluate a State's progress toward achieving its performance measures as specified in the MOU; and to collect information for the administration of the NEPA Assignment Program. This report summarizes the results of the first audit.

Scope and Methodology

The overall scope of this audit review is defined both in statute (23 U.S.C. 327) and the MOU (Part 11). An audit generally is defined as an official and careful examination and verification of accounts and records, especially of financial accounts, by an independent unbiased body. With regard to accounts or financial records, audits may follow a prescribed process or methodology and be conducted by ''auditors'' who have special training in those processes or methods. The FHWA considers this review to meet the definition of an audit because it is an unbiased, independent, official and careful examination and verification of records and information about TxDOT's assumption of environmental responsibilities.

The diverse composition of the team, the process of developing the review report, and publishing it in the **Federal Register** help define this audit as unbiased and an official action taken by FHWA. To ensure a level of diversity and guard against unintended bias, the team consisted of NEPA subject matter experts from the FHWA Texas Division Office, as well as FHWA offices in Washington, DC, Atlanta, GA, Columbus, OH, and Baltimore, MD. All of these experts received training specific to evaluation of implementation of the NEPA Assignment Program. Aside from the NEPA experts, the team included a trainee from the Texas Division office and two individuals from FHWA's Program Management Improvement Team who provided technical assistance in conducting reviews. This audit team conducted a careful examination of highway project files and verified information on the TxDOT NEPA Assignment Program through inspection of other records and through interviews of TxDOT and other staff.

Audits, as stated in the MOU (Parts 11.1.1 and 11.1.5), are the primary mechanism used by FHWA to oversee TxDOT's compliance with the MOU, ensure compliance with applicable Federal laws and policies, evaluate TxDOT's progress toward achieving the performance measures identified in the MOU (Part 10.2), and collect information needed for the Secretary's annual report to Congress. These audits also must be designed and conducted to evaluate TxDOT's technical competency and organizational capacity, adequacy of the financial resources committed by TxDOT to administer the responsibilities assumed, quality assurance/quality control process, attainment of performance measures, compliance with the MOU requirements, and compliance with applicable laws and policies in administering the responsibilities assumed. The four performance measures identified in the MOU are (1) compliance with NEPA and other Federal environmental statutes and regulations, (2) quality control and quality assurance for NEPA decisions, (3) relationships with agencies and the general public, and (4) increased efficiency and timeliness and completion of the NEPA process.

The scope of this audit included reviewing the processes and procedures used by TxDOT to reach and document project decisions. The intent of the review was to check that TxDOT has the

proper procedures in place to implement the MOU responsibilities assumed, ensure that the staff is aware of those procedures, and that the procedures are working appropriately to achieve NEPA compliance. The review is not intended to evaluate project-specific decisions as good or bad, or to second guess those decisions, as these decisions are the sole responsibility of TxDOT.

The team gathered information that served as the basis for this audit from three primary sources: (1) TxDOT's response to a pre-audit information request, (2) a review of a random sample of project files with approval dates subsequent to the execution of the MOU, and (3) interviews with TxDOT, the Texas Historical Commission, and the USFWS staff. The pre-audit information request consisted of questions and requests for information focused on the following six topics: Program management, documentation and records management, quality assurance/quality control, legal sufficiency review, performance measurement, and training. The team subdivided into working groups that focused on five of these topics. The legal sufficiency review was limited to consideration of material in TxDOT's response to the pre-audit information request.

The team defined the timeframe for highway project environmental approvals subject to this first audit to be between December 2014 and February 2015. This initial focus on the first 3–4 months of TxDOT's assumption of NEPA responsibilities was intended to: (1) Assist TxDOT in start-up issues in the transition period where they assumed NEPA responsibilities for all highway projects, (2) follow an August 2014 Categorical Exclusion (CE) monitoring review that generated expected corrective actions, and (3) allow the first audit report to be completed 6 months after the execution of the MOU. Based on monthly reports from TxDOT, the universe of projects subject to review consisted of 357 projects approved as CEs, 9 approvals to circulate an Environmental Assessment (EA), 4 findings of no significant impacts (FONSI), 3 re-evaluations of EAs, 2 Section 4(f) decisions, and 1 approval of a draft environmental impact statement (EIS) project. The team selected a random sample of 57 CE projects sufficient to provide a 90 percent confidence interval and reviewed project files for all 19 approvals that were other than CEs (for a total of 76 files reviewed). Regarding interviews, the team's focus was on leadership in TxDOT's Environmental Affairs Division (ENV) Headquarters in Austin. Due to logistical challenges, the team could only interview a sample of environmental and leadership staff from TxDOT Districts focusing for this first audit on face-to-face interviews in Austin, Waco, and San Antonio and conference call interviews with Corpus Christi, Laredo, and Fort Worth Districts. The team plans to interview staff from at least 18 TxDOT District offices by completion of the third audit. There are a total of 25 TxDOT Districts and the team anticipates covering all over the 5-year term of this MOU.

Overall Audit Opinion

The team recognizes that TxDOT is still in the beginning stages of the NEPA Assignment Program and that its programs, policies, and procedures are in transition. The TxDOT's efforts are appropriately focused on establishing and refining policies and procedures; training staff; assigning and clarifying changed roles and responsibilities; and monitoring its compliance with assumed responsibilities. The team has determined that TxDOT has made reasonable progress in implementing the start-up phase of NEPA Assignment operations and believes TxDOT is committed to establishing a successful program. Our analysis of project file documentation and interview information found two non-compliance observations, several other observations, and noted ample evidence of good practice. The TxDOT has carried out the responsibilities it has assumed in keeping with the intent of the MOU and the Application and as such the team finds TxDOT to be in substantial compliance with the provisions of the MOU.

The TxDOT's staff and management expressed a desire to receive constructive feedback from the team. By considering and acting upon the observations contained in this report, TxDOT should continue to improve upon carrying out its assigned responsibilities and ensure the success of its NEPA Assignment Program.

Non-Compliance Observations

Non-compliance observations are instances of being out of compliance with a Federal regulation, statute, guidance, policy, TxDOT procedure, or the MOU. The FHWA expects TxDOT to develop and implement corrective actions to address all non-compliance observations. The TxDOT may consider implementing any recommendations made by FHWA to address non-compliance and other observations. The team acknowledges that TxDOT has already taken corrective actions to address these observations. The FHWA will conduct follow up reviews of the non-compliance observations as part of Audit #2, and if necessary, future audits.

The MOU (Part 3.1.1) states ''pursuant to 23 U.S.C. 327(a)(2)(A), on the Effective Date, FHWA assigns, and TxDOT assumes, subject to the terms and conditions set forth in 23 U.S.C. 327 and this MOU, all of the U.S. Department of Transportation (DOT) Secretary's responsibilities for compliance with the NEPA, 42 U.S.C. 4321 *et seq.* with respect to the highway projects specified under subpart 3.3. This includes statutory provisions, regulations, policies, and guidance related to the implementation of NEPA for Federal highway projects such as 23 U.S.C. 139, 40 CFR parts 1500–1508, DOT Order 5610.1C, and 23 CFR part 771 as applicable.''

Non-Compliance Observation #1

The first non-compliance observation, in 1 of the 76 projects reviewed, pertained to FHWA policy in 23 CFR 771.105(d) that (1) ''measures necessary to mitigate adverse impacts be incorporated into the action,'' and (2) ''the Administration will consider, among other factors, the extent to which the proposed measures would assist in complying with a federal statute, Executive Order, or Administration regulation or policy.'' The team identified a project whose description indicated that its purpose was to mitigate impacts of a larger project by constructing a noise abatement barrier. Classifying this project as a CE [23 CFR 771.117(c)(6)], that specifies the action as a separate noise abatement barrier mitigation project, does not comply with FHWA approved TxDOT 2011 Noise Guidelines. The TxDOT must have a program for Type II noise abatement projects in order to allow for the construction of a noise abatement barrier as a separate project (23 CFR 772.5). The TxDOT does not currently have such a program and, therefore, could not approve the noise abatement barrier as a separate project. Before approving any NEPA decision document, TxDOT should be knowledgeable of, and must apply, all applicable provisions of FHWA policy and regulation.

Non-Compliance Observation #2

The second non-compliance observation is a project approved by TxDOT staff before all environmental requirements had been satisfied. Before TxDOT's approval, the project required a project-level air quality conformity determination pursuant to 40 CFR

93.121 and be consistent with the State Transportation Improvement Program (STIP). The TxDOT staff made a conditional NEPA approval (CE determination) on a project that, according to records, was not correctly listed in the STIP. The TxDOT then reported the approval to FHWA. The FHWA's policy in 23 CFR 771 is to coordinate compliance with all environmental requirements as a single process under NEPA. Conditional approvals do not comply with the FHWA NEPA policy because they have the effect of allowing a project to move to the next step of project development without satisfying all environmental requirements. Also, there is no authority in the MOU for TxDOT to make conditional approvals. There is a specific MOU requirement in Part 3.3.1 for a project to be consistent with the STIP. The team found evidence in ECOS that this project required a project-level air quality conformity determination. The responsibility for this determination was not assigned to TxDOT under the NEPA Assignment MOU, and FHWA subsequently made this determination. The team acknowledges this project was somewhat unusual as there was uncertainty at the Department as to whether the project was adding capacity requiring a Division Office conformity determination. Since that time, the Division Office has confirmed that such projects do add capacity and are subject to individual project level conformity. Where required, TxDOT needs to coordinate with the FHWA Texas Division Office staff to obtain a project-level air quality conformity determination before making a NEPA approval decision for a project.

Observations and Successful Practices

This section summarizes the team's observations about issues or practices that TxDOT may want to consider as areas to improve as well as practices the team believes are successful that TxDOT may want to continue or expand in some manner. All six topic areas identified in FHWA's pre-audit information request are addressed here as separate discussions. Our report on legal sufficiency reviews is a description of TxDOT's current status as described in their response to the pre-audit information request. The team will examine TxDOT's legal sufficiency reviews by project file inspection and through interviews in future audits.

The team lists 16 observations below that we urge TxDOT to act upon to make improvements through one or more of the following: corrective action, targeted training, revising procedures, continued self-assessment, or by some other means. The team acknowledges that by sharing this draft audit report with TxDOT, they have already implemented actions to address the observations to improve their program. The FHWA will consider the status of these observations as part of the scope of Audit #2. We will also include a summary discussion that describes progress since the last audit in the Audit #2 report.

Program Management

The team recognized four successful program management practices. First, it was evident through interviews that TxDOT has employed highly qualified staff for its program. Second, the team saw evidence of strong communication between TxDOT's ENV and District staff explaining roles and responsibilities associated with implementation of the MOU for NEPA Assignment. Third, based on the response to the pre-audit information request and from interviews, the team recognized efforts to create procedures, guidance, and tools to assist Districts in meeting requirements of the MOU. And finally, District staff understands and takes pride in ownership when making CE determinations. The ENV likewise takes pride in the responsibility for EA and Environmental Impact Statement (EIS) decision-making as well as oversight for the NEPA Assignment Program.

The team found evidence of successful practices in information provided by TxDOT and through interviews. They learned of specific incidences where TxDOT has intentionally hired new personnel and reorganized existing staff to achieve a successful NEPA Assignment program. The TxDOT hired a Self-Assessment Branch (SAB) manager, a staff development manager (training coordinator), and an additional attorney to assist with NEPA Assignment responsibilities. The audit team recognizes the TxDOT ''Core Team'' concept (which provides joint ENV and District peer reviews for EAs and EISs only) as a good example of TxDOT utilizing their existing staff to analyze NEPA documents and correct compliance issues before finalization. Many Districts appreciate the efforts of the Core Team and credit them for assuring their projects are compliant. The ''NEPA Chat'' is another great example of TxDOT's intentional effort to achieve a compliant NEPA Assignment Program with enhanced communication among TxDOT environmental staff statewide. The NEPA Chat, led by ENV, provides a platform for complex issues to be discussed openly, and for Districts to learn about statewide NEPA Assignment Program issues. To date, the NEPA Chat has proven to be an effective vehicle to disseminate relevant NEPA information quickly and selectively to the TxDOT District Environmental Coordinators. Lastly, based on interviews and the response to the pre-audit information request, almost all the ENV and District staff feels there is sufficient staff to deliver a successful NEPA Assignment program. This is further supported by ENV's willingness to shift responsibilities to better align with the needs of the NEPA Assignment program. After interviewing the various Districts, they indicated that ENV is available to assist the Districts when they need help.

The SAB fosters regular and productive communication with District staff. Based on reviews of project documentation, the SAB staff prepares and transmits a summary of their results, both positive and negative, and follows up via telephone with the District Environmental Coordinator responsible for the project. They provided this feedback within 2 weeks of their review, which results in early awareness of issues and corrective action, where necessary; as well as positive feedback when the project files appear to be in order. The creation of the pilot ''Risk Assessment'' tool (a ''smart pdf form'') for environmental documents is a successful, but optional procedure. When used, it helps Districts understand the resources to be considered, what resources should receive further analysis and documents District decisions. Even though this tool is not currently integrated within ECOS, it can be uploaded when used. The TxDOT noted that it had recently developed a Quality Assurance/Quality Control (QA/QC) Procedures for Environmental Documents Handbook (March 2015), and it is used by the Core Team to develop EA and EIS documents. Through its response to pre-audit questions and through interviews with various staff, TxDOT has demonstrated that it has provided a good base of tools, guidance, and procedures to assist in meeting the terms of the MOU and takes pride in exercising its assumed responsibilities.

The team considers three observations as sufficiently important to urge TxDOT to consider improvements or corrective actions to project management in their NEPA Assignment Program.

Observation #1

The CE review completed in August resulted in expectations to implement important updates to ECOS. The team found, however, that TxDOT has been slow to implement updates to ECOS.

These improvements would ensure that TxDOT's project records are complete and correct, utilizing the appropriate terms as cited in the MOU, law, regulation, or executive order. The team's ECOS related observations for improvement come from information provided by TxDOT and through interviews. Beginning with the monitoring review of CE projects completed in August 2014 the team identified the many accomplishments made by TxDOT to ensure ECOS meets the needs of users of this information. However, we also noted areas where necessary ECOS improvement had not yet happened. The team was told that due to outsourcing of many of TxDOT's IT services, the State was unable to complete improvements, due to other perceived priorities in the Department. The TxDOT interviewees indicated that a contract will soon be executed to accomplish needed changes, based on the CE monitoring report. Given the importance of ECOS as TxDOT's official file of record (for projects under implementation of the MOU) for the NEPA Assignment Program, and since obtaining IT contracting resources appears to be a challenge, the team urges TxDOT leadership to support timely and necessary updates to the ECOS system. The team recommends that the statement of work for the IT contract be sufficiently broad to implement all the required and necessary changes identified in both reviews.

Observation #2

The team would like to draw the attention of TxDOT to issues and concerns arising from interaction with resource and regulatory agencies, especially in ways for TxDOT to address possible disputes and conflicts early and effectively. During interviews with both the TxDOT staff and resource agency staff, the team learned that there have been no conflicts between TxDOT and agencies. Despite no reported conflicts, agency staff reported issues of concern that they believed TxDOT was not addressing. Examples include: being kept in the loop on the decisions made by TxDOT, occasional quality concerns for information provided by TxDOT, and occasionally feeling rushed to review and process TxDOT projects. The team recognizes that good communication is a shared responsibility among the parties and suggests TxDOT consider ways to recognize and address disputes, issues, and concerns before they become conflicts.

Observation #3

The team found indications from interviews that local public agency (LPA) projects do not receive the same scrutiny as TxDOT projects, despite TxDOT's project development and review process applying uniformly to all highway projects. Several District staff confirmed that LPA projects were reviewed no differently from TxDOT projects; others did not, which means TxDOT may need to consider ways to ensure its procedures are consistently applied, regardless of project sponsor. The team found the approach to developing and providing training for LPA sponsored projects to be a lower priority than for TxDOT projects.

Documentation and Records Management

The team relied completely on information in ECOS, TxDOT's official file of record, to evaluate project documentation and records management. The ECOS is a tool for information recordation, management and curation, as well as for disclosure within TxDOT District Offices and between Districts and ENV. The strength of ECOS is its potential for adaptability and flexibility. The challenge for TxDOT is to maintain and update the ECOS operating protocols (for consistency of use and document/data location) and to educate its users on updates in a timely manner.

Based on examination of the 76 files reviewed, the team identified 4 general observations (#4, #5, #6, and #7) about TxDOT record keeping and documentation that could be improved or clarified. The team used a documentation checklist to verify and review the files of the 76 sampled projects.

Observation #4

The team was unable to confirm in 11 of the projects where environmental commitments may have needed to be recorded in an Environmental Permits Issues and Commitments (EPIC) plan sheet, that the commitments were addressed. All environmental commitments need to be recorded and incorporated in the project development process so they are documented and or implemented when necessary. If required environmental commitments are not recorded in an EPIC, those commitments would not be implemented. The TxDOT should evaluate whether its procedures to ensure that environmental commitments are both recorded and implemented is appropriate.

Observation #5

The team found 7 of the 57 CE projects reviewed to lack sufficient project description detail to demonstrate that the category of CE action and any related conditions or constraints were met, in order to make a CE approval. The team performing the CE monitoring review completed in August 2014 made a similar observation where TxDOT indicated it would take corrective action. The particular project files included actions that could not be determined to be limited to the existing operational right-of-way (CE 23 CFR 771.117(c)22), or an action that utilizes less than $5 million of Federal funds (CE c23) or an action that met six environmental impact constraints before it could be applied (CEs c26, c27, c28). The documented compliance with environmental requirements prepared by TxDOT needs to support the CE action proposed and that any conditions or constraints have been met. The TxDOT should evaluate whether changes in ECOS and/or their procedures are necessary to ensure that project descriptions are recorded in sufficient detail to verify the appropriate CE action was approved.

Observation #6

The team at times encountered difficulty finding information and found outdated terms in project files. Several project files included CE labels that are no longer valid (blanket categorical exclusion, BCE), but approvals for those project identified the appropriate CE action. Other files indicated that certain coordination had been completed, but the details of the letters or approvals themselves could not be located. In reviewing project records, the team occasionally encountered difficulty finding uploaded files because information occurred in different tabs within ECOS. Another source of confusion for the team was inconsistency in file naming (or an absence of a file naming convention) for uploaded files. Because of these difficulties the team could not determine whether a project file was incomplete or not. The audit team urges TxDOT to seek ways to establish procedures and organize ECOS to promote project records where information may be identified and assessed more easily.

Observation #7

The team notes that most ECOS project records are for CEs, which may be difficult to disclose to the public. Based on interviews with TxDOT staff the team wondered how TxDOT would

disseminate information, such as technical reports, from ECOS as part of Public Involvement procedures. The ENV management has since explained that information will be provided upon request or at public meetings/hearings for a project.

Quality Assurance/Quality Control

The team considers the QA/QC program to be generally in compliance with the provisions of TxDOT's QA/QC Plan. However, TxDOT has yet to apply the SAB program-level review for EA and EIS projects and the lack of data from these types of projects means the team at this time cannot fully evaluate the effectiveness of the program for these types of projects. The team learned that TxDOT's SAB is still developing standards and training for implementation.

The team recognized four areas of successful practices in TxDOT's approach to QA/QC. First, TxDOT's use of a Core Team and its development and usage of QA/QC checklists and toolkits are effective and appear to result in a more standardized internal review process. The TxDOT QA/QC Plan states that a Core Team, composed of a District Environmental Coordinator and one individual from ENV, will be formed for every EA and EIS project. The QA/QC Plan states that Toolkits, Administrative Completeness Reviews and Determinations, Review for Readiness, and Certification forms will be utilized to ensure quality documents and compliance with NEPA laws and regulations.

Second, the team learned through interviews that TxDOT's SAB review process has resulted in very timely and helpful feedback to District staff. The team was told that feedback from SAB team reviews is generally communicated within 2 weeks of the NEPA documentation completion date. District staff said that they appreciate the feedback that helps to ensure they are following procedures and guidelines. The TxDOT also established a ''Corrective Action Team'' (CAT) that aids in the SAB team's effectiveness. The CAT is responsible for determining if findings from SAB reviews are systematic or confined to a certain area or individual. The CAT is in place to ensure issues found by SAB review are resolved.

Third, the team was told that some District staff developed their own QA/QC tools and processes for CEprojects (*i.e.* smart PDF forms, peer reviews, and a two signature approval process) that have led to fewer errors.

Fourth, TxDOT's SAB and CAT recently implemented peer reviews for forms, guidance, and handbooks that should lead to the reduction of improper documentation and need for revisions. The SAB and CAT team work together with ENV subject matter experts to update forms, guidance, and handbooks in three locations (ENV internal server, internal ENV Web page, and external TxDOT Web site). The ENV has strongly encouraged the Districts to go to the appropriate location before starting a new document to ensure they are using the most up to date version of all forms. The end result of the form peer review process should result in fewer errors and more consistency in NEPA documentation.

The team considers three observations as sufficiently important to urge TxDOT to consider improvements or corrective actions to their approach to QA/QC.

Observation #8

The team learned through interviews that no EA or EIS projects had been reviewed by the SAB and there was no agreed upon timeline for the completion of SAB guidelines or standards. This is due to the standards for SAB reviews of EA and EIS documents not yet being established, and to the fact only four FONSIs were made on EAs at the time of the team's ECOS project file review. The team acknowledges that TxDOT conducts QA/QC for EA and EIS projects and urges TxDOT to complete and apply their SAB approach in a timely manner.

Observation #9

The team learned through interviews that there is no established project sampling methodology for self-assessing TxDOT's effectiveness of their standards and guidance. While TxDOT employs sampling, the team could not find information that described how TxDOT assessed that they evaluated a sufficient number of projects. Through our interviews with SAB staff the team learned that there have been several approaches to conducting reviews of the CEs completed since the NEPA Assignment Program. Before the NEPA Assignment Program began, the SAB team reviewed 100 percent of CE files. Then between December 2014, and February 2015, SAB reviews were a grab sample of 11 files each week. Eight were partial project reviews that focused on certain project types. The remaining three reviews were of complete project files for new CE categories (c22 and c23's). Since February 2015, the SAB team has reviewed only the CE Documentation Form in project files. The team was unable to determine whether TxDOT staff had a basis to assert that its process was working as intended and that they could adequately identify areas needing improvement. The TxDOT needs to better assess the effectiveness of its QA/QC approach (a performance measure that it must report on) by clarifying its review approach, recording justifications for decisions TxDOT makes on how often project records are evaluated, and what specifically is reviewed.

Observation #10

The team learned that TxDOT District staff does not have a clear and consistent understanding of what distinguishes ''quality assurance'' and ''quality control'' and ''self-assessment'' with regards to expectations for reviews necessary to reach a NEPA decision versus feedback once a decision was made. From interviews with District and ENV staff, the team found staff was unclear about the role and responsibility of the SAB and the CAT. Several District managers said that they had not seen the QA/QC feedback on projects in their District and were not sure if their staff had received comments from the SAB or the CAT. The TxDOT should evaluate whether they need to clarify expectations for receiving review comments before and after NEPA decisionmaking to District staff.

Legal Sufficiency Review

During this audit period FHWA attorneys delivered a legal sufficiency training for the benefit of the TxDOT attorneys. The team did not perform analyses of this topic area during this audit. However, the team noted that TxDOT developed a set of Standard Operating Procedures for Legal Sufficiency Review. The process is also described in ENV's Project Delivery Manual, an internal document of processes and procedures used by project delivery staff. The TxDOT's Office of General Counsel tracks legal review requests and their status by keeping a log.

According to TxDOT's project delivery manual, four attorneys are available for legal reviews. Additional legal assistance may be requested by TxDOT to the Transportation Division of the Office of the Texas Attorney General. These attorneys would, as part of their review responsibilities, provide written comments and suggestions (when necessary) to TxDOT ENV to help ensure a document's legal sufficiency. They would also be available to discuss questions or issues. Once the reviewing attorney is satisfied that staff has addressed his or her comments/suggestions to the maximum extent reasonably practicable, the reviewing attorney will provide TxDOT ENV with

written documentation that the legal sufficiency review is complete.

The TxDOT ENV has indicated it will not finalize a Final Environmental Impact Statement, individual Section 4(f) evaluation, Notice of Intent, or 139(l) Notice before receiving written documentation that the legal sufficiency review is complete. The team was informed that, at the discretion of TxDOT ENV, EAs may be reviewed for legal sufficiency. If additional reviews are needed, the type and scope of an additional review would be determined by TxDOT ENV on a case-by-case basis.

Performance Measurement

The purpose of performance measures is explained in the MOU (Part 10). Four performance measures were mutually agreed upon by FHWA and TxDOT so that FHWA can take them into account in its evaluation of TxDOT's administration of the responsibilities it has assumed under the MOU. These measures provide an overall indication of TxDOT's discharge of its MOU responsibilities. In collecting data related to the reporting on the performance measures, TxDOT monitors its overall progress in meeting the targets of those measures and includes this data in self-assessments provided under the MOU (Part 8.2.5). The four performance measures are: (1) Compliance with NEPA and other Federal environmental statutes and regulations, (2) quality control and assurance for NEPA decisions, (3) relationships with agencies and the general public, and (4) increased efficiency and timeliness in completion of the NEPA process.

The TxDOT is gathering performance baseline data and testing data collection techniques designed to inform the performance measure metrics that will be reported. The TxDOT intends, according to information provided in their response to pre-audit information questions, to begin reporting on performance measures with the submittal of the next self-assessment summary report. This report is expected in September 2015.

Developing baseline measures is an important part of establishing a performance measure program. The team learned in interviews that TxDOT's QA/QC process includes procedures to ensure that each performance measure has begun with the careful vetting (by following up with individuals in Districts) of data used to develop the baseline measures for performance timeliness. This process should contribute to the validity of the measures. The TxDOT staff explained in interviews that the primary sources of information for overall performance measure baselines are District records and ECOS records.

The TxDOT staff stated that they are considering a variety of performance measurements in addition to measures identified in their response to the pre-audit information request. The audit team recognizes that developing meaningful measures for this program is difficult. However, the audit team encourages TxDOT staff to continue to explore innovative ways to measure performance. (For example, one interviewee described statistical and visual methods to report the performance measure of timeliness this way: ''We will calculate all the statistical numbers. We will look at median and look at cluster around the median. It will likely result in a visual analysis of the data (box plot with outliers, measures of central tendency).'')

Observation #11

The TxDOT reports in their response to the pre-audit information request that the QA/QC measure for NEPA decisions focuses only on EA and EIS projects, but not decisions related to CEs and other specific NEPA-related issues. Many decisions are tied to NEPA including important ones such as decisions on Section 4f (identification of properties, consideration of use, consideration of prudent and feasible avoidance alternatives) and re-evaluations (whether the outcome was adequately supported and is still valid). In applying this performance measure, the team urges TxDOT consider evaluating a broader range of decisions.

Observation #12

The team recognizes that TxDOT is still in the very early stages of applying its performance measures. Based on information gained in the pre-audit request and through interviews, more information on performance measures and their verification may need to be presented before the utility of such measures can be evaluated for audit purposes. The performance measure for compliance with NEPA and other Federal requirements for EA and EIS projects have yet to be fully defined. The performance measurement plan indicated that TxDOT would conduct agency polls to determine the measure for relationships with agencies and the general public, but little detail was provided as to what polls would be conducted and verified. The team also was concerned that the measure for the TxDOT relationship with the public may be too limited by focusing on the number of complaints. Such ''negative confirmation'' monitoring tends to be used when the underlying system or process under evaluation is known to have low levels of errors or problems. Given that NEPA assumption is new to TxDOT, such practice does not appear to be appropriate for gauging effectiveness at this time.

Training Program

The team reviewed TxDOT's initial training plan provided in the response to the pre-audit information request and evaluated its contents and adequacy through interviews of ENV and District staff. Based on information gained, TxDOT staff should consider the following issues and questions in preparing the annual update of their training plan, as required in the MOU. The team found the training plan compliant.

The team recognizes two successful practices. First, FHWA recognizes that TxDOT's largest venue for training is its annual environmental conference. This annual gathering of Federal, State, and local agency employees as well as consultants, in a context of fellowship (400+ attendees), addresses a wide array of environmental topics that reinforce existing and new environmental policies and procedures. The presentations at the conference are usually no longer than 1- hour per topic, but on some occasions does provide more in depth training. The team encourages the continuation of the conference.

Second, the ''NEPA Chat'' is a monthly ENV-led web-based learning/exchange opportunity for TxDOT environmental employees statewide. It is a venue for them to receive updated news and announcements, exchange ideas and is a forum for routine communication among Districts and ENV. This informal training venue is versatile, flexible, and responsive to the need to communicate information that should improve the consistency of statewide NEPA Assignment practices.

The team considers four observations as sufficiently important to urge TxDOT to consider improvements or corrective actions to their approach to the training program. The FHWA recognizes that TxDOT's assumption of Federal environmental responsibilities and liabilities is new and involves tasks not previously performed or familiar to its staff. This is the reason why training is a component of a State's qualifications and readiness to assume FHWA's responsibilities and is addressed in a separate section in the MOU (Part 12).

Observation #13

The team identified a concern about TxDOT's approach to training and its training plan. Information gained in interviews indicated that the initial TxDOT training plan relied heavily on a training model employed by the California Department of Transportation (Caltrans), because Caltrans is the only State that has assumed NEPA responsibilities for the entire highway program. The FHWA does not believe the Caltrans training model can replicate its current form to meet the needs of TxDOT, because TxDOT has fewer NEPA staff, State environmental laws that differ in scope, and a different business ''culture.'' There are other States (Idaho, Michigan, North Dakota, Ohio, and Wyoming) that have established training plans that TxDOT could draw upon as examples. These examples may benefit TxDOT and TxDOT should consider evaluating components of these State's training plans in their future annual updates of their own training plan.

Observation #14

The team found evidence that some aspects of training tasks were either unattended and/or appear to have been forgotten based on the training plan information provided to the team. The TxDOT has a section of their Web site devoted to training, that the team learned from interviews, is out of date. Some courses are no longer taught and several classes are in need of updating, all of which provided for training of non-TxDOT staff (*i.e.* local governments and consultants). The team urges TxDOT to assess whether the proposed training approach for non-TxDOT staff (relying heavily upon the annual environmental conference) is adequate and responsive enough to address a need to quickly disseminate newly developed procedures and policy.

Observation #15

The TxDOT training plan is currently silent on whether certain subjects and topics are mandatory or required for certain job responsibilities. The TxDOT staff told the team they would be developing a ''progressive training plan'' that will identify the range of training necessary for each job classification. District Environmental Coordinators, and particularly District managers who allocated training resources, indicated in interviews that they needed to know which training was required for various TxDOT job categories, to set budgeting priorities. The team recognized the important connection between getting District staff trained and a clear statement whether training was required for a certain job. Due to the connection potentially being tenuous, this may explain the inconsistency the team heard in interview responses to questions on training commitments from District managers. The team suggests that the progressive training plan clearly identify training required for each job classification.

Observation #16

From the perspective of the MOU, training planning and implementation is a partnership effort amongst TxDOT, FHWA, and other agencies. Training should be an ongoing task that follows an up-to-date and mid-to-long range training plan. The current training plan includes mostly TxDOT self-identified training needs and addresses those needs. The MOU (Part 12.2) allows for 3 months after the MOU is executed, to develop a training plan in consultation with FHWA and other agencies. The TxDOT has committed in the MOU to consider the recommendations of agencies in determining training needs, and to determine with FHWA, the required training in the training plan MOU (Part 12.2). The TxDOT considered and will address the specific comments from the U.S. Army Corps of Engineers in the current training plan. However, the team learned through interviews that individuals responsible for training planning were unaware of the coordination between TxDOT subject matter experts and other agencies related to training. It may be useful for the TxDOT training coordinator to be fully involved and aware of the range of coordination other TxDOT staff performs so that the training plan benefits from this coordination.

Next Steps

The FHWA provided this draft audit report to TxDOT for a 14-day review and comment period. The team has considered TxDOT comments in developing this draft audit report. As the next step, FHWA will publish a notice in the **Federal Register** to make it available to the public and for a 30-day comment period review [23 U.S.C. 327(g)]. No later than 60 days after the close of the comment period, FHWA will respond to all comments submitted in finalizing this draft audit report [pursuant to 23 U.S.C. 327(g)(B)]. Once finalized, the audit report will be published in the **Federal Register**.

[FR Doc. 2015–20733 Filed 8–20–15; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2015–0012]

Hours of Service of Drivers: Application for Exemption; American Trucking Associations, Inc.

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; grant of application for exemption.

SUMMARY: FMCSA announces its decision to grant motor carriers transporting security-sensitive hazardous materials (HM) requiring a security plan an exemption from the Federal hours-of-service (HOS) regulations that prohibit commercial motor vehicle (CMV) drivers from driving a CMV if more than 8 consecutive hours have passed since the driver's last off-duty or sleeper-berth period of 30 minutes or more. American Trucking Associations, Inc. (ATA) requested the exemption on behalf of all motor carriers that transport certain HM shipments requiring security plans under regulations of the Pipeline and Hazardous Materials Safety Administration (PHMSA). These plans normally require a driver to attend such cargo while the CMV is stopped, which is an on-duty activity under the HOS rules. Exempt drivers may now count their on-duty attendance of HM cargo toward the required 30-minute rest break requirement provided they perform no other on-duty activity. This exemption parallels § 395.1(q) of the Federal Motor Carrier Safety Regulations (FMCSRs) that allows drivers who are attending loads of certain explosives to count on-duty attendance time toward their rest break so long as they engage in no other on-duty activity.

DATES: The exemption is effective August 21, 2015 and expires on August 21, 2017.

FOR FURTHER INFORMATION CONTACT: Thomas L. Yager, Chief, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202–366–4325; Email: *MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from the FMCSRs. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide

the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reason for the grant or denial, and, if granted, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which exemption is granted. The notice must also specify the effective period of the exemption (up to 2 years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Driver Attendance and Rest Breaks

Some shipments of property by CMV require that the vehicle be attended at all times, such as shipments of explosives, weapons, or radioactive materials. Constant attendance of the CMV may be explicitly required by Federal or State law, or by the terms of the shipment contract. For example, Section 397.5 of the FMCSRs requires drivers transporting cargo classified as Division 1.1, 1.2, or 1.3 (explosive) materials to attend the cargo at all times.

On December 27, 2011, FMCSA published a final rule amending the HOS rules (76 FR 81134). The Agency added a new requirement that drivers obtain a rest break: ''After June 30, 2013, driving is not permitted if more than 8 hours have passed since the end of the driver's last off-duty or sleeper-berth period of at least 30 minutes.'' (§ 395.3(a)(3)(ii)). Thus, drivers must expand a fueling stop or other break to ensure that they go off duty (or into the sleeper berth) for at least 30 consecutive minutes to satisfy this requirement. The drivers must make an entry on their record of duty status (RODS) showing the off-duty time.

By definition, on-duty time includes all time ''. . . [p]erforming any other work in the capacity, employ, or service of, a motor carrier'' (§ 395.2). A driver attending a CMV is on duty. During the 2011 HOS rulemaking, motor carriers of hazardous materials identified the conflict between HM attendance under § 397.5 and the rest-break requirement. As a result, FMCSA included § 395.1(q) in the 2011 HOS amendments. This section permits drivers who are attending a motor vehicle transporting Division 1.1–1.3 explosives, but performing no other work, to log a period of at least 30 consecutive minutes of the time spent attending the CMV toward the break. The driver annotates his log to indicate when the § 395.1(q) break was taken. The time is on-duty time, and counts against the driver's maximum time on duty of 60 hours in 7 days (in some cases, 70 hours in 8 days).

Request for Exemption

Another Federal agency, PHMSA, requires motor carriers transporting materials requiring placarding under 49 CFR part 172, subpart F, or certain agents and toxins identified in § 172.800(b)(13) that do not require placarding, to develop special plans that account for personnel, cargo, and en route security (49 CFR 172.800–804). Most carriers include constant attendance on cargo in these security plans. Because attendance on a CMV is considered on-duty time under the HOS rules, drivers who are required by their carrier's HM security plan to attend the CMV at all times cannot go off duty to satisfy the HOS rest-break requirement.

ATA filed this exemption request on behalf of all motor carriers whose drivers transport HM loads subject to the PHMSA security plan requirement. ATA asserts that allowing these drivers to count up to 30 minutes of their attendance time as the required rest break if they perform no other on-duty activities during the break would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation. It asserts that attendance is unlikely to contribute to driver fatigue and that allowing these drivers to maintain their attendance of these loads provides better security than if the driver has to leave the vehicle to obtain 30 minutes off duty.

Public Comments

The FMCSA published a notice announcing and requesting public comment on ATA's exemption request on May 1, 2015 (80 FR 25004). Thirteen comments were submitted. Three individuals expressed concern that the exemption was only of value to large trucking firms and that the Agency should deny all applications for exemption. Advocates for Highway and Auto Safety thought the exemption was overly broad, permitting motor carriers engaged in qualifying HM shipments to use the exemption for their shipments of non-HM cargo. Several trade groups and two drivers favored the application as a necessary solution to a regulatory dilemma.

FMCSA Response

FMCSA has evaluated ATA's application for exemption and the public comments submitted. Opponents of the exemption did not address the regulatory dilemma described in the application for exemption and echoed by the comments of drivers and trade organizations supporting the exemption. The Agency finds the arguments in favor of the exemption persuasive. FMCSA believes it has designed terms and conditions for this exemption sufficient to relieve this dilemma while preventing its abuse. Motor carriers may only use this exemption when their drivers are actually transporting HM that requires placarding or includes a select agent or toxin identified in § 172.800(b)(13), and for which a security plan has been filed under §§ 172.800–804. If a driver is not transporting qualifying HM materials, he or she is not entitled to substitute attendance for the required off-duty break. Drivers operating under this exemption may count up to 30 minutes of their on-duty attendance time toward a required rest break, if they perform no other on-duty activities during the rest-break period.

It should be noted that there is no motive for a driver or carrier to claim this exemption when not entitled to it. A driver who is not required to constantly attend his or her vehicle must take the minimum 30-minute rest break as off-duty time, which does not count against the 7 or 8-day limit of 60 or 70 hours on-duty. A driver claiming this exemption unnecessarily would be required to take the same rest breaks, but would be on-duty and the time would count against the 60 or 70-hour limit.

FMCSA Decision

In consideration of the above, FMCSA has determined that it is appropriate to provide a two-year exemption from the 30-minute break requirement for carriers whose drivers transport HM loads requiring placarding under 49 CFR part 172, subpart F, or select agents and toxins identified in § 172.800(b)(13) that do not require placarding, and who have filed security plans requiring constant attendance of HM in accordance with §§ 172.800–804. Drivers must annotate their RODS to show the on-duty time claimed as a rest break to satisfy a security plan requiring attendance of HM loads.

Under these terms and conditions described below, the application for exemption is likely to achieve a level of

safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. Motor carriers utilizing the exemption will be required to report any accidents, as defined in 49 CFR 390.5, to FMCSA. The exemption is eligible for renewal at the end of the two-year period.

Terms and Conditions of the Exemption

Extent of the Exemption

This exemption is limited to drivers transporting HM loads requiring placarding under 49 CFR part 172, subpart F, or select agents and toxins identified in § 172.800(b)(13) that do not require placarding, and who have filed security plans requiring constant attendance of HM in accordance with §§ 172.800–804. This exemption is limited to motor carriers that have a ''satisfactory'' safety rating or are ''unrated''; motor carriers with ''conditional'' or ''unsatisfactory'' safety ratings are prohibited from utilizing this exemption. Drivers must have a copy of the exemption document in their possession while operating under the terms of the exemption and must present it to law enforcement officials upon request.

Accident Reporting

Motor carriers must notify FMCSA by email addressed to *MCPSD@DOT.GOV* with 5 business days of any accident (as defined in 49 CFR 390.5) that occurs while its driver is operating under the terms of this exemption. The notification must include:

a. Identifier of the Exemption: ''HM''

b. Name of operating carrier and USDOT number,

c. Date of the accident,

d. City or town, and State, in which the accident occurred, or closest to the accident scene,

e. Driver's name and license number,

f. Name of co-driver, if any, and license number

g. Vehicle number and state license number,

h. Number of individuals suffering physical injury,

i. Number of fatalities,

j. The police-reported cause of the accident,

k. Whether the driver was cited for violation of any traffic laws, motor carrier safety regulations, and

l. The total driving time and total on-duty time prior to the accident.

Safety Oversight of Carriers Operating Under the Exemption

FMCSA expects each motor carrier operating under the terms and conditions of this exemption to maintain its safety record. However, should safety deteriorate, FMCSA will, consistent with the statutory requirements of 49 U.S.C. 31315, take all steps necessary to protect the public interest. Authorization of the exemption is discretionary, and FMCSA will immediately revoke the exemption of any motor carrier or driver for failure to comply with the terms and conditions of the exemption.

Preemption

During the period the exemption is in effect, no State may enforce any law or regulation that conflicts with or is inconsistent with this exemption with respect to a person or entity operating under the exemption [49 U.S.C. 31315(d)].

Issued on: August 6, 2015.

T.F. Scott Darling, III,

Chief Counsel.

[FR Doc. 2015–20686 Filed 8–20–15; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2015–0268]

Agency Information Collection Activities; Revision of a Currently-Approved Information Collection Request: Motor Carrier Identification Report

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for information.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for review and approval and invites public comment. The FMCSA requests approval to revise an ICR entitled, ''Motor Carrier Identification Report,'' which is used to identify FMCSA regulated entities, help prioritize the agency's activities, aid in assessing the safety outcomes of those activities, and for statistical purposes. This ICR is being revised due to a Final Rule titled, ''Unified Registration System,'' (78 FR 52608) dated August 23, 2013 which will require regulated entities to file for registration via a new online Form MCSA–1 and eliminate the Forms MCS–150B and MCS–150C contained in the ICR. The Form MCS–150 will be retained for use by the small number of Mexico-domiciled motor carriers that seek authority to operate beyond the United States municipalities on the United States-Mexico border and their commercial zones because they are not included within the scope of the Unified Registration Final Rule.

DATES: We must receive your comments on or before *October 20, 2015.*

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Docket Number FMCSA–2015–0268 using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number. For detailed instructions on submitting comments and additional information on the exemption process, see the Public Participation heading below. 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.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov,* and follow the online instructions for accessing the dockets, or go to the street address listed above.

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 for the Federal Docket Management System published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdfE8-794.pdf.*

Public Participation: The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the ''help'' section of the Federal eRulemaking Portal Web site. If you

want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online. Comments received after the comment closing date will be included in the docket and will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Secrist, Office of Registration and Safety Information, Department of Transportation, Federal Motor Carrier Safety Administration, West Building 6th Floor, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Telephone: 202–385–2367; email *jeff.secrist@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background: Title 49, United States Code Section 504(b)(2) provides the Secretary of Transportation (Secretary) with authority to require carriers, lessors, associations, or classes of these entities to file annual, periodic, and special reports containing answers to questions asked by the Secretary. The Secretary may also prescribe the form of records required to be prepared or compiled and the time period during which records must be preserved (See section 504(b) (1) and (d)). The FMCSA will use this data to administer its safety programs by establishing a database of entities that are subject to its regulations. This database necessitates that these entities notify the FMCSA of their existence. For example, under 49 CFR 390.19(a), FMCSA requires all motor carriers beginning operations to file a Form MCS–150 entitled, Motor Carrier Identification Report. This report is filed by all motor carriers conducting operations in interstate or international commerce before beginning operations. It asks the respondent to provide the name of the business entity that owns and controls the motor carrier operation, address and telephone of principal place of business, assigned identification number(s), type of operation, types of cargo usually transported, number of vehicles owned, term leased and trip leased, driver information, and certification statement signed by an individual authorized to sign documents on behalf of the business entity.

The Department of Transportation and Related Agencies Appropriations Act for fiscal year 2002, Public Law 107–87, 115 Stat. 833, dated December 18, 2001 (see Attachment B), directed the agency to issue an interim final rule (IFR) to ensure that new entrant motor carriers are knowledgeable about the Federal Motor Carrier Safety Regulations (FMCSRs) and standards. On May 13, 2002, the agency published an IFR entitled, ''New Entrant Safety Assurance Process'' (67 FR 31978).

On August, 23, 2013, the agency published a Final Rule titled, ''Unified Registration System,'' (URS) which requires interstate motor carriers, freight forwarders, brokers, intermodal equipment providers, hazardous materials safety permit applicants, and cargo tank facilities to file for registration via a new online Form MCSA–1. The Form MCSA–1 will replace the existing Forms MCS–150B and MCS–150C in this ICR. However, the Form MCS–150 will be retained for the small number of Mexico-domiciled carriers that seek authority to operate beyond the United States municipalities on the United States-Mexico border and their commercial zones because they are not included within the scope of the URS Final Rule. This revised ICR captures the burden on the Mexico-domiciled carriers that will continue to use Form MCS–150 after implementation of the URS Final Rule effective October, 23 2015.

Title: Motor Carrier Identification Report.

OMB Control Number: 2126–0013.

Type of Request: Revision of a currently-approved information collection.

Respondents: Mexico domiciled motor carriers and commercial motor vehicle drivers.

Estimated Number of Respondents: 15,291.

Estimated Time per Response: 20 minutes for new filings and 7.5 minutes for biennial updates and changes to complete the Form MCS–150.

Expiration Date: December 31, 2015.

Frequency of Response: On occasion and biennially.

Estimated Total Annual Burden: 386 hours [(396 new filings × 20 minutes ÷ 60 minutes) + (2,030 biennial updates and changes × 7.5 minutes ÷ 60 minutes)].

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the information collected. The Agency will summarize or include your comments in the request for OMB's clearance of this ICR.

Issued under the authority of 49 CFR 1.87 on: August 14, 2015.

G. Kelly Regal,

Associate Administrator for Office of Research and Information Technology.

[FR Doc. 2015–20683 Filed 8–20–15; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2011–0124; FMCSA–2011–0140]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 9 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective September 7, 2015. Comments must be received on or before September 21, 2015.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: Docket No. [Docket No. FMCSA–2011–0124; FMCSA–2011–0140], using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the

docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

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

FOR FURTHER INFORMATION CONTACT: Charles A. Horan, III, Director, Carrier, Driver and Vehicle Safety Standards, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

II. Exemption Decision

This notice addresses 9 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 9 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Charles E. Carter (MI), James A. Ellis (NY), Michael R. Gartin (OH), Dale L. Giardine (PA), Richard A. McGuire (KY), Dennis L. Morgan (WA), Peter M. Shirk (PA), Thomas C. Stromwall (MN), Joseph A. Wells (IL).

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

III. Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 9 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (76 FR 34136; 76 FR 37169; 76 FR 50318; 76 FR 55463; 78 FR 78477). Each of these 9 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements.

These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

IV. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2011–0124; FMCSA–2011–0140), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, got to *http://www.regulations.gov* and put the docket number, ''FMCSA–2011–0124; FMCSA–2011–0140'' in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on ''Comment Now!'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period and may change this notice based on your comments.

Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* and in the search box insert the docket number, ''FMCSA–2011–0124; FMCSA–2011–0140'' in the ''Keyword'' box and click ''Search.'' Next, click ''Open Docket

Folder'' button choose the document listed to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Issued on: August 3, 2015.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2015–20682 Filed 8–20–15; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2008–0231; FMCSA–2001–9561; FMCSA–2005–21254; FMCSA–2011–0024; FMCSA–2011–0092; FMCSA–2011–0140; FMCSA–2011–0141; FMCSA–2013–0025; FMCSA–2013–0026; FMCSA–2013–0027; FMCSA–2013–0029; FMCSA–2013–0030]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 20 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective September 6, 2015. Comments must be received on or before September 21, 2015.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: Docket No. [Docket No. FMCSA–2008–0231; FMCSA–2001–9561; FMCSA–2005–21254; FMCSA–2011–0024; FMCSA–2011–0092; FMCSA–2011–0140; FMCSA–2011–0141; FMCSA–2013–0025; FMCSA–2013–0026; FMCSA–2013–0027; FMCSA–2013–0029; FMCSA–2013–0030], using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

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

FOR FURTHER INFORMATION CONTACT: Charles A. Horan, III, Director, Carrier, Driver and Vehicle Safety Standards, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

II. Exemption Decision

This notice addresses 20 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 20 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Rickie L. Boone (NC), Juan R. Cano (TX), Daniel G. Cohen (VT), Kenneth D. Daniels (PA), Donnie H. Eagle (WV), Saul E. Fierro (AZ), Robert Fox (NY), Steven G. Garrett (CA), Eric M. Grayson (KY), Michael A. Kelly (TX), Michael G. McGee (CA), Dionicio Mendoza (TX), Brian P. Millard (SC), James A. Parker (PA), Nathan Pettis (FL), Louis A. Requena (NY), Thomas L. Swatley (TN), Lee T. Taylor (FL), Michael J. Thane (OH), Paul B. Williams (NY).

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

III. Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 20 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (66 FR 30502; 66 FR 41654; 68 FR 44837; 70 FR 30999; 70 FR 41811; 70 FR 46567; 72 FR 40359; 72 FR 40362; 73 FR 46973; 73 FR 54888; 74 FR 34074; 74 FR 34395; 76 FR 17481; 76 FR 25766; 76 FR 28125; 76 FR 29026; 76 FR 37169; 76 FR 37885; 76 FR 40445; 76 FR 44652; 76 FR 44653; 76 FR 50318; 76 FR 53710; 78 FR 20376; 78 FR 22598; 78 FR 24300; 78 FR 24798; 78 FR 30954; 78 FR 34141; 78 FR 34143; 78 FR 37270; 78 FR 37274; 78 FR 41975; 78 FR 46407; 78 FR 52602; 78 FR 56986; 78 FR 56993; 79 FR 4531). Each of these 20 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements.

These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

IV. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2008–0231; FMCSA–2001–9561; FMCSA–2005–21254; FMCSA–2011–0024; FMCSA–2011–0092; FMCSA–2011–0140; FMCSA–2011–0141; FMCSA–2013–0025; FMCSA–2013–0026; FMCSA–2013–0027; FMCSA–2013–0029; FMCSA–2013–0030), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and put the docket number, ''FMCSA–2008–0231; FMCSA–2001–9561; FMCSA–2005–21254; FMCSA–2011–0024; FMCSA–2011–0092; FMCSA–2011–0140; FMCSA–2011–0141; FMCSA–2013–0025; FMCSA–2013–0026; FMCSA–2013–0027; FMCSA–2013–0029; FMCSA–2013–0030'' in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on ''Comment Now!'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period and may change this notice based on your comments.

Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* and in the search box insert the docket number, ''FMCSA–2008–0231; FMCSA–2001–9561; FMCSA–2005–21254; FMCSA–2011–0024; FMCSA–2011–0092; FMCSA–2011–0140; FMCSA–2011–0141; FMCSA–2013–0025; FMCSA–2013–0026; FMCSA–2013–0027; FMCSA–2013–0029; FMCSA–2013–0030'' in the ''Keyword'' box and click ''Search.'' Next, click ''Open Docket Folder'' button choose the document listed to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Issued on: August 3, 2015.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2015–20691 Filed 8–20–15; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2008–0355; FMCSA–2010–0203; FMCSA–2011–0389; FMCSA–2012–0050; FMCSA–2012–0094; FMCSA–2012–0294; FMCSA–2013–0106]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the Epilepsy and Seizure Disorders requirement in the Federal Motor Carrier Safety Regulations for 29 individuals. FMCSA has statutory authority to exempt individuals from the Epilepsy and Seizure Disorders requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective July 12, 2015. Comments must be received on or before September 21, 2015.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: Docket No. [Docket No. [FMCSA–2008–0355; FMCSA–2010–0203; FMCSA–2011–0389; FMCSA–2012–0050; FMCSA–2012–0094; FMCSA–2012–0294; FMCSA–2013–0106], using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a

comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act

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

FOR FURTHER INFORMATION CONTACT: Charles Horan III, Director, Carrier & Vehicles Safety Standards, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the Epilepsy and Seizure Disorders requirements in 49 CFR 391.41(b)(8), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 29 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Patrick N. Andreasen (PA), Prince Austin, Jr. (OH), Samuel D. Beverly, Jr. (VA), John W. Boerth (WI), Michael C. Breitbach (IA), Todd W. Brock (CO), Craig R. Bugella ((WI), Frank J. Cekovic (PA), Joseph D'Angelo (NY), Todd A. Davis (WI), Steven Gordon (MT), James R. Gorniak (WI), Brian R. Hanson (OR), Eric A. Hilmer (WI), Kevin A. Jandreau (ME), David Kietzman (WI), Jason Kirkham (WI), Joseph A. Kogut (NY), William P. Lago (MA), Michael K. Lail (NC), Robert J. Mooney (OH), Jeffrey P. Moore (NY), Diana J. Mugford (VT), Brian J. Porter (PA), Michael Righter (PA), Douglas S. Slagel (OH), Robert C. Spencer (FL), Brian J. Wiggins (ID), Timothy M. Zahratka (MN).

These exemptions are extended subject to the driver maintaining a stable treatment regimen and remaining seizure-free during the 2-year exemption period. The exempted drivers must submit a physician statement from their treating physician attesting to the stability of treatment and that the driver has remained seizure-free. The driver must undergo an annual medical examination by a medical examiner, as defined by 49 CFR 390.5, following the FCMSA's regulations for the physical qualifications for CMV drivers. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 29 applicants has satisfied the entry conditions for obtaining an exemption from the Epilepsy and Seizure Disorder requirements (73 FR 75167; 75 FR 38599; 77 FR 537; 77 FR 12360; 78 FR 3077; 78 FR 3079; 78 FR 24301). Each of these 29 applicants has requested renewal of the exemption and has submitted evidence showing that they have maintained a stable treatment regimen and remained seizure-free during the 2-year exemption period. The exempted drivers must submit a physician statement from their treating physicians attesting to the stability of treatment and that the driver has remained seizure-free. The driver must undergo an annual medical examination by a medical examiner, as defined by 49 CFR 390.5, following the FCMSA's regulations for the physical qualifications for CMV drivers. In addition to evaluating the medical status of each applicant CDLIS and MCMIS were searched for crash and violation data on the 29 applicants. For non-CDL holders, the Agency reviewed the driving records from the State licensing agency. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by September 21, 2015.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 29 individuals from the Epilepsy and Seizure Disorders requirement in 49 CFR 391.41(b)(8). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated the medical condition of each applicant for an exemption from the Epilepsy and Seizure requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket numbers FMCSA–2008–0355; FMCSA–2010–0203; FMCSA–2011–0389; FMCSA–2012–0050; FMCSA–2012–0094; FMCSA–2012–0294; FMCSA–2013–0106 and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Viewing Comments and Documents

To view comments, as well as any documents mentioned in this notice, or to submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2008–0355; FMCSA–2010–0203; FMCSA–2011–0389; FMCSA–2012–0050; FMCSA–2012–0094; FMCSA–2012–0294; FMCSA–2013–0106 and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to this document.

Issued on: August 3, 2015.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2015–20687 Filed 8–20–15; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2015–0011]

Notice of a Buy America Waiver for Replacement Gondola Components

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of a Buy America waiver.

SUMMARY: The Federal Transit Administration (FTA) received a Buy America waiver request from the Colorado Department of Transportation on behalf of the Town of Mountain Village for replacement parts for a gondola rehabilitation project. A non-availability waiver is needed because Mountain Village intends to rehabilitate the gondola system with FTA funding and the replacement parts do not comply with Buy America requirements. In accordance with 49 U.S.C. 5323(j)(3)(A), FTA published a notice of the waiver request and sought public comment in deciding whether to grant the request. Having received no comments opposing the waiver, FTA is hereby granting a non-availability waiver for the replacement gondola components to be procured by Mountain Village for the gondola refurbishment projects described herein.

DATES: This waiver is effective immediately.

FOR FURTHER INFORMATION CONTACT: Richard Wong, FTA Attorney-Advisor, at (202) 366–0675 or *Richard.Wong@dot.gov.*

SUPPLEMENTARY INFORMATION: The purpose of this notice is to announce that FTA is granting a non-availability waiver for Mountain Village's procurement of replacement components for its gondolas used to provide public transportation service.

With certain exceptions, FTA's Buy America requirements prevent FTA from obligating an amount that may be appropriated to carry out its program for a project unless ''the steel, iron, and manufactured goods used in the project are produced in the United States.'' 49 U.S.C. 5323(j)(1). A manufactured product is considered produced in the United States if: (1) All of the manufacturing processes for the product take place in the United States; and (2) all of the components of the product are of U.S. origin. A component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents. 49 CFR 661.5(d). If, however, FTA determines that ''the steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality,'' then FTA may issue a waiver (non-availability waiver). 49 U.S.C. 5323(j)(2)(B); 49 CFR 661.7(c).

The Town of Mountain Village provides free public transportation via gondola (also known as a tramway) between Mountain Village and the Town of Telluride. The gondola operates continuous fixed route service 17 hours per day, 7 days per week, 280 or more days per year, serving over 2,000,000 passengers per year. According to Mountain Village, the existing low-speed conveyor components (bearings, pulleys, tires and other related components) and gondola grip components (coil springs, movable jaws, fixed jaws, bearings, bolts, bushings, wheels and other related components) are nearing the end of their useful service lives and are showing signs of wear and fatigue. Without periodic capital equipment replacement/rebuild, the likelihood of mechanical downtime increases significantly, equating to prolonged service outages for commuters. Mountain Village also needs to refurbish the 59 gondola cabins due to wear and tear. Mountain Village intends to replace these gondola components over several phases during the coming years. Specifically, procurement of the low-speed conveyor components and the grips will be procured in two phases, one in 2015 and one in 2016; parts for the cabin refurbishment are anticipated to be procured over a six-year period. The non-availability waiver is effective for all phases of these projects, but expires upon completion of these projects.

Mountain Village asserted that there are no companies that manufacture these gondola components in the United States and that each of the gondola components to be procured is available only from a single source—Dopplemayer and CWA, the original equipment manufacturers. The Colorado Passenger Tramway Safety Board (CPTSB), the state agency responsible for regulating the safety of aerial tramways within the State of Colorado, agreed and noted that because gondolas are specialized and the market is limited, there are no aftermarket manufacturers for these gondola components. The CPTSB concluded that, for these parts, there are no alternatives to the original equipment manufacturers, which do not manufacture the replacement components in the United States. Although there is a new U.S. manufacturer for tramways in the

United States, it does not produce detachable tramways like the one used by Mountain Village. Additionally, parts for the remainder of the tramway are of a different design and are not interchangeable with those used on other gondola systems.

On Wednesday, July 22, 2015, and in accordance with 49 U.S.C. 5323(j)(3)(A), FTA published a notice in the **Federal Register** announcing the Colorado Department of Transportation Buy America waiver request made on behalf of Mountain Village (80 FR 43552), seeking comment from all interested parties, including potential vendors and suppliers. The comment period closed on August 5, 2015, and no comments were received.

Based on the representations from the Colorado Department of Transportation and the Colorado Passenger Tramway Safety Board, and the lack of any comments opposing the waiver, FTA is granting a non-availability waiver for replacement gondola components, limited to the parts procured by Mountain Village for the gondola refurbishment projects described above.

Issued on August 17, 2015.

Dana C. Nifosi,

Acting Chief Counsel.

[FR Doc. 2015–20662 Filed 8–20–15; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2015–0077]

Decision That Certain Nonconforming Motor Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Grant of Petitions.

SUMMARY: This document announces decisions by NHTSA that certain motor vehicles not originally manufactured to comply with all applicable Federal Motor Vehicle Safety Standards (FMVSS) are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for sale in the United States and certified by their manufacturers as complying with the safety standards, and they are capable of being readily altered to conform to the standards or because they have safety features that comply with, or are capable of being altered to comply with, all applicable FMVSS.

DATES: These decisions became effective on the dates specified in Annex A.

ADDRESSES: For further information contact Mr. George Stevens, Office of Vehicle Safety Compliance, NHTSA (202–366–5308).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and/or sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable FMVSS based on destructive test data or such other evidence as NHTSA decides to be adequate.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

NHTSA received petitions from registered importers to decide whether the vehicles listed in Annex A to this notice are eligible for importation into the United States. To afford an opportunity for public comment, NHTSA published notice of these petitions as specified in Annex A. The reader is referred to those notices for a thorough description of the petitions.

Comments: No substantive comments were received in response to the petitions identified in Appendix A.

NHTSA Decision: Accordingly, on the basis of the foregoing, NHTSA hereby decides that each motor vehicle listed in Annex A to this notice, which was not originally manufactured to comply with all applicable FMVSS, is either substantially similar to a motor vehicle manufactured for importation into and/or sale in the United States, and certified under 49 U.S.C. 30115, as specified in Annex A, and is capable of being readily altered to conform to all applicable FMVSS or has safety features that comply with, or are capable of being altered to comply with, all applicable Federal Motor Vehicle Safety Standards.

Vehicle Eligibility Number for Subject Vehicles: The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. Vehicle eligibility numbers assigned to vehicles admissible under this decision are specified in Annex A.

Authority: 49 U.S.C. 30141(a)(1)(A), (a)(1)(B) and (b)(1); 49 CFR 593.7; delegations of authority at 49 CFR 1.95 and 501.8.

Jeffrey M. Giuseppe,

Director, Office of Vehicle Safety Compliance.

ANNEX A—Nonconforming Motor Vehicles Decided To Be Eligible for Importation

1. Docket No. NHTSA–2014–0048

Nonconforming Vehicles: 2011–2014 Harley-Davidson FX, FL, XL, and VR Series Motorcycles
Substantially Similar U.S. Certified Vehicles: 2011–2014 Harley-Davidson FX, FL, XL, and VR Series Motorcycles
Notice of Petition Published at: 79 FR 26804 (May 9, 2014)
Vehicle Eligibility Number: VSP–567 (effective date June 24, 2014)

2. Docket No. NHTSA–2014–0098

Nonconforming Vehicles: 2002 BMW Z3 Passenger Cars
Substantially Similar U.S. Certified Vehicles: 2002 BMW Z3 Passenger Cars
Notice of Petition Published at: 79 FR 56851 (September 23, 2014)
Vehicle Eligibility Number: VSP–568 (effective date November 5, 2014)

3. Docket No. NHTSA–2014–0120

Nonconforming Vehicles: 2008 Cadillac Escalade Multipurpose Passenger Vehicles
Substantially Similar U.S. Certified Vehicles: 2008 Cadillac Escalade Multipurpose Passenger Vehicles
Notice of Petition Published at: 80 FR 36404 (June 24, 2015)
Vehicle Eligibility Number: VSP–572 (effective date July 31, 2015)

4. Docket No. NHTSA–2014–0097

Nonconforming Vehicles: 1991 BMW M3 Convertible Passenger Cars

Because there are no substantially similar U.S.–certified version 1991 BMW M3 Convertible Passenger Cars the petitioner sought import eligibility under 49 U.S.C. 30141(a)(1)(B).
Notice of Petition Published at: 80 FR 30761 (May 29, 2015)
Vehicle Eligibility Number: VCP–60 (effective date August 6, 2015)

[FR Doc. 2015–20667 Filed 8–20–15; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 603 (Sub-No. 4X)]

V and S Railway, LLC—Abandonment Exemption—in Pueblo, Crowley, and Kiowa Counties, Colo.

V and S Railway, LLC (V&S) has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon a line of railroad extending between milepost 747.5 near Towner and milepost 869.4 near NA Junction, a distance of 121.9 miles in Pueblo, Crowley, and Kiowa Counties, Colo. (the Towner Line). The Towner Line traverses United States Postal Service Zip Codes 81022, 80125, 81062, 81033, 81063, 81076, 81021, 81045, 81036, and 81071.

V&S has certified that: (1) No local traffic has moved over the Towner Line for at least two years; (2) any overhead traffic on the Towner Line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the Towner Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Towner Line is either pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of a complainant within the two-year period; [1] and (4) the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to government agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 20, 2015, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and interim trail use/rail banking requests under 49 CFR 1152.29 must be filed by August 31, 2015. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 10, 2015, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to applicant's representative: Fritz R. Kahn, Fritz R. Kahn, P.C., 1919 M Street NW., 7th Floor, Washington, DC 20036.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

V&S has filed a combined environmental and historic report that addresses the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by August 28, 2015. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), V&S shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Towner Line. If consummation has not been effected by filing of a notice of consummation by August 21, 2016, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: August 18, 2015.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2015–20718 Filed 8–20–15; 8:45 am]

BILLING CODE 4915–01–P

[1] In Docket No. NOR 42140, the Colorado Wheat Administrative Committee, the Colorado Association of Wheat Growers, the Colorado Wheat Research Foundation, and KCVN, LLC (collectively, the Colorado Interests) filed a complaint alleging that V&S has violated 49 U.S.C. 11101 and 10903 by removing certain track and related assets from a segment of the Towner Line over which the Board had previously permitted V&S to discontinue service. *See V&S Ry.—Discontinuance of Serv. Exemption—in Pueblo, Crowley, & Kiowa Cntys., Colo.*, AB 603 (Sub-No. 2X) (STB served June 28, 2012). This segment of the Towner Line, known as the Western Segment, extends between milepost 808.3 near Haswell, Colo., and milepost 868.5. The Board granted the joint petition of V&S and the Colorado Interests asking that the agency stay that complaint proceeding so that V&S could file for the abandonment exemption it seeks here. *See Colo. Wheat Admin. Comm.* v. *V&S Ry.*, NOR 42140 (STB served July 17, 2015). Based on these facts, the certification is accurate.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines*, 5 I.C.C. 2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which is currently set at $1,600. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35938]

New England Central Railroad, Inc.—Acquisition and Operation Exemption—Claremont Concord Railroad Corp.

New England Central Railroad, Inc. (NECR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire from Claremont Concord Railroad Corp. (CCRR) its rights in a line of railroad between milepost 0.29 and milepost 2.1 in Claremont, Sullivan County, N.H., and its rights in a line of railroad between milepost 141.00 +/− and milepost 142.78+/− [1] in West Lebanon, Graton County, N.H.[2]

The transaction is expected to be consummated on or after September 8, 2015.

[1] CCRR has recently obtained authority to discontinue service over 0.97 miles of rail line between approximately milepost 140 and milepost 141. *See Claremont Concord R.R.—Discontinuance of Serv. Exemption—in Grafton Cnty., N.H.,* AB 1120 (Sub-No. 1X) et al. (STB served Feb. 12, 2015). NECR is not acquiring any rights with respect to the portion of the rail line over which service is being discontinued.

[2] CCRR owns the line in Claremont and leases the line in West Lebanon from the State of New Hampshire's Department of Transportation.

NECR has certified that the acquisition does not impose or include an interchange commitment.

NECR has certified that this transaction will not result in NECR's becoming a Class II or Class I rail carrier. Because NECR's projected annual revenues will exceed $5 million, NECR certified to the Board on July 8, 2015, that it has complied with the requirements of 49 CFR 1150.42(e) by providing notice to employees on the affected lines.[3] Under 1150.42(e), this exemption cannot become effective until 60 days after the requirements of that section have been satisfied (here, September 6, 2015).

If the 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 for stay must be filed no later than August 28, 2015 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35938 must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Eric M. Hocky, Clark Hill PLC, One Commerce Square, 2005 Market Street, Suite 1000, Philadelphia, PA 19103.

Board decisions and notices are available on our Web site at *WWW.STB.DOT.GOV.*

Decided: August 18, 2015.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2015–20675 Filed 8–20–15; 8:45 am]

BILLING CODE 4915–01–P

[3] In its letter to the Board, NECR stated that, because the employees of CCRR are not represented by any labor unions, it did not serve the national offices of any unions.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[OCC Charter Number 706624]

New Buffalo Savings Bank, New Buffalo, Michigan; Approval of Conversion Application

Notice is hereby given that on August 12, 2015, the Office of the Comptroller of the Currency (OCC) approved the application of New Buffalo Savings Bank, New Buffalo, Michigan, to convert to the stock form of organization. Copies of the application are available for inspection on the OCC Web site at the FOIA Electronic Reading Room *https://foia-pal.occ.gov/palMain.aspx.* If you have any questions, please call OCC Licensing Activities at (202) 649–6260.

Dated: August 12, 2015.

By the Office of the Comptroller of the Currency.

Stephen A. Lybarger,

Deputy Comptroller for Licensing.

[FR Doc. 2015–20761 Filed 8–20–15; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket ID: OCC–2015–0018]

Minority Depository Institutions Advisory Committee

AGENCY: Office of the Comptroller of the Currency, Department of the Treasury.

ACTION: Notice.

SUMMARY: The Office of the Comptroller of the Currency (OCC) announces a meeting of the Minority Depository Institutions Advisory Committee (MDIAC).

DATES: The OCC MDIAC will hold a public meeting on Tuesday, September 15, 2015, beginning at 8:30 a.m. Eastern Daylight Time (EDT).

ADDRESSES: The OCC will hold the September 15, 2015 meeting of the MDIAC at the Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

FOR FURTHER INFORMATION CONTACT: Beverly Cole, Designated Federal Officer and Senior Advisor to the Senior Deputy Comptroller for Midsize and Community Bank Supervision, (202) 649–5420, Office of the Comptroller of the Currency, Washington, DC, 20219.

SUPPLEMENTARY INFORMATION: By this notice, the OCC is announcing that the MDIAC will convene a meeting at 8:30 a.m. EDT on Tuesday, September 15, 2015, at the Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219. Agenda items will include current topics of interest to the industry. The purpose of the meeting is for the MDIAC to advise the OCC on steps the agency may be able to take to ensure the continued health and viability of minority depository institutions and other issues of concern to minority depository institutions. Members of the public may submit written statements to the MDIAC by any one of the following methods:

- *Email to: MDIAC@OCC.treas.gov*
- *Mail to:* Beverly Cole, Designated Federal Officer, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

The OCC must receive written statements no later than Tuesday, September 8, 2015. Members of the public who plan to attend the meeting should contact the OCC by 5:00 p.m. EDT on Tuesday, September 8, 2015 to inform the OCC of their desire to attend the meeting and to provide information that will be required to facilitate entry into the meeting. Members of the public may contact the OCC via email at *MDIAC@OCC.treas.gov* or by telephone at (202) 649–5420. Attendees should provide their full name, email address, and organization, if any. For security reasons, attendees will be subject to security screening procedures and must present a valid government issued identification to enter the building. Members of the public who are deaf or hard of hearing should call (202) 649–5597 (TTY) at least five days before the meeting to arrange auxiliary aids such as sign language interpretation for this meeting.

Dated: August 13, 2015.

Thomas J. Curry,

Comptroller of the Currency.

[FR Doc. 2015–20727 Filed 8–20–15; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0128]

Agency Information Collection (Notice of Lapse—Government Life Insurance/ Application for Reinstatement (29–389) and Notice of Past Due Payment/ Application for Reinstatement (29–389–1)) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 21, 2015.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0094'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 632–7492 or email *crystal.rennie@va.gov.* Please refer to ''OMB Control No. 2900–0094.''

SUPPLEMENTARY INFORMATION:

Title: Notice of Lapse—Government Life Insurance/Application for Reinstatement (29–389) and Notice of Past Due Payment/Application for Reinstatement (29–389–1).

OMB Control Number: 2900–0128.

Type of Review: Revision of a currently approved collection.

Abstract: These forms are used by an insured to reinstate a lapsed policy.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 80 FR 7701 on February 11, 2015.

Affected Public: Individuals or households.

Estimated Annual Burden: 4,281 hours.

Estimated Average Burden Per Respondent: 11 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 23,352.

By direction of the Secretary.

Kathleen M. Manwell,

Program Analyst, VA Privacy Service, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2015–20693 Filed 8–20–15; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 80 Friday,

No. 162 August 21, 2015

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 226

Endangered and Threatened Species: Final Rulemaking To Revise Critical Habitat for Hawaiian Monk Seals; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 110207102–5657–03]

RIN 0648–BA81

Endangered and Threatened Species: Final Rulemaking To Revise Critical Habitat for Hawaiian Monk Seals

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

ACTION: Final rule.

SUMMARY: We, the National Marine Fisheries Service (NMFS), issue a final rule to revise the critical habitat for the Hawaiian monk seal (*Neomonachus schauinslandi*) pursuant to the Endangered Species Act. Specific areas for designation include sixteen occupied areas within the range of the species: ten areas in the Northwestern Hawaiian Islands (NWHI) and six in the main Hawaiian Islands (MHI). These areas contain one or a combination of habitat types: Preferred pupping and nursing areas, significant haul-out areas, and/or marine foraging areas, that will support conservation for the species. Specific areas in the NWHI include all beach areas, sand spits and islets, including all beach crest vegetation to its deepest extent inland, lagoon waters, inner reef waters, and including marine habitat through the water's edge, including the seafloor and all subsurface waters and marine habitat within 10 meters (m) of the seafloor, out to the 200-m depth contour line around the following 10 areas: Kure Atoll, Midway Islands, Pearl and Hermes Reef, Lisianski Island, Laysan Island, Maro Reef, Gardner Pinnacles, French Frigate Shoals, Necker Island, and Nihoa Island. Specific areas in the MHI include marine habitat from the 200-m depth contour line, including the seafloor and all subsurface waters and marine habitat within 10 m of the seafloor, through the water's edge 5 m into the terrestrial environment from the shoreline between identified boundary points on the islands of: Kaula, Niihau, Kauai, Oahu, Maui Nui (including Kahoolawe, Lanai, Maui, and Molokai), and Hawaii. In areas where critical habitat does not extend inland, the designation ends at a line that marks mean lower low water. Some terrestrial areas in existence prior to the effective date of the rule within the specific areas lack the essential features of Hawaiian monk seal critical habitat because these areas are inaccessible to seals for hauling out (such as cliffs) or lack the natural areas necessary to support monk seal conservation (such as hardened harbors, shorelines or buildings) and therefore do not meet the definition of critical habitat and are not included in the designation. In developing this final rule we considered public and peer review comments, as well as economic impacts and impacts to national security. We have excluded four areas because the national security benefits of exclusion outweigh the benefits of inclusion, and exclusion will not result in extinction of the species. Additionally several areas are precluded from designation under section 4(a)(3) of the ESA because they are managed under Integrated Natural Resource Management Plans that we have found provide a benefit to Hawaiian monk seals.

DATES: This final rule becomes effective September 21, 2015.

ADDRESSES: The final rule, maps, and other supporting documents (Economic Report, Endangered Species Act (ESA) Section 4(b)(2) Report, and Biological Report) can be found on the NMFS Pacific Island Region's Web site at *http://www.fpir.noaa.gov/PRD/prd_critical_habitat.html.*

FOR FURTHER INFORMATION CONTACT: Jean Higgins, NMFS, Pacific Islands Regional Office, (808) 725–5151; Susan Pultz, NMFS, Pacific Islands Regional Office, (808) 725–5150; or Dwayne Meadows, NMFS, Office of Protected Resources (301) 427–8403.

SUPPLEMENTARY INFORMATION:

Background

The Hawaiian monk seal (*Neomonachus schauinslandi*) was listed as endangered throughout its range under the ESA in 1976 (41 FR 51611; November 23, 1976). In 1986, critical habitat for the Hawaiian monk seal was designated at all beach areas, sand spits and islets, including all beach crest vegetation to its deepest extent inland, lagoon waters, inner reef waters, and ocean waters out to a depth of 10 fathoms (18.3 m) around Kure Atoll, Midway Islands (except Sand Island), Pearl and Hermes Reef, Lisianski Island, Laysan Island, Gardner Pinnacles, French Frigate Shoals, Necker Island, and Nihoa Island in the NWHI (51 FR 16047; April 30, 1986). In 1988, critical habitat was expanded to include Maro Reef and waters around previously designated areas out to the 20 fathom (36.6 m) isobath (53 FR 18988; May 26, 1988).

On July 9, 2008, we received a petition dated July 2, 2008, from the Center for Biological Diversity, Kahea, and the Ocean Conservancy (Petitioners) to revise the Hawaiian monk seal critical habitat designation (Center for Biological Diversity 2008) under the ESA. The Petitioners sought to revise critical habitat by adding the following areas in the MHI: Key beach areas; sand spits and islets, including all beach crest vegetation to its deepest extent inland; lagoon waters; inner reef waters; and ocean waters out to a depth of 200 m. In addition, the Petitioners requested that designated critical habitat in the NWHI be extended to include Sand Island at Midway, as well as ocean waters out to a depth of 500 m (Center for Biological Diversity 2008).

On October 3, 2008, we announced a 90-day finding that the petition presented substantial scientific information indicating that a revision to the current critical habitat designation may be warranted (73 FR 57583; October 3, 2008). On June 12, 2009, in the 12-month finding, we announced that a revision to critical habitat is warranted because of new information available regarding habitat use by the Hawaiian monk seal, and we announced our intention to proceed toward a proposed rule (74 FR 27988). Additionally, in the 12-month finding we identified the range of the species as throughout the Hawaiian Archipelago and Johnston Atoll.

Following the 12-month finding, we convened a critical habitat review team (CHRT) to assist in the assessment and evaluation of critical habitat. Based on the recommendations provided in the draft biological report, the initial Regulatory Flexibility Analysis and section 4(b)(2) analysis (which considers exclusions to critical habitat based on economic, national security and other relevant impacts), we published a proposed rule on June 2, 2011 (76 FR 32026) to designate sixteen specific areas in the Hawaiian archipelago as Hawaiian monk seal critical habitat. In accordance with the definition of critical habitat under the ESA, each of these sixteen areas contained physical or biological features essential to conservation of the species, and which may require special management consideration or protections. In the proposed rule, we described the physical or biological features that support the life history needs of the species as essential features, which included (1) areas with characteristics preferred by monk seals for pupping and nursing, (2) shallow, sheltered aquatic areas adjacent to coastal locations preferred by monk

seals for pupping and nursing, (3) marine areas from 0 to 500 m in depth preferred by juvenile and adult monk seals for foraging, (4) areas with low levels of anthropogenic disturbance, (5) marine areas with adequate prey quantity and quality, and (6) significant areas used by monk seals for hauling out, resting, or molting. We requested public comments through August 31, 2011, on the proposed designation and then published a notification of six public hearings (76 FR 41446; July 14, 2011). In response to requests, we reopened the public comment period for an additional 60 days and accepted all comments received from June 2, 2011 through January 6, 2012 (76 FR 68710l; November 7, 2011).

During the public comment periods, we received comments that indicated that substantial disagreement existed over the identification of the essential features in the MHI. On June 25, 2012, we announced a 6-month extension for the final revision of critical habitat for the Hawaiian monk seal and committed to evaluating information provided through comments and additional information from over 20 GPS-equipped cellular transmitter tags deployed on seals in the MHI (new MHI GPS tracking information) to aid in resolving the disagreement (77 FR 37867).

The CHRT was reconvened to review comments, information used to support the proposed rule, and newly available information, including new MHI GPS tracking information. This final rule describes the final critical habitat designation, including the responses to comments, CHRT recommendations, a summary of changes from the proposed rule, supporting information on Hawaiian monk seal biology, distribution, and habitat use, and the methods used to develop the final designation.

For a complete description of our proposed action, including the natural history of the Hawaiian monk seal, we refer the reader to the proposed rule (76 FR 32026; June 2, 2011).

Statutory and Regulatory Background for Critical Habitat

The ESA defines critical habitat under section 3(5)(A) as: ''(i) the specific areas within the geographical area occupied by the species, at the time it is listed . . . , on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed . . . upon a determination by the Secretary that such areas are essential for the conservation of the species.''

Section 4(a)(3) of the ESA precludes military land from designation, where that land is covered by an Integrated Natural Resource Management Plan that the Secretary has found in writing will benefit the listed species.

Section 4(b)(2) of the ESA requires us to designate critical habitat for threatened and endangered species ''on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impact, of specifying any particular area as critical habitat.'' This section also grants the Secretary of Commerce (Secretary) discretion to exclude any area from critical habitat if she determines ''the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat.'' However, the Secretary may not exclude areas that ''will result in the extinction of the species.''

Once critical habitat is designated, section 7 of the ESA requires Federal agencies to insure they do not fund, authorize, or carry out any actions that will destroy or adversely modify that habitat. This requirement is additional to the section 7 requirement that Federal agencies insure their actions do not jeopardize the continued existence of listed species.

Summary of Changes From the Proposed Critical Habitat Designation

After considering public comments received and updating the best scientific information available, we have (1) eliminated ''areas with low levels of anthropogenic disturbance'' as an essential feature; (2) combined the marine and terrestrial essential features that describe Hawaiian monk seal reproduction and rearing sites to clarify how these habitats are interconnected in supporting Hawaiian monk seal conservation; (3) clarified the location of pupping and nursing areas essential to Hawaiian monk seals by providing further description for the term ''preferred;'' (4) clarified the location of haul-out areas essential to Hawaiian monk seals by providing further description for the term ''significant;'' (5) combined the marine areas and prey features that support Hawaiian monk seal foraging areas to describe better how these features are interrelated; (6) refined the boundaries for depth and height of marine foraging areas to describe better those areas that support the foraging ecology and conservation of the Hawaiian monk seal; (7) refined the description of critical habitat areas in the NWHI to eliminate areas that are inaccessible to seals or manmade structures that do not support monk seal conservation, such as hardened harbors and shorelines or buildings, and (8) refined the boundaries of preferred pupping and nursing areas and significant haul-out habitats. These changes from the proposed rule are discussed further below.

1. The essential feature ''areas with low levels of anthropogenic disturbance'' was included in the proposed rule to protect habitat areas used by Hawaiian monk seals, which are sensitive to disturbance caused by human activity. Public comments received about this essential feature requested clarification about what role this feature plays in Hawaiian monk seal ecology; some noted that this feature does not appear to align with monk seal behavior or habitat use in the MHI, and other comments questioned whether development or access would be restricted in areas with low anthropogenic disturbance that are not used by seals. Such comments triggered a reevaluation of this proposed essential feature. To consider the significance of this feature to Hawaiian monk seal conservation the CHRT re-examined the information that was used to support this feature in the NWHI and considered the information available regarding monk seal habitat use in the MHI. The historical examples from military settlement in the NWHI highlight that chronic disturbance in sensitive monk seal habitat, such as pupping and nursing sites or important haul-out areas, can alter the conservation value of these areas. In the proposed rule we also noted that three aerial surveys of the MHI in 2000 and 2001 indicate that seals showed a preference for more remote areas (Baker and Johanos 2004). However, since 2004, seal use of the MHI has continued to increase and review of the more recent sighting and cell phone tracking data indicate that monk seals regularly haul-out in both highly trafficked and relatively remote areas of the MHI. For example, Kaena point experiences relatively low levels of human activity in comparison with White Plains Beach, yet both of these areas remain important haul-out sites for seals on Oahu. Upon further consideration of available information, the CHRT was unable to define the service or function that ''areas with low levels of anthropogenic disturbance'' would provide to Hawaiian monk seal conservation as a singular or stand-alone feature. We agree that this feature does not appear to provide a service or function for monk seal conservation, which would support identification as

an independent essential feature. We have removed this as an essential feature for monk seal conservation, but recognize that this may be a characteristic important to some preferred pupping and nursing areas or significant haul out areas.

2. The proposed rule identified two essential features that support reproduction: ''areas with characteristics preferred by monk seals for pupping and nursing'' and ''shallow sheltered aquatic areas adjacent to coastal locations preferred by monk seals for pupping and nursing.'' Public comments expressed criticism about the description of where these two areas exist and the role these two areas play in supporting Hawaiian monk seals. Comments suggested that we should identify known areas of significance for pupping and nursing, because these areas are limited based on available information and that a more precise designation would ensure that protections are focused on those important areas. Other comments suggested that ''shallow, sheltered aquatic areas'' could be found throughout the State and that the current description was insufficient to identify areas that were important to Hawaiian monk seal reproduction. The CHRT determined that these two proposed essential features describe a terrestrial and marine component of a single area that supports Hawaiian monk seal reproduction and growth. The CHRT recommended, and we agreed, that combining these two features would better identify these areas as interconnected habitats that support Hawaiian monk seal mothers and pups through birth, lactation and weaning. The revised feature is now described as, ''Terrestrial areas and the adjacent shallow sheltered aquatic areas with characteristics preferred by monk seals for pupping and nursing.''

3. After considering public comments, the CHRT also examined how ''preferred'' pupping areas may be better defined for the species. As identified in the proposed rule (76 FR 32026; June 2, 2011), monk seals generally return to the same site year after year for birthing, and those sites with characteristics including a shallow and sheltered area protected from predators and weather, may draw multiple females to the same site. Still, some females prefer to use more solitary locations for pupping, returning to these sites multiple times throughout their reproductive lifetime to birth and rear pups. The CHRT determined that both of these types of favored reproductive sites remain essential to Hawaiian monk seal conservation to support reproduction and population growth. After considering public comments requesting a more accurate location for these areas in the MHI, the CHRT reviewed pupping data from throughout the range to consider how these two types of reproductive sites may be best described to match the description from the proposed rule.

In the NWHI, terrestrial pupping areas are well established and over 30 years of data identify pupping areas on the various islands and islets. Records indicate that some pupping areas support multiple mothers in any given year, while other pupping areas may support a single female for multiple years and/or multiple females spanning multiple generations. In the MHI, pupping habitat has not been clearly established for all the specific areas. For example, data indicate that some MHI mothers have given birth in one location and have chosen an alternative birth site in subsequent years. To avoid applying unnecessary protections to areas that monk seals found unsuitable for repeat pupping, the CHRT recommended that preferred pupping and nursing areas be defined as those areas where multiple females have given birth or where a single female has given birth in more than one year. This allows for the protection of areas that are used by multiple mothers year after year, and protection of those areas where individual females have returned to a more solitary pupping site. We agree that this description of ''preferred'' provides clarity to the public about which areas are likely to support Hawaiian monk seal conservation and also helps to conserve sufficient habitat to support Hawaiian monk seal recovery.

4. The proposed rule incorporated all coastal terrestrial areas from the water's edge to 5 m inland of the shoreline in the MHI, with the exception of those areas that are manmade structures (*e.g.,* harbors or seawalls) and/or inaccessible to seals (*e.g.,* cliffs), to ensure that all existing ''significant haul-out areas'' would be captured in the designation. We relied upon this approach, rather than using voluntary MHI monk seal data to identify favored haul-out areas, due to concerns we expressed in the proposed rule regarding potential biases associated with the collection of MHI voluntary monk seal sighting information (*i.e.,* highly trafficked areas by humans are likely to report monk seal sightings more often than remote areas that seals may still use) and the limited information available regarding habitat use in areas with a small number of seals (76 FR 32026; June 2, 2011). Public comments expressed criticism of this expansive approach. In particular, comments pertaining to terrestrial essential features suggested that the 2011 proposed designation was too broad, and that all areas of MHI coastline could not possess the features ''essential'' to Hawaiian monk seal conservation. Some comments suggested that there was insufficient analysis to support the identification of all areas of coastline for the designation, as monk seal habitat use indicates that not all coastlines in the MHI can be accessed by seals and therefore not all habitat should be considered essential. Other comments suggested that the analysis was insufficient because the designation does not match known habitat use patterns of Hawaiian monk seals in various areas of the MHI, nor does it identify habitat that will support recovery of the population.

In reviewing these comments and considering the available data, the CHRT agreed that the 2011 proposal was too broad for stakeholders to be able to distinguish those features that are essential to Hawaiian monk seal conservation from other areas of coastline, and that available data suggest that significant haul-out areas and preferred pupping areas may be described with more precision. The CHRT acknowledged that, although Hawaiian monk seals may use many accessible areas of coastline to haul-out, not all haul-out areas of the MHI are of the same value to Hawaiian monk seal conservation and not all areas would be described as essential. To be responsive to comments requesting more precision in identifying the essential features and to use the best available information for describing the essential features, the CHRT re-evaluated information relied upon in the proposed rule to describe significant haul-out areas. As indicated in the proposed rule, Hawaiian monk seals do not congregate in large numbers at particular sites like some other pinnipeds such as sea lions. However, Hawaiian monk seals reliably return to stretches of coastline that are favored for resting, molting, and socializing, and multiple individuals are likely to use the same stretches of coastline around a particular island. Identifying the combination of characteristics that are common to stretches of coastline that monk seals favor for hauling out is difficult, because habitat characteristics are not uniform from one favored haul-out area to another. For example, the relatively remote stretches of beach along Laau point on Molokai do not display all of the same characteristics as the beaches along Oahu's busy southwestern shoreline; however, both

of these areas are consistently used by monk seals for hauling out and are recognized by scientists, managers, and the public as important haul-out habitat. For this reason, the CHRT determined that stretches of coastline that maintain a combination of characteristics favored by monk seals for resting, molting and socializing may best be identified by evaluating actual monk seal usage of each island and using the frequency of use as a proxy for identifying those areas with significant characteristics. Since the June 2, 2011 publication of the proposed rule (76 FR 32026), the number of monk seals instrumented with cell phone tracking devices has doubled and this information supplements information regarding MHI monk seal habitat use in the MHI that was available at the time that the proposed areas were delineated. Spatial comparisons of these available data sets demonstrate that the voluntary sighting data successfully captures areas frequented by monk seals throughout the MHI, alleviating our previous concerns that significant haul-out areas may be missed due to the remote nature of a particular site (or the lack of human reporting). To describe better where significant haul-out areas exist using the available data, the CHRT reviewed spatial patterns of monk seal locations by mapping available cell phone tracking data, the past voluntary sighting information, and aerial survey data from across the MHI. The mapped data displayed where seal sightings were concentrated and allowed the CHRT to evaluate areas of higher use and importance to Hawaiian monk seals.

The CHRT determined that the number of seals using each particular island varies; therefore, the importance of particular habitats also varies from island to island. To account for this variation and to ensure that significant areas used by monk seals for hauling out and thus essential to monk seal conservation were included for each specific area, the CHRT defined ''significant'' as those areas where monk seals use is at least 10 percent or greater than the area(s) with highest seal use for each island. This description of significant haul-out areas allows for inclusion of contiguous stretches of coastline regularly used by monk seals where experts agree that monk seals are more likely to haul-out, accounts for data that may be underrepresented in frequency due to a lower likelihood of reporting, and, in areas with lower seal numbers, provides sufficient habitat for monk seals to use as the population expands to meet recovery goals. A detailed description of the evaluation of the information used to refine the description of this essential feature may also be found in the biological report (NMFS 2014).

5. Comments raised questions regarding how foraging areas were described in the proposed rule. First, comments from Hawaii's Department of Land and Natural Resources (DLNR) identified that ''marine areas from 0 to 500 m in depth preferred by juvenile and adult monk seals for foraging'' and ''marine areas with adequate prey quantity and quality'' are two features describing the same type of area and should be combined. Having reviewed this comment, the CHRT acknowledged, and we agree, that these features were both proposed to provide protection for monk seal foraging areas which support prey items important to Hawaiian monk seal conservation. After considering this comment and to provide clarity regarding those features that support Hawaiian monk seal conservation, we have combined these two overlapping features into a single feature that describes important Hawaiian monk seal foraging areas.

6. Numerous comments expressed disagreement with the scope of the designation in marine habitat, stating that the designation was too broad and did not adequately take into account the best available information about monk seal foraging in the MHI to describe those foraging depths that are ''essential'' to the conservation of the species. Comments questioned the depths at which Hawaiian monk seals forage, and the types of activities that may affect Hawaiian monk seal foraging features.

With regard to the depths at which monk seals forage, one commenter suggested that the current information indicates that depths out to 200 m are the primary foraging habitats for monk seals in the MHI, not 500 m in depth. In addition, new MHI cell phone tracking information that supplemented information examined for the proposed rule indicates that deeper areas are used less frequently by monk seals in the MHI. This suggests that deeper foraging areas may not play as significant a role in Hawaiian monk seal conservation as previously thought. After considering these comments, the CHRT reviewed the information from the proposed rule and information received since 2011 from seals tracked throughout the MHI to re-evaluate the information that describes marine foraging areas that are essential to Hawaiian monk seal conservation.

As noted in the proposed rule, Hawaiian monk seals exhibit individual foraging preferences and capabilities (Iverson 2006), but the species has adapted to the low productivity of a tropical marine ecosystem by feeding on a wide variety of bottom-associated prey species across a wide expanse of habitat. The 2011 proposed rule relied on maximum dive depths demonstrated in the NWHI and limited diving data available from the MHI to identify the outer boundaries of where Hawaiian monk seal foraging areas exist. The proposed designation focused on incorporating adequate areas to support the conservation of a food-limited population in the NWHI and a growing population in the MHI.

In the NWHI the best available information indicates that monk seals are regularly feeding at depths that are deeper than 20 fathoms (approximately 37 m), the depth boundary for the 1988 critical habitat designation. From 1996 to 2000 a total of 147 seals were tracked for several months at a time in the NWHI using satellite-linked radio transmitters (Stewart *et al.* 2006). Additionally, at French Frigate Shoals, seals were outfitted for shorter time periods with Crittercams (mounted cameras) to provide more information about monk seal foraging ecology. Dive data throughout the NWHI indicate that seals spend a great deal of time in waters less than 40 m, but that in most areas seals are regularly diving at depths greater than 40 m, sometimes even exceeding depths of 550 m (Stewart *et al.* 2006). From Crittercam observations, Parrish *et al.* (2000) describe greater than 50 percent of seal behavior as sleeping or socially interacting and note that these behaviors are exhibited at depths as deep as 80 m. While seals with Crittercams displayed active foraging behavior at various depths, at deeper depths behaviors were focused on foraging, *i.e.,* seals spent more time actively searching along or near the bottom for prey at these depths (Parrish *et al.* 2000). Specifically, Parrish *et al.* (2000) observed most feeding between 60–100 m at French Frigate Shoals, with seals focusing on the uniform habitat found along the slopes of the atoll and neighboring banks. A low percentage of dives also occurred in the subphotic habitats greater than 300 m. Across the NWHI, Stewart *et al.* (2006) described various modes represented in the dive data that suggest depth ranges where foraging efforts may be focused, but describe a majority of diving behavior occurring at depths less than 150 m. The deeper diving behavior was exhibited at French Frigate Shoals, Kure, Midway, Lisianski, and Laysan, where seals displayed various modes at deeper depth ranges, many of which occurred

at less than 200 m in depth (Abernathy 1999, Stewart and Yochem 2004a, Stewart and Yochem 2004b). However, modes also occurred at 200 to 400 m at Midway and Laysan and at 500 m at Kure (Abernathy 1999, Stewart and Yochem 2004a, Stewart and Yochem 2004b). Although these modes in the data suggest a focus around particular depth ranges in the various locations, the deeper areas are used less frequently; data from French Frigate Shoals, Laysan, and Kure demonstrate that less than 10 percent of all diving effort recorded in these areas occurred in depths greater than 200 m (Abernathy 1999, Stewart and Yochem 2004a, Stewart and Yochem 2004b). The NWHI data demonstrate that seal foraging behavior is focused beyond the boundary of the 1988 designation and that depths beyond 100 m provide important foraging habitat for this species. While foraging areas deeper than 100 m remain important to the species' conservation, the variation in diving behavior displayed among the NWHI subpopulations made the significance of these areas difficult to determine.

Information from the MHI taken across multiple years indicates that monk seal foraging behavior is similar to the behavior of seals in the NWHI, but that foraging trip duration and average foraging distance in the MHI is shorter (Cahoon 2011). Although a few monk seals have been recorded as diving to depths around 500 m in the MHI, these dives are rare and do not describe the majority of diving behavior in the MHI (NMFS 2012). Cell phone tracking data received within the last 2 years in the MHI indicate that approximately 95 percent of all recorded dives in the MHI have occurred at 100 m or less, and that approximately 98 percent of dives occur at 200 m or less (NMFS 2012). These numbers indicate a relatively low frequency of use for foraging areas between 100 m and 200 m; however, monk seal population numbers in the MHI are acknowledged to be low but increasing.

Although the frequency of use of deeper foraging areas is different from the NWHI, seal foraging behavior in the MHI is described as similar in nature to their NWHI counterparts, with seals' core areas focused over submerged banks and most seals focusing efforts close to their resident islands (Cahoon 2011). Baker and Johanos (2004) suggest that monk seals in the MHI area are experiencing favorable foraging conditions due to decreased competition in these areas, which is reflected in the healthy size of animals and pups in the MHI. This theory is supported by Cahoon's (2011) recent comparisons of foraging trip duration and average foraging distance data. For both the recommendations for proposed and final rules, the CHRT indicated that marine foraging areas that are essential to Hawaiian monk seal conservation are the same depth in the NWHI and in the MHI. Although MHI monk seal foraging activity currently occurs with less frequency at depths between 100–200 m than their NWHI counterparts, MHI seal numbers are still low (approximately 153 individuals) and expected to increase (Baker *et al.* 2011). As seal numbers increase around resident islands in the MHI, seals' foraging ranges are expected to expand in order to adjust as near-shore resources are shared by more seals whose core foraging areas overlap. Given that 98 percent of recorded dives are within 200 m depth in the MHI, and the lack of information supporting a 500 m dive depth, we are satisfied that the 200 m depth boundary provides sufficient foraging habitat to support a recovered population throughout the range.

Accordingly, we have revised the foraging areas' essential feature to reflect the best available information about monk seal foraging to, ''Marine areas from 0 to 200 m in depth that support adequate prey quality and quantity for juvenile and adult monk seal foraging.''

After considering public comments, we recognize that many activities occur in the marine environment and are unlikely to cause modification to the bottom-associated habitat and prey that make up essential Hawaiian monk seal foraging areas. As noted in the proposed rule and the biological report (NMFS 2014a), monk seals focus foraging efforts on the bottom, capturing prey species located on the bottom within the substrate of the bottom environment or within a short distance of the bottom (such that the prey may be easily pinned to the bottom for capture). In other words, the proposed rule recognized that the features that support Hawaiian monk seal foraging exist on and just above the ocean floor. The proposed rule identified foraging areas as essential to the Hawaiian monk seal and not those marine areas where monk seals travel and socialize. To clarify for the public where Hawaiian monk seal essential features exist and where protections should be applied, we have revised the delineation to incorporate the seafloor and marine habitat 10 m in height from the bottom out to the 200 m depth contour. That portion of the water column above 10 m from the bottom is not included within the critical habitat designation.

7. All terrestrial areas in the NWHI, with the exception of Midway harbor, were included in the proposed designation; however, in the MHI we identified that major harbors and areas that are inaccessible to seals or that have manmade structures that lack the essential features of Hawaiian monk seal critical habitat were not included in the designation. We received comments indicating that the NWHI, similar to the MHI, also have areas that are inaccessible to seals or that have manmade structures that do not support monk seal conservation (such as, seawalls and buildings), and that these areas should similarly not be included in the designation. We agree and have revised the designation of the final rule to acknowledge that areas that are inaccessible to seals and/or have manmade structures that lack the essential features are not included in the designation for Hawaiian monk seal critical habitat throughout all sixteen specific areas.

8. Last, to ensure that the boundaries of the designation reflect the revisions to the definitions of preferred pupping and nursing areas and significant haul-out habitats we reviewed NMFS Pacific Islands Fisheries Science Center (PIFSC) records from the NWHI and the MHI. These records indicate that seals in the NWHI have preferred pupping and nursing sites and significant haul-out areas on the islands and islets of eight of the ten areas designated in the 1988 designation. Since the low-lying islands and islets of the NWHI provide characteristics (*e.g.,* sandy sheltered beaches, low-lying vegetation, and accessible shoreline) that support terrestrial essential features, we have included the entire land areas in the designation (with the exception of inaccessible areas and/or manmade structures as stated above). Identification of where these features exist in the specific areas may be found in the biological report (NMFS 2013). We identified significant haul-out areas using sighting and tracking information mapped across the MHI displaying frequency of seal use as described above. Final areas of terrestrial critical habitat within the MHI were delineated to include all significant haul-out areas and preferred pupping and nursing sites. Segments of the coastline in the MHI that include these features and which are delineated and included in this final designation are described in the Critical Habitat Designation section below.

Summary of Comments and Responses

We requested comments on the proposed rule and associated supporting

reports to revise critical habitat for the Hawaiian monk seal as described above. The draft biological report and draft economic analysis were also each reviewed by three peer reviewers. We received 20,898 individual submissions in response to the proposed rule (including public testimony during the six hearings). This included 20,595 form letter submissions in support of revising Hawaiian monk seal critical habitat and 303 unique submissions. The majority of comments concerned economic and other impacts for consideration for exclusions, the regulatory process for critical habitat designation, legal issues, essential features, additions to critical habitat and biological issues. Additionally, among the 303 submissions we received multiple petitions in opposition and support of the proposed rule; in all we received 2,950 signatures in opposition to the proposed rule and 5,872 signatures in support.

We have considered all public and peer reviewer comments, and provide responses to all significant issues raised by commenters that are associated with the proposed revision to Hawaiian monk seal critical habitat.

We have not responded to comments or concerns outside the scope of this rulemaking. For clarification purposes, a critical habitat designation is subject to the rulemaking provisions under section 4 of the ESA (16 U.S.C. 1533). When finalized, a critical habitat designation creates an obligation for Federal agencies under section 7 of the ESA to insure that actions which they carry out, fund, or authorize (permit) do not cause destruction or adverse modification of critical habitat. Research and management activities for endangered species are subject to provisions described under section 10 of the ESA, which requires the issuance of a Federal permit to allow for activities that may otherwise be prohibited under section 9 of the ESA. Because the research and management actions in the PEIS are carried out by a Federal agency and they require Federal permitting, these actions have been reviewed in accordance with section 7 to ensure that the actions would not jeopardize the continued existence of a listed species or cause destruction or adverse modification to critical habitat. Accordingly, critical habitat designations in no way authorize research and management activities to occur and do not ease or secure the authorization of such activities.

Peer Review

Comment 1: One peer reviewer questioned whether there are temporal differences in the use of Hawaiian monk seal habitat features. The reviewer suggested that if temporal aspects exist, such as changes in prey abundance or availability, variations in weather or environmental conditions, which make some areas inaccessible or less preferable to seals, or seasonal differences that may influence human-seal interactions, that we describe these aspects in more detail in the biological report.

Response: Factors that influence when Hawaiian monk seals use habitat features are described in the Habitat section of the biological report (NMFS 2014). Life-history stages influence when and how Hawaiian monk seals use habitat features; consequently, annual changes in habitat use may reflect the demographics of the resident population of seals. Differences, or peaks, in habitat use of preferred pupping areas or significant haul-out areas may occur when resident seals are reproductively active or experiencing their molt. Some preferred pupping areas may be used more frequently by females and pups during common birthing months between February and August (Johanos *et al.* 1994, NMFS 2007). Additionally, significant haul-out areas may be used more as resident animals of various ages and each sex undergo their annual molt (see NMFS 2014a).

Little information is available to indicate that monk seal use of foraging areas is influenced annually by seasonal variations in weather. Stewart *et al.* (2006) noted seasonal variation in core foraging areas for individual seals, but not for others tracked during a single year at Pearl and Hermes reef. Cahoon (2011) tested the summer and winter diets of seals and found no statistical differences in composition between seasons. However, in both studies sample sizes are limited and additional data may provide more clarity.

No information suggests that there is a seasonality associated with human-seal interactions, or that Hawaiian monk seal habitat use is currently influenced in a seasonal way by human activities. Historical factors associated with human-use of the NWHI and impacts to Hawaiian monk seal habitat use are discussed in the Population Status and Trends section of the biological report (NMFS 2014).

Comment 2: Several peer review comments suggested that we provide additional information about the ecology of Hawaiian monk seals to better demonstrate how habitat supports behaviors that are important to Hawaiian monk seal conservation. Specifically, reviewers requested that additional information be provided about resting, molting, and socializing behaviors.

Response: We have added additional information to the Habitat section of the biological report (NMFS 2014a) to better identify how specific habitat features support Hawaiian monk seal behaviors, such as resting, molting, and socializing and to describe the significance of these activities to Hawaiian monk seals. With regard to the significance of these behaviors, we provide the following information. Resting provides energetic benefits by allowing these phocids' recovery from the energetically demanding marine environment (Brasseur *et al.* 1996). Molting is considered a metabolically demanding process whereby pinnipeds renew skin, fur, and hair for critical waterproofing and insulation purposes. Studies indicate that seals may minimize energetic costs of heat loss during this demanding transition by hauling-out on land (Boily 2002). Monk seals are a relatively solitary species, and the most substantial social bonding occurs between the mother and pup throughout the nursing period, which is important for early nourishment and protection. In addition to this early pairing, Hawaiian monk seals do socialize from time to time with other conspecifics. In later years pairing activities are directed towards reproductive output. In summary, seals haul-out for a variety of reasons including rest, thermoregulation, predator avoidance, social interaction, molting and pupping and nursing. Generally, the objective of natural behaviors is believed to enhance the animals' fitness by providing energetic, survival, and reproductive benefits to the species.

Comment 3: A peer reviewer questioned what studies are being done on monk seal prey species and whether changes in Hawaiian monk seal prey abundance have been recorded.

Response: It is still difficult to determine the relative importance of particular prey items given the variation that is seen in the diets of Hawaiian monk seals and the dynamic nature of the marine ecosystem across the range of the Hawaiian monk seal. To better characterize Hawaiian monk seal foraging ecology, NMFS' Hawaiian Monk Seal Research Program directs foraging research towards evaluating monk seal diet, foraging behavior and habitat use, and understanding linkages between foraging success and changing oceanographic conditions. Information gained from the foraging program is discussed throughout the Habitat section of the biological report (NMFS 2014a).

Generally, climate patterns (*e.g.,* El Nino) drive changes in temperatures and/or ocean mixing that result in changes to ocean productivity. This influence extends up the food web, altering prey abundance for top predators like the Hawaiian monk seal, which eventually affects juvenile survival (Baker *et al.* 2012). Researchers found that variation in Hawaiian monk seal abundance trends across the NWHI appears to reflect shifts in ocean productivity that are driven by various climate patterns (Polovina *et al.* 1995; Polovina & Haight 1999; Antonelis *et al.* 2003; Baker *et al.* 2007; Baker *et al.* 2012). The final biological report provides updated information about Hawaiian monk seal foraging ecology and additional information on how various climate patterns may influence productivity and prey abundance.

Comment 4: One peer reviewer expressed concerns that NMFS had overlooked discussing the adverse effects of anthropogenic noise on Hawaiian monk seal habitat. The reviewer stated that literature documents the adverse effects of underwater activities (*e.g.,* military training, dredging, and pile driving) as well as in-air acoustics (*e.g.,* jet landing and takeoff, boats, construction related, and live firings) on pinnipeds, including responses such as avoidance, startle, generalized disturbance, and auditory damage. The reviewer recommended including information in the biology section of the report and in other sections as appropriate.

Response: We have updated the Natural History section of the biological report to provide additional information about the hearing capabilities and vocalizations of Hawaiian monk seals. Limited information suggests that Hawaiian monk seal hearing is less sensitive than that of other pinnipeds (Southall *et al.* 2007). Seals communicating in the airborne environment rely largely on short-range signals to alert conspecific animals, or to keep them informed of a signaler's location or general behavioral state (Miller and Job 1992). In addition, vocalization occurs between moms and pups, but studies indicate that females do not distinguish their pups' vocalizations from other pups (Job *et al.* 1995). Note that impacts to Hawaiian monk seals, including those associated with sound, are already analyzed in accordance with obligations to avoid jeopardy during ongoing section 7 consultation.

Comment 5: Several peer reviewers commented that marine debris is a threat to Hawaiian monk seals and their habitat and requested that additional information about this threat be provided in the biological report. Specifically, reviewers commented that lost fishing nets and gear may affect Hawaiian monk seal foraging areas by reducing the abundance of prey species due to entanglement or habitat loss. A reviewer also commented that lost fishing gear washing ashore in critical habitat areas could impact either where seals haul out or cause injury and mortality if they become entangled in debris onshore.

Response: We agree that marine debris is a threat to Hawaiian monk seals and their critical habitat and that fishery associated debris may affect Hawaiian monk seal foraging areas by reducing the abundance of prey species due to entanglement or habitat loss. We have added additional information about this threat and the activities associated with this threat into the Special Management Considerations or Protections section of the biological report (NMFS 2014a) under fisheries activities and environmental response activities.

Fisheries related debris can affect Hawaiian monk seal critical habitat and this threat is prevalent in the NWHI where the combination of prevailing ocean currents (in the North Pacific Subtropical Gyre) and wind patterns causes marine debris, including fishing gear from fisheries throughout the Pacific Rim, to accumulate. Lost fishing gear may be snagged in coral reefs causing damage to these areas and/or entangling monk seal prey species within Hawaiian monk seal foraging areas. Additionally, marine debris may accumulate on land, reducing the quality or availability of terrestrial habitat. Although some gear is lost from Hawaii's fisheries, a majority of the gear observed from the NWHI marine debris removal efforts includes trawl netting, monofilament gillnet, and maritime line from other Pacific Rim fisheries (Donohue *et al.* 2001). Similar gear also accumulates around the main Hawaiian Islands; areas of heavy accumulation include the windward coasts of many of the islands (PIFSC 2010). Due to the widespread nature of these problems, and the number of species and ecosystems affected by this threat, the NOAA Marine Debris Response Program encourages partnerships among agencies to address marine debris response.

Comment 6: One reviewer commented that the biological report should make a distinction between impacts from initial construction versus the on-going operation of new energy-generating devices. This reviewer also questioned whether short-term activities would be allowed within critical habitat areas or if the vulnerability of the population would forbid all activities due to the lack of experimental research on the response of Hawaiian monk seals to such activities.

Response: We agree that energy development projects may have impacts associated both with construction and with on-going operations and we have revised the Special Management Considerations or Protections section of the biological report (NMFS 2014a) to reflect these potential impacts to essential features.

Protections for critical habitat are applied under section 7 of the ESA. In Federal section 7 consultations, the Services (NMFS and the U.S. Fish and Wildlife Service (USFWS), the agencies that implement the ESA) may recommend specific measures or actions to prevent or reduce the likelihood of impacts to the important resources in designated areas. Recommendations to protect critical habitat depend on how a project or activity might affect the quantity, quality, or availability of essential features, and this is determined through a thorough review of the action to identify any environmental stressors and to assess the responses to exposure and risk from the activity. Generally, if short term impacts are anticipated, the section 7 process will assist in minimizing those impacts. For projects in which impacts of the activity are more uncertain, Federal agencies are still held to the same standards to avoid destruction and adverse modification. During section 7 consultations, agencies meet this standard by using the best available information to determine the likely impacts of the activity on a listed species and its critical habitat.

Comment 7: Peer review comments indicated that an expansive designation meets the biological needs of the species, but questioned how large areas would be managed adequately. Among these comments, a reviewer questioned if regulations would be in place to limit new structures built right up to the shoreline in critical habitat.

Response: Protections for critical habitat are applied under section 7 of the ESA as described above in the response to comment 6. The designation does not establish new regulations specific to a type of activity, such as building a structure on the shoreline.

Comment 8: Peer review comments stated that the draft economic analysis (ECONorthwest 2010) did not clearly describe the overall impacts of the proposed designation with regard to the spatial distribution of expected impacts and the types of activities. One reviewer

questioned whether impacts are uniformly distributed.

Response: The draft economic analysis (ECONorthwest 2010) did note that potential impacts are expected to be largely associated with in-water and construction activities; however, we agree that the discussion of spatial distribution of the expected impacts resulting from the proposed designation could be improved. The final economic analysis (Industrial Economics 2014) has been revised to describe more clearly the spatial distribution of economic impacts associated with the designation as well as how individual activities are expected to be affected.

Comment 9: A peer reviewer questioned whether impacts associated with the 1988 designation were used to inform the economic analysis. The reviewer recommended that the economic analysis more clearly identify the types of activities that occur within the current designation and use past consultation history from these areas to inform the full analysis.

Response: Since the 1988 designation, there is a limited history of activities in the NWHI from which to inform the revised designation, because little human activity occurs within the NWHI. This is due to the remoteness of the region as well as the fact that the areas have received environmental protections as a national wildlife refuge and then later as a national monument. The economic analysis uses NMFS' section 7 consultation history to anticipate the types, number, and location of activities that may occur within the areas designated for this final rule. This includes those areas from the 1988 designation in the NWHI, where consultations have already considered the effects of actions on Hawaiian monk seal critical habitat. After considering this and other comments, the final economic analysis (Industrial Economics 2014) was revised to articulate more clearly the impacts anticipated for each specific area, including those areas in the NWHI. Activities in these areas are described in Chapter 12 of the economic analysis as research permits, education activities, recreation management, and maintenance of existing structures (Industrial Economics 2014). Annual anticipated impacts range from less than $177 per year at Nihoa Island to $1,090 per year at French Frigate Shoals.

Public Comments

Legal Comments

Comment 10: We received comments questioning why NMFS did not prepare an Environmental Impact Statement (EIS) and/or an Environmental Analysis (EA) in compliance with the National Environmental Policy Act (NEPA). Comments voiced concerns that NMFS completed an EIS for the original 1986 designation, which analyzed the impacts of five alternatives, but did not complete an equivalent NEPA analysis for the current proposed designation. One of the comments further noted that the proposed critical habitat expansion to the main Hawaiian Islands has potential for greater social, cultural, and economic impacts than the original designation, and that the sheer number of section 7 consultations and associated biological opinions with this designation could be debilitating to the State. An additional comment questioned NMFS' reliance on *Douglas County* v. *Babbitt* 48 F.3d 1495 (9th Cir. 1995), cert. denied, 116 S. Ct. 698 (1996), to determine that an environmental analysis as provided for under NEPA compliance was not required. This comment noted that NEPA requirements associated with critical habitat designations remain unsettled because the 10th circuit's decision in *Catron County Board of Commissioners* v. *United States Fish & Wildlife Service* 75 F.3d 1429, 1433 (10th Cir. 1996) required the U.S. Fish and Wildlife Service to prepare an Environmental Assessment for the Mexican Spotted Owl designation.

Response: We disagree that NMFS is required to complete analysis under NEPA for the current designation. In 1980, when we first considered providing habitat protections for the Hawaiian monk seal we wished to evaluate the benefits and impacts associated with either designating a sanctuary under the National Marine Sanctuaries Act (NMSA), or critical habitat under the ESA in the NWHI. Section 304 of the NMSA requires the Secretary to prepare a draft EIS, in compliance with NEPA, when proposing to designate a national marine sanctuary; therefore, a draft EIS was prepared to evaluate this option for Hawaiian monk seal habitat protection. The alternatives were presented to the public in 1980 in compliance with the NMSA and NEPA. Comments received mostly supported the designation of critical habitat under the ESA; however, the boundaries for designation remained undecided and we postponed further action to await recovery team recommendations (51 FR 16047; April 30, 1986). In 1985, in accordance with recommendations from the 1983 recovery plan, NMFS proposed critical habitat for the Hawaiian monk seal under the ESA and then finalized the action in 1986. The 1986 final rule (51 FR 16047; April 30, 1986) determined that NEPA was not necessary to move forward with the designation of critical habitat under the ESA. Nonetheless, however, we elected to complete the EIS process since a draft and supplemental report had already been prepared to meet the requirements of NMSA.

Since the original designation of monk seal critical habitat, in *Douglas County* v. *Babbitt* 48 F.3d 1495 (9th Cir. 1995), cert. denied, 116 S. Ct. 698 (1996), the Ninth Circuit Court of Appeals directly addressed the question of whether NEPA applies to critical habitat designations. The Ninth Circuit held that because it was apparent that Congress intended the comprehensive ESA procedures for designating critical habitat to replace the NEPA requirements, NEPA does not apply to critical habitat designations. In particular, the Ninth Circuit noted that ESA procedures for critical habitat designations, including a ''carefully crafted congressional mandate for public participation'' through extensive public notice and hearing provisions, renders NEPA procedures superfluous. Although we recognize that the 10th Circuit Court of Appeals disagrees with the *Douglas County* decision, we note that recently in *Bear Valley Mutual Water Company, et. al.,* v. *Jewell,* F.3d, 2015 WL 3894308 (9th Cir. June 26, 2015), the Ninth Circuit reaffirmed its decision in *Douglas County* as controlling law. Accordingly, NMFS was not required to prepare an environmental impact statement for the revision of monk seal critical habitat.

Comment 11: Several comments suggested NMFS did not comply with various legal requirements associated with other laws while preparing this rulemaking, including the National Historic Preservation Act (NHPA), the Clean Water Act, and the Hawaii Environmental Policy Act, Chapter 343, HRS, as amended by Act 50. Comments regarding the NHPA either indicated that Native Hawaiians or indigenous people were not consulted in accordance with section 106 prior to this proposal or requested that Native Hawaiian organizations be a part of a consultation process.

Response: The designation of critical habitat merely establishes an additional consideration to existing Federal ESA section 7 consultation processes. The designation would not alter the physical characteristics of areas within the boundaries and would not authorize a specific project, activity, or program to occur. As stated above, the critical habitat designation only establishes additional consultation considerations

for Federal agencies to ensure that actions undertaken do not destroy or adversely affect Hawaiian monk seal critical habitat. Accordingly, the designation and associated consultation has no potential to alter the characteristics of any historic properties, or otherwise authorize the discharge of pollutants that may degrade the water; therefore, the requirements of the above-referenced authorities are not triggered. Notably, any future Federal actions that are subject to section 7 consultations would remain subject to the consultation provisions of section 106 of the NHPA, provided such action has the potential to cause effects to historic properties.

Furthermore, the associated ESA section 7 consultation process does not preclude any applicable protections or requirements associated with the Clean Water Act. Finally, while HEPA does not directly apply to NMFS' designation of critical habitat, applicants for state permits in designated critical habitat areas must continue to comply with all applicable Hawaii state requirements.

Comment 12: One comment indicated that NOAA's declaration of critical habitat in the State's ocean resources constitutes a taking of resources.

Response: We disagree. Executive Order (E.O.) 12630 requires Federal agencies to consider the impact of proposed actions on private property rights. The Classification section of this rule and the proposed rule provides a summary of our determination on E.O. 12630 with regard to takings. This final rule does not result in a physical invasion of private property, nor does it substantially affect the value or use of private property. Rather, in designating critical habitat for Hawaiian monk seals, this final rule establishes obligations on Federal agencies to consider the impact of their proposed actions, and to avoid destroying or adversely modifying areas designated as critical habitat. Accordingly, we disagree that this designation would constitute a taking of resources.

Need To Designate

Comment 13: Several comments indicated that we are not required to designate critical habitat for the Hawaiian monk seal, because the species was listed in 1976 prior to the 1978 amendment to the ESA (which required critical habitat be designated concurrent with listing). These comments cited *Southwest Florida Conservancy* v. *United States Fish and Wildlife Service* (citation: No. 11–11915) (11th Cir. 2011), which upheld the USFWS' discretion to not designate critical habitat for the Florida panther because the species was listed prior to 1978. One of these comments indicated that this case proves we incorrectly identified in public meetings that the petition gave us no choice but to declare critical habitat for the Hawaiian monk seal.

Response: The comments correctly identify that the Hawaiian monk seal was listed in 1976, prior to the 1978 amendment to the ESA, which required to the maximum extent prudent and determinable that critical habitat be designated for newly listed species. However, we do have the discretion to designate critical habitat for species listed before the amendment, and we exercised that discretion in 1986 (51 FR 16047; April 30, 1986). Due to the existing monk seal critical habitat designation, our obligations under the ESA are different than those of the USFWS in the case of the Florida panther, in which critical habitat was never designated for the species. Under the 1982 amendments to the ESA, the Services ''may'' revise critical habitat designations ''from time-to-time . . . as appropriate.'' 16 U.S.C. 1533(a)(3)(A).

Although the Services are not compelled to revise critical habitat for a listed species, we were required by the petition response process under the ESA to make a decision as to whether substantial scientific information indicates that a revision may be warranted (U.S.C. 1533(b)(D)(i)). As we announced in our 12-month finding, new information about Hawaiian monk seal foraging and habitat use in the MHI indicates that physical and biological features essential to the conservation of the Hawaiian monk seal (which may require special management considerations or protections) are located outside of the boundaries of the 1988 critical habitat designation and throughout the Hawaiian Archipelago (74 FR 27988; June 12, 2009). Consistent with the standards for announcing our 12-month finding (U.S.C. 1533(b)(D)(ii)) we announced our intention to proceed with the requested revision. As we noted in public meetings, applying the best available science, we believe that a revision is necessary to define more accurately the essential features and areas that support Hawaiian monk seal conservation. Additionally, we believe that this revision will facilitate better Federal, State, and local planning for monk seal recovery.

Comment 14: A number of comments maintained that a revised critical habitat designation was unnecessary because existing protections both on the Federal and State level already adequately protect Hawaiian monk seals. Among these comments Hawaii's DLNR identified such existing management measures as those provided for under the ESA (including section 7), the existing critical habitat designation, protections under the MMPA, and State zoning and land use protections in place for Special Management Areas under the Coastal Zone Management Act (CZMA). Additionally, some of the comments questioned the need for the designation because they did not understand how protections for critical habitat would differ from those protections that already exist.

Response: The ESA defines critical habitat in relevant part, as ''the specific areas within the geographical area occupied by the species, at the time it is listed . . . on which are found those physical and biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection,'' 16 U.S.C. 1532(5)(A)(i). The phrase ''may require'' indicates that critical habitat includes features that may now, or at some point in the future, be in need of special management or protection.

As explained in the proposed rule, we determined that each essential feature may require special management considerations or protections. We agree that certain laws and regulatory regimes already protect, to different degrees and for various purposes, the essential features identified for Hawaiian monk seals. However, in determining whether essential features may require special management considerations or protection, we do not base our decision on whether management is currently in place, or whether that management is adequate. That is, we cannot read the statute to require that ''additional'' special management be required before we designate critical habitat (See *Center for Biological Diversity* v. *Norton,* 240 F.Supp.2d 1090 (D. Ariz. 2003)). That habitat may be under an existing conservation program is not determinative of whether it meets the definition of critical habitat.

Moreover, we do not believe that existing laws and regulations adequately ensure that current and proposed Federal actions will not adversely modify or destroy Hawaiian monk seal critical habitat, currently or into the future. While the MMPA provides protections to Hawaiian monk seals, the MMPA offers little direct protection to the features upon which their survival and recovery depend. Additionally, while Hawaii's Special Management Areas may provide some protections for Hawaiian monk seal habitat, they do not inform Federal agency decisions that

may directly affect monk seal essential features.

Under the ESA, Hawaiian monk seals receive other protections for the species itself. ''Take'' of the species is broadly prohibited unless authorized by a permit or incidental take statement, and Federal agencies must ensure that their activities do not result in ''jeopardy'' to the species. In some circumstances ''take'' may be described as harm, which may include habitat modifications, but ESA prohibitions apply only when the modification or degradation is significant and ''actually kills or injures'' the species by ''significantly impairing essential behavioral patterns, including, breeding, spawning, rearing, migrating, feeding or sheltering,'' (See 50 CFR 222.102).

The revision and expansion of critical habitat for this species also informs Federal agencies, State and local governments, and the public of the importance of these areas to the species' recovery. Additionally, the designation helps to ensure that Federal activities are planned and conducted in a manner that safeguards Hawaiian monk seal essential features, and becomes one tool in a suite of conservation measures to support recovery goals for this species (NMFS 2007a). Finally, the consultation process under section 7 of the ESA will provide NMFS with a powerful tool with which to propose project modifications and, as appropriate, reasonable and prudent alternatives, before adverse impacts occur.

Comment 15: Some commenters asserted that the proposed critical habitat designation is unnecessary, misguided, and/or will be ineffective, because the designation would not address the major threats to the species in either the NWHI or the MHI, including those identified in the recovery plan. Among these comments Hawaii's DLNR expressed that the designation would provide no additional benefits to the species than already exist, and suggested that we should concentrate our efforts on more active or valid management techniques that address the major threats to the species, including those threatening the status of the seals in the NWHI, such as juvenile food limitations, shark predation, and mobbing. Similarly, another comment suggested the designation would not address the main management problem for monk seals, which is the destruction of the monk seals' main food source by the commercial lobster fishery in the NWHI, and proposed enhancing lobster stocks as a solution. An additional comment stated that the most detrimental threats to the species cannot be addressed through the designation because the threats are not caused by federally funded, authorized, or permitted activities, or because they are not issues of habitat. Another comment stated that the proposed designation did not align with our recovery plan for the species, and this commenter stated that the designation would fail to remove the ''sociological problems'' that the recovery plan lists as threats to the MHI seals.

Response: The Hawaiian Monk Seal Recovery Plan (NMFS 2007a) acknowledges multiple threats to the species, and ranks those threats as crucial, serious, and moderate. The plan additionally provides prioritized recommendations on conservation actions or programs that support recovery. Generally, conservation actions that address crucial threats are given top priority. We recognize that a revision to critical habitat does not necessarily address all of the crucial threats that are outlined in the recovery plan, such as food limitation, entanglement, and shark predation; however, we disagree with comments that suggest that the revision to critical habitat provides no benefit to this species and/or does not align with the goals of the recovery plan.

Because just over a thousand Hawaiian monk seal individuals remain in the population, priority management actions and recommendations in the Hawaiian monk seal recovery plan focus on diminishing the population-limiting threats, such as food limitations, entanglement, and shark predation in the NWHI. While management actions to address crucial threats are necessary to ensure the survival of the species, other management actions are also necessary to plan for and accomplish recovery of the species throughout its range. In the Recovery Plan, habitat loss is considered a serious threat to the species, and the recovery plan provides recommendations, which received priority 2 ranking, to maintain protections for existing critical habitat with possible expansions as information is available (NMFS 2007a). Accordingly, contrary to comments received, the revision to critical habitat does align with the recovery plan.

With regard to the benefits of the designation, critical habitat uniquely protects the essential features that a listed species needs to survive and recover. These protections are applied through Federal section 7 consultation when an activity carried out, funded or authorized by a Federal agency may affect critical habitat. During consultation the activity is carefully planned in order to avoid impacts to the essential features, such that the critical habitat areas remain functional for the species' use now and in the future. While a critical habitat designation may not be able to prevent the priority threats to the Hawaiian monk seal, it is a valuable tool that helps to ensure that Federal planning and development does not limit recovery for the species.

As stated in our response to Comment 13, we were required to respond to the 2008 petition to revise critical habitat. Moreover, we believe that any effective, broad-based conservation program must address threats not only to the listed species but also to the habitat upon which the species depends. We believe that a revision to critical habitat will support recovery of the species because it will provide information about and protections for habitat and resources that are not exclusively detailed and protected under the 1988 critical habitat designation.

In addition to revising critical habitat for the species, we plan to continue to work towards addressing other obstacles to recovery through other directed research, management, and educational initiatives.

With regard to the comment about lobsters in the NWHI; we acknowledge that food limitations appear to limit juvenile survival in the NWHI; however, we do not have information to confirm the commenter's theory that the declines in the Hawaiian monk seal population are a direct result of the decreased lobster population. Moreover, we note that all commercial fishing within the Papahanaumokuakea Marine National Monument, including crustacean fishing, ceased in 2011, removing competition for those resources by commercial fishermen.

Current information indicates that Hawaiian monk seals are foraging generalists feeding on a wide variety of species; the relative importance of lobster in the diet is not clear. Alternatively, both of these populations may have experienced similar declines due to changes in productivity in the region associated with climate and ocean variability following periods of overexploitation (Schultz *et al.* 2011), and seal declines may have occurred regardless of any influence that lobsters have on the diet. In addition, by referring to ''sociological problems'' we assume the commenter was referring to obstacles associated with improving co-existence between humans and monk seals in the MHI. We recognize that successful recovery efforts for monk seals in the MHI depends on cooperation from Hawaii's communities and we have been and will continue to work with the public to address

concerns that hinder monk seal conservation and peaceful co-existence in the MHI.

Comment 16: Some of the comments stated that the proposed expansion of critical habitat was not justified, or that it was unnecessary for reasons relating to the status of the species. Specifically, some of these comments stated that the 1988 critical habitat designation has proven to be unnecessary or ineffective, because the species is declining within critical habitat in the NWHI and increasing in the MHI, where critical habitat is not designated. One such comment stated that NMFS had not adequately demonstrated that the existing critical habitat in the NWHI had contributed to conservation and recovery of the monk seal, nor demonstrated how the revision would contribute to the recovery goals of the species. Another comment stated that the proposed designation did not meet the definition of critical habitat, because the proposed areas were not essential to the conservation of the species and that the 1988 designation has not proven to be essential to the recovery of the species. Additional comments stated that the increasing numbers and the health of the population in the MHI suggest that seals are adequately protected and that no additional protection is necessary in the MHI.

Response: As noted in the biological report (NMFS 2014a), the difference in the status between these two areas of the Hawaiian monk seal's range is believed to be a reflection of the differences in environmental conditions between these two regions. Evidence evaluating seal health, growth, survival and fecundity in various regions of the NWHI indicates that food limitations may be influencing the lack of recovery in this region (Craig and Ragen 1999; Harting *et al.* 2007; Baker 2008). Researchers suggest that climate-ocean variability leads to variable ocean productivity, which in turns affects these top predators (Polovina *et al.* 1995; Polovina and Haight 1999; Antonelis *et al.* 2003; Baker *et al.* 2007; Baker *et al.* 2012). We recognize that protections established under a critical habitat designation have not and will not alone ameliorate the primary threat of food limitations in the NWHI. However, this does not mean that critical habitat protections are not an important component of an effective recovery program. Critical habitat protections are designed to protect a listed species' habitat from Federal activities that may result in destruction or adverse modification. Therefore, the success or effectiveness of each particular designation may only be measured by determining how agencies were able to minimize the impacts of their activities, or prevent adverse modification or destruction of critical habitat. Contributions to Hawaiian monk seal conservation resulting, at least in part, from the 1988 designation include the continued existence of monk seal essential features in the NWHI and the various measures that Federal agencies have taken over the past 26 years to mitigate or minimize the potential impacts to this habitat. We believe that this revision to critical habitat is supported by new information that is available regarding the ecological needs of the Hawaiian monk seal and that a revised designation will support Federal agencies (as well as State and local governments) in planning for the protection of resources for Hawaiian monk seal conservation.

The comment that stated that the proposed areas did not meet the definition of critical habitat has incorrectly applied the definition of unoccupied habitat to the areas proposed for designation. The ESA defines critical habitat in part, as ''the specific areas within the geographical area occupied by the species . . . on which are found those physical and biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection.'' 16 U.S.C. 1532(5)(A)(i). Critical habitat includes areas outside of the geographical areas occupied by the species if such areas are essential for the conservation of the species. 16 U.S.C. 1532(5)(A)(ii). Habitat proposed for Hawaiian monk seal critical habitat designation within the MHI meets the definition of occupied critical habitat. Specifically, these areas are within the range used by the species, have features essential to conservation of the species, and these features may require special management considerations or protections from certain activities, as outlined in the biological report (NMFS 2014a). Regarding the comment that suggested that the previous designation has not proven to be essential to recovery of the Hawaiian monk seal, we think this statement fails to appreciate the complexity of recovering a species from a depleted status. We maintain that recovery for a listed species most often requires a suite of recovery actions and that critical habitat is just one tool that maintains the habitat to support the recovered population, as intended by Congress (see our response to comment 4). We refer back to our previous discussion about calculating the effectiveness of the 1988 designation and maintain that the former designation has played a role in conserving the essential features within the NWHI portion of the species range. Further, we believe that by expanding the 1988 designation to other significant areas of the Hawaiian monk seals' range, we can more effectively conserve the habitat that is necessary to support a recovered population.

Concerning comments that suggest that increasing numbers of seals in the MHI indicate that additional protections are unnecessary, we refer back to our responses to comments 15 and 16, which describe how the best available information indicates that Hawaiian monk seal essential features exist throughout the MHI and that they require special management or protection. Therefore, we believe a revised critical habitat designation including habitat throughout the species' range will help to safeguard resources Hawaiian monk seals will need for recovery.

Comment 17: Several comments appear to confuse the protections that monk seals are afforded under a critical habitat designation with those that currently exist to protect the species under the MMPA and other parts of the ESA, or other habitat protections. One comment stated that the critical habitat designation was not warranted because ''human-seal interaction'' and enforcement in the MHI was too low to clearly establish a need for additional regulations. Other comments suggested that there was not information to indicate a need for a reserve or for the Federal government to own the land. Still other comments suggested that the designation was unnecessary because of the thousands of square miles that are already protected within the National Marine Monument and the Sanctuary.

Response: The comments indicate that at least some protections for critical habitat may be misunderstood and/or misconstrued. We have grouped these comments in an effort to clarify the protections that exist with a critical habitat designation and to express how critical habitat protections differ from other forms of protections that were mentioned.

Critical habitat designations identify those areas where features exist that are essential to the conservation of the species and which may require special management considerations or protection. Protections for critical habitat are applied under section 7 of the ESA (see Statutory and Regulatory Background section). These designations are used as a planning tool for Federal agencies to protect the essential features such that the areas may support survival and recovery of

the listed species. In section 7 consultation, the Services may recommend specific measures or actions to prevent or reduce the likelihood of impacts to the important resources in these areas. Recommendations to prevent harm to critical habitat depend on how a project or activity might impact the essential features, and for this reason, recommendations may be project or activity specific.

A critical habitat designation does not create a reserve or a preserve. Critical habitat designations do not change the ownership of land, and they do not change the other local or State jurisdiction over a particular area. A critical habitat designation generally has no effect on property where there is no Federal agency involvement; for example, a private landowner undertaking a project that involves no Federal funding or permit.

We assume that the comment referencing ''human-seal interaction'' and enforcement is referring to incidents of ''take'' where people interact with seals on the beaches or in the water, resulting in harm or disturbance to the species. The commenter is suggesting that low ''take'' enforcement records in Hawaii implies that critical habitat protections are unnecessary. To clarify, a critical habitat designation protects essential features and habitat; it does not regulate day to day ''human-seal interaction'' where take may occur, nor does it change the existing regulations that prevent take or harassment of monk seals under the ESA or the MMPA.

The Papahanaumokuakea Marine National Monument was established by Executive Order in 2006 to protect the exceptional array of natural and cultural resources that include the NWHI and the surrounding marine resources. The area is managed jointly by the State, NOAA, and the USFWS. The 1988 monk seal critical habitat designation, as well as the proposed expansion in the NWHI, falls entirely within the boundaries of Papahanaumokuakea. We agree that the Hawaiian monk seal and the essential features of its critical habitat receive some protections from the ecosystem approach to management that is used by the Papahanaumokuakea Marine National Monument. However, these areas continue to meet the definition of critical habitat for the species because the essential features exist within these areas and they require special management or protection. The ecosystem in this area has experienced a great deal of perturbation and it falls on the managing agencies to ensure that current and future management efforts support the vast array of species that use this habitat, including the Hawaiian monk seal. A revision to critical habitat and acknowledgment of its existence within these protected areas, at a minimum, provides the management authorities with the information necessary to responsibly plan for the specific protection of monk seal critical habitat essential features, while using the ecosystem approach to management.

The Hawaiian Islands Humpback Whale National Marine Sanctuary (HIHWNMS) was established in 1992 and is jointly managed by NOAA and the State of Hawaii. While covering key areas that are significant to the humpback whale, HIHWNMS waters do not encompass the entirety of areas in the MHI that support Hawaiian monk seal essential features. Management within HIHWNMS waters currently focuses on providing protections for humpback whales and their habitat. Recently the National Ocean Service proposed to expand the boundaries and scope of the HIHWNMS to include an ecosystem-based management approach, including providing specific regulatory protections for various locations. Although existing protections and proposed measures, if finalized, may provide some form of protection for Hawaiian monk seal essential features; they do not, ensure that current and proposed actions will not adversely modify or destroy Hawaiian monk seal critical habitat within the HIHWNMS boundaries.

Natural History

Comment 18: Multiple comments referenced the historical use of MHI habitat by Hawaiian monk seals, and the proposed designation in these areas. These comments expressed divergent perspectives including the belief that Hawaiian monk seals are not native to the MHI, or the belief that MHI habitat has supported Hawaiian monk seals for many years.

We received many comments referring to Hawaiian monk seals as not native, as introduced, or as invasive in the MHI. Some of these comments questioned the origin of the name, and whether it is an indigenous species due to a lack of Hawaiian cultural references. Other comments attributed the increase in the number of seals in the MHI and their use of MHI habitat to historical translocation efforts. Additionally, a couple of comments speculated that seals were not found historically in the MHI, because Hawaiians would likely have extirpated the seals to prevent competition for resources.

In contrast, other comments acknowledged that Hawaiian monk seals exist throughout the Hawaiian Islands, and that historical accounts of monk seals in the MHI indicate that the species has been using the habitat for longer periods of time than previously acknowledged. A couple of these comments indicated that the seals' use of the Main Hawaiian Islands predates human presence in Hawaii, and other comments expressed the importance of educating the public about the historical information that is available. One of these comments theorized that seals were driven from the MHI due to hunting pressures. One comment acknowledged that they were unsure about historical monk seal use of the MHI, but noted that the current increase in the number of seals in the MHI signifies that MHI habitat does not have the same problems for monk seal growth as NWHI habitat; consequently, monk seals are going to continue to use the MHI habitat. This commenter also noted that the MHI was part of the same chain as the NWHI and that these areas represent the same ecosystem.

Response: We recognize these conflicting views regarding the Hawaiian monk seal's historical use of the MHI in the biological report (NMFS 2014a); however, we agree with comments that note that Hawaiian monk seals are native to the Hawaiian Islands and a natural part of the ecosystem in this region.

An invasive or non-native species most commonly refers to species that are human-introduced in some manner to an ecosystem. However, Hawaiian monk seals have been in the Pacific basin for millions of years and express ecological adaptations to Hawaii's tropical marine environment in their foraging ecology, reproductive behavior, and metabolism. ''Hawaiian'' describes the geographical area where the species, found nowhere else on earth, was first recorded by European explorers in the late 1800s and fossils have been found on the Island of Hawaii dating back 1,400–1,760 years ago, well before any of the historically written accounts of seals (Rosendahl, 1994). Early historical accounts of seals in the MHI, the fossil evidence, and the similarities in ecology between the NWHI and the MHI, indicate that MHI habitat is within the species' natural range.

As noted in the biological report, we translocated 21 males to the MHI in 1994 to alleviate male aggression issues at Laysan Island. However, Hawaiian monk seals were already established in the MHI prior to the 1994 translocation efforts. This is corroborated by reports of seals on Niihau in the 1970s and public sighting reports received throughout the MHI in the 1980s (Baker

and Johanos 2004), which included eight seal births in the MHI prior to the male-only translocation effort in 1994. Hawaiian monk seal numbers in the MHI have continued to grow naturally with births on seven of the MHI. While some of the 1994 translocated males may have sired pups in the MHI, the naturally occurring female monk seals in the MHI are responsible for the propagation of seals in the MHI.

Comment 19: We received multiple comments that questioned the accuracy of the description of monk seal use of the MHI habitat. In general these comments questioned how seals arrived in the MHI, how many seals are moving on their own to the MHI, whether the species is migratory, and whether we have ever translocated seals to the MHI in the past, or present.

Response: As noted in the biological report (NMFS 2014a), the current population of monk seals in the MHI is believed to have been founded by seal dispersal from the NWHI to under-documented areas of the MHI, such as Niihau or Kaula. Local accounts from Niihau indicate that seals were regularly using the Island as early as the 1970s (Baker and Johanos 2004). In the past 40 years seal numbers have grown in the MHI and seals have begun to utilize habitat throughout the MHI. Since early tagging efforts began in the NWHI in the 1980s, only a small number of seals have been documented moving from the NWHI to the MHI. The growth of the MHI seal population cannot be explained by this small number of migrations; instead, the population is growing due to high survival and reproduction of the local MHI population. As noted in our response to comment 18, 21 male seals were translocated to the MHI to manage an aggression problem at Laysan Island, but female seals have not been translocated to the MHI.

Comment 20: We received several comments regarding Hawaiian monk seal foraging behaviors. Some of these comments expressed concerns or stated that monk seals may be damaging to the reef environment or competing directly with humans for fishing resources. Other comments wished to clarify what monk seals eat, and how much they eat to better understand their impacts on various resources.

Response: The biological report (NMFS 2014a) provides information about Hawaiian monk seal foraging behavior and preferences that we summarize here.

Video footage of foraging monk seals indicates that the species uses a variety of techniques to capture prey species, including probing the bottom with their nose and vibrissae, using their mouth to squirt streams of water at the substrate, and flipping small loose rocks with their heads or shoulders in uniform bank, slope, and sand habitats (Parrish *et al.* 2005). However, there is no evidence to suggest that these natural seal foraging behaviors that may cause some disturbance to the bottom are causing damage to the coral reefs or the surrounding environment. In fact, the largest numbers of seals exist in the NWHI (around 900 animals) and the reefs in this area of the Archipelago are generally understood to be more diverse and less degraded than in the MHI (Friedlander *et al.* 2009).

In general, Hawaiian monk seals are considered foraging generalists that feed on a wide variety of bottom-associated prey species. Goodman and Lowe (1998) identified inshore, benthic, and offshore teleost or bony fishes, as the most represented prey items in monk seal scat, followed by cephalopods (squid, octopus and cuttlefish); from the 940 scats sampled, the study identified 31 families of teleosts or bony fishes and 13 families of cephalopods. It is difficult to precisely determine the degree of overlap between MHI fisheries and the Hawaiian monk seal diet, because the available data only show the families of fishes that monk seals eat and the species of fish caught by MHI fisheries. These data do not clarify whether competition exists for the same types or size of fish, in the same geographic areas, or at the same depths or time. Importantly, pelagic fisheries, such as tunas, mahi-mahi, and wahoo, which make up a majority of commercial and recreational landings in Hawaii, are not considered in competition with Hawaiian monk seals because seals focus on much smaller, bottom-associated prey species found closer to shore.

To consider how monk seal prey items may overlap with Hawaii's near-shore commercial and recreational fisheries Sprague *et al.* (2013) compared fish families landed in the Hawaiian monk seal diet with the most prevalent fish families found in the near-shore commercial and recreational fisheries. This evaluation excluded pelagic species, which make up 95 percent of commercially reported landings and 90 percent of recreational landings, and are not Hawaiian monk seal prey species. Of the 32 fish families found in the Hawaiian monk seal diet or in commercial or recreational near-shore landings, there was overlap in 15 families (Cahoon 2011; Sprague *et al.* 2013). With all pelagic landings excluded, these 15 families make up about 27 percent of the remaining reported commercial fishery landings by weight, and 39 percent of the remaining reported recreational fishery landings by weight (Cahoon 2011; Sprague *et al.* 2013). In other words, only about 27 percent of the near-shore commercial fishery landings and 39 percent of the near-shore recreational fishery landings are from families of fish also known to be eaten by monk seals. In summary, based on currently available data, it appears that Hawaiian monk seals are not likely to have a large impact on the available biomass in the MHI.

Sprague *et al.* (2013) also estimated that the maximum current MHI population of about 200 seals consumes around 1300kg/day (2900 lbs/day, or about 15lbs/day per seal); this is about 0.009 percent of the estimated available prey biomass in the near-shore waters (<30 meters) around the MHI. Spread out over their likely foraging habitat in the MHI (out to 200 m depth), the estimate above translates to about 0.17 kg per square kilometer per day (or about 1 lb/square mile per day). In perspective, apex predatory fishes in the MHI are estimated to consume at least 50 times more biomass daily and recreational and commercial fisheries in the MHI (excluding pelagic species) are estimated to land approximately three times more near-shore marine resources than are consumed by the current monk seal population (Sprague *et al.* 2013).

Comment 21: One comment stated that the proposed rule process was presenting misinformation regarding the seals' population and their pending extinction. This comment goes on to cite a 2007 report, that presented the number of seals at about 1,200 animals with a computer generated decline of 4 percent and a 2011 report that gives the numbers as 1,100 with a decline again given as 4 percent. This commenter concluded that the projected extinction has no bearing in fact, and that the population has been essentially constant over the last five years.

Response: We disagree with the commenter's conclusion, because the commenter has incorrectly applied information presented on the NWHI population to the entire monk seal population estimates and has associated an incorrect time scale to the data presented. The population estimates and percent decline estimates referred to in the comment are taken from the annual Stock Assessment Reports (SARs). The approximate 4.5 percent decline (2009 SARs) referred to in the proposed rule is based solely on the six NWHI subpopulations (using a log-linear regression of estimated abundance on year for the past 10 years) and does not represent a percent decline

for the entire population. The population numbers presented by the commenter are for the entire population of seals located throughout the Archipelago, including estimates for Necker, Nihoa, and the MHI. The proposed rule did not use the decline rate for the NWHI to predict the extinction of the species, but rather to demonstrate the status of the declining population in the NWHI in comparison with the increasing MHI population. Population projections of the Hawaiian monk seal indicate that these two populations could equalize in less than 15 years (Baker *et al.* 2011). We believe the different trajectories between these two sub-populations expresses the critical role that the MHI population plays in supporting the survival of this species and emphasizes the importance of protecting MHI habitat.

Essential Features

Comment 22: We received several comments regarding the essential feature describing low levels of anthropogenic disturbance. Some comments suggested that human activity in MHI habitat makes some or all of MHI areas not conducive to monk seal population recovery because the areas do not offer low levels of anthropogenic disturbance. One comment suggested that the 1986 designation did not include the MHI, because the NWHI areas were sparsely populated by humans in comparison to the MHI.

Response: After considering these and other comments, we further evaluated the role that areas with low levels of anthropogenic disturbance play in supporting monk seal conservation. We have determined that low levels of anthropogenic disturbance are not a physical or biological feature that is essential to Hawaiian monk seal conservation because they do not independently provide a service or function for Hawaiian monk seal conservation. Instead we find that low levels of anthropogenic disturbance may be a characteristic that describes some Preferred pupping and nursing areas or significant haul-out areas, which are the two terrestrial features that were found to be essential to Hawaiian monk seal conservation (see Summary of Changes from the Proposed Designation section above for more details).

Areas designated as critical habitat for Hawaiian monk seals in the MHI support the three essential features: Preferred pupping areas, significant haul-out areas, and/or foraging areas. In response to the comment regarding the 1986 designation, the areas identified as part of the 1986 designation in the NWHI were included due to the existence of five essential features found throughout these areas (51 FR 16047; April 30, 1986), based on the then-available scientific information, not because the area is sparsely populated by humans.

Comment 23: We received a couple of comments that questioned how the boundaries of critical habitat were determined and/or what data support the designation. One of these comments questioned why the 1988 boundary of 20 fathoms could not also apply to the revised designation.

Response: As identified in the proposed rule and the biological report (NMFS 2014a), we identified habitat features essential to the conservation of Hawaiian monk seals, and delineated specific areas within the geographical area occupied (or range) which contain at least one essential feature. Since the proposed designation, and after considering public comments, we have refined our description of the essential features to identify more precisely those areas where these features exist. As described in the Changes from the Proposed Designation section of this rule, we believe that depths up to 200 m, used by monk seals for foraging, support features essential to Hawaiian monk seal conservation. At this time, we do not have sufficient available information to conclude that waters deeper than 200 m support these essential features. Consequently, the boundaries of this designation are set at 200 m depth to encompass this refined essential feature. The terrestrial boundaries are set to encompass preferred pupping and nursing areas as well as significant haul-out areas. The information that supports the designation is described more fully in the Habitat section of the biological report (NMFS 2014a) and includes information on foraging ecology to describe where preferred marine foraging areas exist and monk seal sighting and tracking information to describe where preferred pupping and nursing areas and significant haul-out areas exist.

The 20 fathom (37 m) boundary in marine areas in the NWHI was established in 1988 at a time when our understanding of monk seal foraging ecology was limited. Advances in technology since the 1980s has led to a better understanding of Hawaiian monk seal ecology and we believe that the best available information indicates that foraging areas essential to Hawaiian monk seal conservation exist outside the 20 fathom (37 m) boundary established for the 1988 designation. For example, data from the NWHI indicates that seals are regularly diving at depths greater than 40 m, that at deeper depths behaviors are focused on foraging and that a majority of deeper diving behavior is captured at depths less than 200 m (Parrish *et al.* 2000; Stewart *et al.* 2006).

Comment 24: The DLNR submitted comments stating that the detail provided and/or the analysis associated with five of the proposed six essential features was inadequate to meet the regulatory requirements of the ESA to establish critical habitat. In these comments the DLNR identified that pupping and nursing areas appear to meet the definition of ''essential,'' but that shallow aquatic sites occur everywhere and that these sites can be decreased in number based on the occurrence of pupping and nursing areas. The DLNR also suggested that two of the essential features regarding foraging habitat are identical in nature and should be consolidated. Additionally, they contend that the designation of critical habitat is not necessary because adequate protections are in place in the MHI where Hawaiian monk seal food availability is not constrained. The DLNR also identified that haul-out areas need to be physically accessible to seals and that areas such as high cliff shorelines should not be included in the proposed designation. The DLNR concluded that in considering this information that the designation should be revised to reduce the coastal areas proposed.

Response: We agree with the DLNR and other comments suggesting that some of the essential features could be refined or combined to eliminate unnecessary duplication. To address these comments, we reconvened the CHRT to review comments, information used to support the proposed rule, and newly available information, including more recent MHI GPS tracking information. The Summary of Changes from the Proposed Designation section of this rule provides more specific information about refinements to the essential features.

We note that these comments indicate some confusion about the role of certain essential features in Hawaiian monk seal ecology. The proposed rule may have contributed to that confusion by identifying certain habitat features as separate essential features, even though they defined similar features that are used by monk seals to support a specific life-history stage or ecological function. For example, in the proposed designation ''areas with characteristics preferred by monk seals for pupping and nursing'' described the terrestrial component and ''shallow sheltered

aquatic areas adjacent to coastal locations preferred by monk seals for pupping and nursing'' described the marine component of the areas that support Hawaiian monk seal mothers and pups throughout birth, lactation and weaning. To simplify and clarify the role of this habitat in Hawaiian monk seal ecology we have combined the two features in this final rule to describe the entire area that supports Hawaiian monk seal reproduction and rearing as, ''Terrestrial areas and the adjacent shallow, sheltered, aquatic areas with characteristics preferred by monk seals for pupping and nursing. Similarly, we have combined the two proposed essential features that described marine foraging areas that are essential to Hawaiian monk seal conservation as a single feature.''

With regard to the comment that the critical habitat designation is unnecessary where existing habitat protections exist, we incorporate the response to comment 14. The purpose of critical habitat is to identify the occupied areas that contain features that are essential to the conservation of a listed species and the unoccupied areas that are essential to the conservation of the species. The best available information indicates that marine foraging areas out to 200 m are essential to support conservation of the Hawaiian monk seal throughout its range. While the ESA provides NMFS with broad discretion to exclude areas from designation based on consideration of national security, economic, and other relevant impacts, it does not provide authority to exclude areas where essential features are found merely because those areas may be subject to existing conservation measures.

Finally, we agree with the DLNR that haul-out areas need to be physically accessible to seals. In the proposed designation we indicated that those areas in the MHI that were inaccessible, such as cliffs, were not considered to meet the definition of Hawaiian monk seal critical habitat. However, as noted in the Summary of Changes From the Proposed Rule section, we did not clearly state that these areas are not included in the NWHI portion of the designation. Accordingly, we have revised the final rule to clarify that areas found within the boundaries of this final designation that are inaccessible to monk seals, such as cliffs and manmade structures, are not designated Hawaiian monk seal critical habitat because they do not meet the statutory definition.

Comment 25: One comment argued that the low survival rate of pups and juvenile monk seals is the primary factor contributing to the decline of the population in the NWHI and recommended that the essential features focus on the habitat requirements of pups and juveniles, not adults. This comment went on to recommend that critical habitat in the MHI be revised to depths between 0–100 m to match preferred juvenile foraging habitat. Additionally, this comment went on to acknowledge if the 500 m depth is considered ''essential'' on the basis of a few dive records from the MHI, then NMFS should equally include all shoreline and adjacent marine areas with previous records of monk seal haul outs as these would also be considered essential, including Waikiki Beach, Kaneohe Bay, and Hanalei Bay.

Response: The ESA defines critical habitat to include occupied areas that contain those physical or biological features essential to the conservation of the species, and which may require special management considerations or protections. We believe that providing protections only to those features that provide a service to a particular life-history stage of the species, without regard to the habitat needs of the listed species as a whole, is inconsistent with the ESA.

With regard to the depth contour selected for the designation, we have re-evaluated NWHI dive data and supplementary MHI tracking and dive data after considering this and other comments received regarding the clarity of the described essential features (see Summary of Changes from the Proposed Designation section of this rule). We have determined that foraging habitat that supports all age classes of Hawaiian monk seals and is essential to the conservation of the species is best described as foraging areas out to a depth of 200 m. This depth boundary encompasses foraging habitat that supports a majority of diving behavior throughout the island chain and includes foraging habitat that will support recovery of seals in the MHI. Additionally, in the Critical Habitat Review Team Process section of the biological report (NMFS 2014a) we have clearly described the significant haul-out areas essential feature to better describe those coastal areas that support important terrestrial habitat for Hawaiian monk seal conservation.

Comment 26: One comment agreed that pupping and nursing areas are essential features for Hawaiian monk seals, but disagreed that haul out areas may be described as equally essential and contended that identifying most of the coastline as critical habitat is misleading or inadequate. This comment asserted that seal terrestrial use is most sensitive during pupping and rearing stages, and that seal haul out locations are not as resource/site specific or sensitive. The comment went on to further state that areas with no known seal activity cannot be assumed to be critical habitat and that haul-out habitat and reproductive habitat need to be delineated and mapped.

Response: We agree with the commenter that pupping and nursing areas are an essential feature for Hawaiian monk seal critical habitat, but maintain that the evidence shows that haul-out areas are an essential feature as well. A feature is essential if it provides an essential service or function to the conservation of the listed species and may require some form of management or protection. As noted in the biological report, monk seals use haul-out areas for resting, molting, and as a refuge from predators. Additionally, frequented haul-out areas provide space for social interactions with other seals and support behaviors associated with mating and reproduction. Although monk seals may use a variety of accessible areas of coastline for hauling out, there are areas of coastline where monk seal haul out activity is more prevalent, and we believe these areas are essential to promote natural monk seal behaviors. In the proposed rule, we recognized that preferred pupping and nursing areas and significant haul-out areas do not occur continuously along the coastlines and, after considering public comments, we recognized that we could provide greater clarity on where features are found (see Summary of Changes from the Proposed Designation section of this rule). These more precise descriptions were then used to identify where the essential features exist within each specific area and we have revised the boundaries of the designation to reflect more accurately those areas that meet the definition of Hawaiian monk seal critical habitat. We are satisfied that this approach has identified sufficient haul-out habitat to meet the needs of a recovered monk seal population in the MHI.

Comment 27: One comment asserted that the proposed rule failed to take into account the ''Hawaii reef strategy: Priorities for the management in the main Hawaiian Islands 2010–2020'' (State of Hawaii 2010) when considering food limitations in the NWHI as a basis for including marine foraging areas as an essential feature. The commenter indicated that the State of Hawaii (2010) publication states that standing fish stock in the NWHI is 260 percent greater than in the MHI, and that most of the dominant species that are present, regardless of trophic level, are nearly

always larger in the NWHI than in the MHI. The commenter questioned whether food limitations were a threat to the species.

Response: We believe that the commenter incorrectly equates the numbers presented in the Hawaii reef strategy to available prey resources for monk seals. These numbers are taken from a study by Friedlander and DeMartini (2002), which compared density, size, and biomass of reef fishes between the NWHI and the MHI to consider how fishing has affected assemblages in the MHI. The NWHI numbers include the apex predator biomass, which was reported as 54 percent of the total fish biomass in the NWHI (Friedlander and DeMartini 2002), as well as other fish species that are generally not considered prey resources for Hawaiian monk seals. While we agree that total fish biomass is greater in the NWHI than the MHI, this difference in biomass does not equate to available prey resources for monk seals and does not take into account the number of predators competing for those resources.

As noted in the proposed rule, the best scientific information available, including evidence of seal health, growth, survival, and fecundity in the NWHI (Baker 2008), indicates that food limitations are primarily responsible for the decline of the monk seal population in the NWHI.

Comment 28: We received a few comments in agreement with the proposed essential features, and these comments identified the important role that critical habitat plays in providing protections for features and habitat to support recovery. Among these comments, the Marine Mammal Commission asserted that the descriptions of the physical and biological features are adequate and that the list of habitat types are complete and appropriate for consideration as essential.

Response: We acknowledge these comments. We have further evaluated the role that each proposed feature plays in monk seal survival and recovery and have made minor clarifications to resolve confusion over differences between identified features, the importance of specific habitat areas, and the characteristics which describe these areas. We refer to the Summary of Changes from the Proposed Designation section of this rule and our responses to the comments regarding the essential features 35–39 for additional details.

Best Available Science

Comment 29: A commenter argued that the rationale behind the 500 m depth boundary in the MHI was inconsistent with section 4(b)(2) of the ESA requiring the use of the best available information. This comment went on to note that current diving information indicates that monk seals forage within the 200 m isobaths in the MHI and that the unpublished MHI diving data presented in the proposed rule is limited and only demonstrates that monk seals are capable of diving to these depths, not that these depths are ''preferred.'' This commenter also argued that there is no literature to indicate that intra-specific competition plays a role in food limitation in the NWHI; therefore, NMFS' rationale for expanding MHI boundaries to 500 m to accommodate both population increase and intra-specific competition in the MHI is speculative.

Response: We have re-evaluated the information used to support the proposed essential feature for marine foraging areas and agree that only those marine foraging areas in water depths of 0 to 200 m are essential to the conservation of the Hawaiian monk seal (see discussion in the Summary of Changes from the Proposed Designation section of this rule for further information).

As noted in the proposed rule, decline of the monk seal population in the NWHI has been attributed to food limitations, and evidence supporting this conclusion has been demonstrated by evaluating seal health, growth, survival, and fecundity in the NWHI (Baker 2008). Several factors may influence the availability of prey resources and intraspecific competition (competition between the same species) has been one of the factors indicated in the literature as playing a role in food limitations in the NWHI. For example, Craig and Ragen (1999) indicated that an earlier population boom at French Frigate Shoals Atoll may have led to more pronounced declines in juvenile survival in the late 1980s–1990s in comparison to Laysan Island's subpopulation, because juvenile seals at French Frigate Shoals faced more competition during periods of low productivity. We believe that the substantial overlap demonstrated in the generalized home ranges of seals within resident areas of the NWHI (Stewart *et al.* 2006) indicate that these seals are using similar resources and that some degree of intraspecific competition is occurring. The literature also indicates that interspecific competition with other predatory fishes is occurring (Parrish *et al.* 2008) and that changes in overall abundance and distribution of prey due to climate-ocean factors is influencing food availability for Hawaiian monk seals in the NWHI (Polovina *et al.* 1999, 1995; Antonelis *et al.* 2003, Baker *et al.* 2007; Baker *et al.* 2012). Within the complexity of ecosystem dynamics it is difficult to measure how much any one of these factors is influencing food limitations for Hawaiian monk seals; however, all factors contribute to Hawaiian monk seals' ability to successfully forage.

As noted earlier, dive data collected in the MHI indicate that seals are using areas from 100–200 m less frequently than their NWHI counterparts; however, Hawaiian monk seals are capable of diving and foraging at depths exceeding 550 m (Stewart *et al.* 2006). Available scientific information indicates that foraging behaviors in the MHI are similar to seals in the NWHI in that seals' foraging focuses on submerged banks and most seals focus their foraging efforts close to their resident island (Cahoon 2011). Baker and Johanos (2004) suggest that monk seals in the MHI area are experiencing favorable foraging conditions due to decreased competition (both interspecific and intraspecific) in these areas, which is reflected in the healthy size of animals and pups in the MHI. This theory is supported by Cahoon's (2011) recent comparisons of foraging trip duration and average foraging distance data between these two areas, which indicates that MHI seals do not travel as far or as long as NWHI seals.

In both the proposed and this final rule, we noted that marine foraging areas that are essential to Hawaiian monk seal conservation are at the same depth in the NWHI and in the MHI. Although a majority of MHI monk seal foraging activity currently occurs at depths that are shallower than their NWHI counterparts, MHI seal numbers are still low (approximately 153 individuals) and expected to increase (Baker *et al.* 2011). We anticipate that as seal numbers increase around resident islands in the MHI, seals' foraging ranges will expand in order to adjust as near-shore resources become shared by more seals whose core foraging areas may overlap. As density-dependent factors are known to influence large mammals and have been shown to influence pinnipeds within specified geographic areas (Kuhn *et al.* 2014), NMFS is satisfied that foraging areas out to 200 m depth are essential for monk seal conservation throughout the species' range.

Comment 30: We received one comment that NOAA had not met its obligations for decision making under the ESA to use the best available scientific information because the CHRT considered factors such as economic

and societal impacts in the biological report.

Response: The commenter is misinformed about the role of the CHRT and the biological report in our decision making process. Our decision to designate critical habitat is consistent with the requirements of section 4(b)(2) of the ESA, which requires that we designate critical habitat using the best scientific data available after taking into consideration economic, national security and other relevant impacts. Our CHRT, consisting of biologists from NMFS PIFSC and PIRO with expertise in Hawaiian monk seal research and management, was responsible for using the best available scientific data to identify the features that are essential to Hawaiian monk seal conservation and this information was summarized in the biological report (NMFS 2014a), which was peer reviewed by independent scientific experts. A complete economic analysis was separately conducted by consultants with expertise in economics and reported in an economic analysis report (Industrial Economics 2014). The draft economic analysis report was subjected to rigorous review by three independent peer reviewers, and the report was revised for this designation in response to comments received from peer reviewers and the public. Our decision to designate critical habitat was based on a thorough consideration of public comments as well as all information contained in the biological report, the economic report, national security impacts identified by the DOD or Department of Homeland Security, and other relevant impacts, and the weighing process for this is outlined in the 4(b)(2) report as well as this final rule.

Areas Proposed

Comment 31: Several comments questioned the rationale behind expanding the critical habitat designation to the MHI because of differences in environmental conditions between the NWHI and the MHI. Some of these comments question the seals' ability to recover in areas of high human use, when they are not recovering in the ''pristine'' areas of the NWHI. Still other comments propose that the inability to survive in a ''pristine'' environment indicates that the seals are naturally headed towards extinction.

Response: Our response to comment 15 clearly outlines the regulatory and scientific rationale that generated this revision. Additionally, as previously stated, the proposed critical habitat areas were selected by identifying those areas that have the features essential for monk seal conservation, in accordance with the definition under the ESA.

Habitat throughout the MHI meets the definition of critical habitat because it contains features essential to Hawaiian monk seal conservation, including preferred pupping and nursing areas, and foraging areas. Since the 1988 designation of critical habitat, Hawaiian monk seals have naturally increased in numbers in the MHI. The continued growth and health of monk seals in these areas demonstrate that monk seals are doing well in MHI habitat, despite any perceived conflicts with human uses. As indicated in the Hawaiian monk seal recovery plan (NMFS 2007a), MHI habitat must support a minimum of 500 seals as part of the recovered population for this species. Critical habitat provides a mechanism to protect some of the habitat necessary for this recovering population.

We disagree with comments that imply that the decline of the Hawaiian monk seal is a natural progression to extinction because the decline is occurring in a ''pristine'' environment. Although often portrayed as pristine, the NWHI ecosystem has been subject to intense anthropogenic perturbations including harvesting of seabirds, turtles, monk seals, sharks, fish, invertebrates, and island resources (Schultz *et al.* 2011), which have impacted the integrity of this complex marine ecosystem. Historical records of extraction give a rough estimate of the difference in biological assemblages of commercially sought after species, but there is not enough information to understand how key relationships in this environment may have been altered. However, the lack of recovery in certain species such as Hawaiian monk seals, pearl oysters, and two lobster species (Schultz *et al.* 2011) provides evidence that the current assemblage of species continues to reflect an altered system. While human extraction has been mostly eliminated as a threat in the NWHI, historical perturbations left remnants of these populations to survive in a habitat that was undoubtedly altered by human activities. Small population size leads to instability in population dynamics, which leaves small populations more vulnerable to the changes that occur within their ecosystem, especially to changes in resource availability (Copenhagen 2000). Although the current decline in the NWHI monk seal population appears to be a result of resource limitations that may be associated with climate and ocean variability (Baker *et al.* 2012), the populations' natural ability to withstand ecological shifts in their environment was most likely altered by earlier human exploitation. Describing the decline of the Hawaiian monk seal as a natural event overlooks the impacts that historical human exploitation has had on this population and its environment.

Regardless of the cause of the decline, the ESA requires that we work to mitigate the threats to this species to assist in its survival and recovery. Recovery in the NWHI may require additional time for the ecosystem to stabilize, but active management efforts are important to bolster the resilience of the monk seal population. As previously stated in our response to comment 15, we recognize that a critical habitat designation will not alone mitigate these problems in the NWHI; however, the designation is required by the ESA and is expected, along with other conservation efforts, to facilitate the survival and recovery of the monk seal.

Comment 32: Hawaii's DLNR submitted comments stating the proposed designation was overly broad and not consistent with the actual physical and biological needs of the Hawaiian monk seal. They suggested that NMFS take a more targeted approach to designate critical habitat by identifying the ''best available habitat'' that can be protected and managed for the species. The DLNR identified six qualities important for targeted areas. These included: (1) Relatively intact off-shore coral beds for feeding; (2) relatively secluded beaches and shorelines to provide haul-out; (3) resting, loafing, and pup rearing sites; (4) areas with low levels or potential for discharge of urban and industrial pollutants, erosion, and mammalian disease pathogens (they suggested we investigate Class AA water and exclude Class A waters identified by the State Department of Health to meet this quality criterion); (5) areas with low or infrequent human use of beach, ocean recreation, and surface boat traffic; and (6) areas where the above activities can be controlled. They additionally suggested directing management efforts towards those targeted areas to tie into the overall recovery efforts. Additional comments from the DLNR, received during the second public comment period, provided more detail about this targeted approach, noting that 34 percent of Hawaii's coastlines and adjacent reef habitat could provide more than enough high quality habitat and food for the Hawaiian monk seal consistent with the goals of the Federal recovery plan.

Response: After considering this and other comments, we have further evaluated the proposed essential features and have refined them to better

describe how these features provide a service or function to the conservation of the Hawaiian monk seal. Additionally, we have revised the delineation of the designation to accurately reflect where these essential features exist, providing more precision to the designation. Some of the qualities recommended by the DLNR are already incorporated in the designation, including resting and pupping sites. However, other qualities recommended by the DLNR focused on the human-use of the area and, although we did consider human-uses when conducting our exclusion analyses for national security, economic, and other relevant impacts under our section 4(b)(2), we believe that the approach described by DLNR does not adequately consider the ecology of the species or the best scientific information available regarding Hawaiian monk seal habitat use, as required by the ESA. In particular, under the ESA, if the occupied habitat contains those features that are essential to conservation of the species and NMFS determines that they may require special management considerations or protection, then the habitat area is subject to critical habitat designation, unless an appropriate exclusion applies, regardless of human use of the area. We disagree that the ESA would have us designate only a portion of occupied habitat where there might be sufficient forage, haul-out, and area to support the needs of the species within that habitat area, particularly when there are sizeable undesignated areas of occupied habitat that contain essential features outside that area. Moreover, we believe that the DLNR's assessments are unlikely to reflect the foraging needs of a recovered population of the Hawaiian monk seal, because their assessment includes all available biomass and focuses on fish species that have limited overlap with the Hawaiian monk seal diet.

Focusing on the ecological patterns and needs of the species, we have identified preferred pupping areas, significant haul-out areas, and foraging areas to 200 m. The areas designated meet the definition of critical habitat and this designation will support Federal agencies (as well as State and local agencies) in planning for the protection of resources for Hawaiian monk seal conservation throughout the areas designated.

Comment 33: A few comments requested that additional occupied areas be considered for inclusion in the proposed designation to provide further protections for areas that monk seals use or for important habitat features.

A couple of these comments noted that monk seals currently occupy beaches with disturbance and manmade structures, including Waikiki and Maunalua Bay on Oahu, and one comment even noted that a monk seal pup had been born at the Honolulu airport on property not proposed for designation. These comments suggested adding such areas to the designation because they are important to monk seals despite the presence of manmade structures.

One comment requested that we include marine areas a specific distance from land rather than at a specified depth. This comment expressed concern that the 500 m depth contour is reached quickly off the Island of Hawaii, and that monk seals have been seen in these areas and should be protected. Another comment recommended including areas further inland than 5 meters in order to provide adequate vegetative habitat for monk seals to use as shelter. Lastly, a comment recommended that areas with poor habitat quality be included in the designation, and questioned whether improved water quality and other factors could make an area eligible for designation.

Response: The definition of critical habitat requires us to identify the specific areas within the geographical area occupied by the species at the time of listing that contain physical and biological features essential to the conservation of the Hawaiian monk seal, and which may require special management considerations or protections, or identify those specific areas outside the geographical area occupied by the species at the time of listing which are essential to conservation of the species. We did not include in this designation portions of the coastline that include large stretches with manmade structures, such as Waikiki, because these areas do not support features essential to the conservation of Hawaiian monk seals (not because these areas are high human use areas). We acknowledge that individual monk seals may use some manmade areas throughout the range for various purposes because these areas are accessible to seals; however, monk seal sighting data indicate that these areas are used at a lower frequency than other areas, and do not have the same importance to monk seal ecology. Monk seals still receive protections under the ESA throughout their range (see response to comment 11), including in areas with manmade structures that are not included in the designation; however, these areas would not receive the protections provided by a section 7 consultation to ensure that critical habitat is not likely to be destroyed or adversely modified by an action with a Federal nexus.

The marine boundary for the critical habitat designation is set to encompass those areas where essential features exist; specifically, in the marine environment this includes preferred foraging areas to a depth of 200 m. While we acknowledge that monk seals may use habitat outside of these depth boundaries and at various distances from shore throughout its range, we have not identified the existence of essential features in other areas of the range. Because monk seals' preferred prey species are bottom-associated, essential foraging areas are described using the depth contour where monk seals' preferred prey species and foraging areas exist. Tracking information from across the MHI, including off the Island of Hawaii, indicates that a majority of diving behavior occurs within the 200 m depth boundary. In some areas, such as areas off the Island of Hawaii, the bathymetric gradient increases quickly; however, we have no information to indicate that deeper areas are essential to Hawaiian monk seals or that features a specific distance from shore are in some way essential to the ecology of the Hawaiian monk seal.

We have considered the request to include areas further inland than 5 m from the shoreline to provide adequate vegetative habitat as shelter for Hawaiian monk seals; however, we have determined that the areas 5 m inland from the shoreline provide adequate space to encompass significant haul-out and preferred pupping areas as features that are essential for the conservation of Hawaiian monk seals. Monk seals occasionally haul out under vegetation, presumably for shelter; however, we have not determined that vegetation is itself an essential feature, although it is certainly a characteristic found in certain preferred areas.

Lastly, with regard to the comment about poor habitat quality, we emphasize that areas that were not included in the designation lack the features essential for monk seal conservation. Nevertheless, we are not precluded from revising the designation in the future should information indicate that features (which may require special management) essential to Hawaiian monk seal conservation, such as natural preferred pupping areas, or significant haul out areas, exist outside of the areas designated as critical habitat.

Comment 34: One comment expressed concern that the exclusion of manmade structures and its description in the

proposed rule is vague, and may lead to unintended adverse impacts on monk seal critical habitat. This comment recommended that we be more explicit that new Federal actions in the vicinity of such manmade structures may still trigger consultation requirements.

Response: We acknowledge that our list of potential existing manmade structures is not exhaustive, but that it is important for providing effective notice to recognize that these structures do not have the features essential to Hawaiian monk seal conservation. To provide further clarity we have included a more complete list of examples to include docks, seawalls, piers, fishponds, roads, pipelines, ramparts, jetties, groins, buildings, and bulkheads. With regard to concerns about unintended impacts to critical habitat, we anticipate that most Federal actions will already be undergoing consultation to consider the effects that the activities may have on Hawaiian monk seals. Accordingly, in most cases, we will be able to identify any potential impacts to critical habitat during the existing consultation process. Even so, we recognize that protection for these features includes continued outreach and we have noted in this designation that activities that are carried out, funded, or authorized by a Federal agency which have the potential to affect Hawaiian monk seal critical habitat are subject to section 7 consultation under the ESA.

Comment 35: One comment stated that the proposed rule's exemption of military bases, Waikiki Beach, and Kaneohe Bay ''implies that there is no specific critical habitat as proposed, to be *essential to the conservation of the Hawaiian monk seal''* (emphasized by commenter). The comment goes on to state that Waikiki beach is an excellent haul out and pupping area and that the exemption of this area suggests that it is to avoid consultation for sand replenishment activities for the State of Hawaii. The comment states that monk seals haul out, pup, and occupy waters wherever they choose, so specifically exempting areas is unrealistic.

Response: As indicated in our response to comment 14, within occupied habitat, the definition of critical habitat includes those areas where features exist essential to the conservation of the species which may require special management consideration or protection. We note that the features, not the area in which they are found, are what are considered essential to conservation of the species, and a critical habitat designation identifies those features that are to be protected from destruction or adverse modification. As identified in the biological report, monk seals may use accessible terrestrial habitat throughout their range for the purposes of hauling out or pupping; however, we have included only those areas that meet the definition of critical habitat in the designation; in other words, those areas that contain features that are essential to the conservation of the species.

Waikiki was not included in the proposed designation because this area does not contain those essential features of Hawaiian monk seal critical habitat, *i.e.,* the area does not have features that support a preferred pupping area or significant haul-out area. As noted in the *Summary of Changes From the Proposed Critical Habitat Designation* section, we have refined the description of preferred pupping areas and significant haul-out areas to clarify the roles that these features play in Hawaiian monk seal ecology and to identify better where these features are located. Although monk seals may occasionally haul out along Waikiki, monk seal sighting information indicates low use of the area in comparison to other areas on Oahu, such that it does not meet the criteria established for a significant haul-out area. Contrary to the commenter's assertion, we have no record of pupping occurring on Waikiki beach. Further, large portions of this coastline contain manmade structures, such as harbors, seawalls, groins or buildings that do not support monk seal conservation and are not included in the designation. This final designation includes portions of marine habitat in Kaneohe Bay that support Hawaiian monk seal foraging areas; however, the 500-yard buffer of marine area that surrounds the Marine Corps Base Hawaii (MCBH) on the Mokapu peninsula is ineligible for designation under 4(a)(3) of the ESA (see the *Military Areas Ineligible for Designation (4(a)(3) Determinations* section of this rule). In conclusion, we have not exempted these areas due to the human activities associated with these sites; rather we have not included these areas because either they lack the features that are essential to monk seal conservation, or they have been precluded from designation under 4(a)(3) of the ESA.

Comment 36: Several comments suggested that the proposed designation was inappropriate due to the excessive size of the designation. Among these, a couple of the comments also indicated that the proposed designation was contrary to section 3(5)(C) of the ESA. A comment received by the State DLNR argued that critical habitat should not include the entire geographic area of the State of Hawaii, and that the designation of all marine habitat everywhere is an abdication of responsibility to make an affirmative judgment regarding which areas are best suited for recovery and then actively manage those areas. Additionally, another comment indicated that the designation of critical habitat is limited to habitat that is essential for the conservation of a species that may require special management or protection, and that the entire area occupied may not be designated unless determined necessary by the Secretary. The comment argues that the Secretary must be discriminating when designating critical habitat and the decision must be supported by conclusive evidence.

Response: According to section 3(5)(C) of the ESA, ''critical habitat shall not include the entire geographical area which can be occupied,'' by the listed species, except in rare circumstances where determined necessary. In other words, we are generally prevented from designating all occupied (*i.e.,* the current range) and unoccupied areas as critical habitat. The range for the Hawaiian monk seal includes the entire Hawaiian Archipelago and Johnston Atoll. The proposed designation was limited to 16 specific areas within the Hawaiian Archipelago, including foraging areas in greater depths. Therefore, we did not designate the entire geographical area which can be occupied by the Hawaiian monk seal.

In addition, as more fully explained in the biological report (NMFS 2014a), we have refined the essential features to account for supplemental information regarding habitat use in the MHI, and to clarify the description and location of essential features after considering public comment. These targeted changes have further reduced the overall size of the designation, while ensuring that the features identified in the original proposal as essential for monk seal conservation receive the full protection of critical habitat designation. We are satisfied that the final designation will appropriately meet the ecological needs of this wide-ranging species. As we have not designated the entire range of the species, nor have we designated any unoccupied critical habitat, the designation complies with section 3(5)(c) of the ESA.

With regard to the comment which suggests that habitat must be ''essential,'' we refer to our response to comment 14, and note that the definition of occupied critical habitat requires that the areas contain those physical or biological features that are essential to the conservation of the species and which may require special

management considerations or protection. These essential features are identified in this rule and in the biological report (NMFS 2014a), and the information about where those features exist provides evidence of why areas are designated as critical habitat that will support the survival and recovery of the species.

Comment 37: A few comments stated that MHI habitat was not suitable for designation because seals will face more threats in these developed areas of the archipelago. The commenters identified that increasing seal numbers in the MHI would increase the likelihood that seals will encounter or be affected by these threats and that the MHI habitat may be of poor quality due to pollution, risk of disease transferred from domestic animals, and increased risk of human interactions. One of these comments suggested that the negative impacts make MHI habitat not qualify as critical habitat. Another comment suggested that the designation is based on the narrow-sighted view that it is ''better'' for the monk seals to live and reproduce in the MHI. The last of these comments stated that the population of tiger sharks has increased due to an increase in turtles around the MHI, and that these sharks would be likely to prey on juvenile monk seals.

Response: We disagree that MHI habitat is unsuitable for designation. As noted in our response to comment 14, MHI areas were included in the designation with NWHI areas because all of these areas meet the definition of critical habitat. In the biological report and the 2007 recovery plan, we acknowledge that some threats differ between the MHI and the NWHI. The threats facing seals in the MHI may be significant, but this fact alone does not indicate that the habitat is of such poor quality that it does not meet the definition of critical habitat. In fact, the monk seal population in the MHI is increasing despite identified threats and in contrast to their NWHI counterparts. We believe this growth is attributable to favorable environmental conditions (see response to comment 16).

By designating critical habitat in the MHI, we are not suggesting that it is ''better'' for seals to live and reproduce in the MHI; rather, we have determined that essential features exist within occupied areas of the MHI which are important to monk seal survival and recovery, and that these features may require special management considerations or protection. As noted in the 2007 recovery plan for the species, healthy populations of seals will be necessary in both the NWHI and the MHI to meet recovery goals. Accordingly, critical habitat protections in both of these areas will assist in conservation efforts for this species.

Comment 38: A number of comments suggest that expansion of critical habitat to the MHI is inappropriate or not beneficial to recovery, because the promotion of seal populations in the MHI increases the risk of harmful impacts to people and/or seals. Some of these comments expressed concern that seals will behave aggressively towards people, either harming residents and tourists, or stealing food from fishermen, especially as seal numbers increase. Other comments suggested that aggressive seal behavior or increased restrictions will create animosity towards seals and may cause people to retaliate, consequently increasing the risk of harm to seals and hindering recovery efforts. Additional comments suggested that increased seal numbers in the MHI would increase the number of predatory sharks found in MHI waters, which may result in more shark attacks on people. One additional comment suggested that seals may affect people by bringing disease.

Response: See our above discussion of the rationale for finding that HMS critical habitat exists in the MHI and recovery benefits of MHI critical habitat. With regard to effects of Hawaiian monk seal critical habitat and seals in the MHI on people, see our response to comment 37.

With regard to challenges associated with human interactions in the MHI, all scientific evidence, field observations, and public reports to date indicate that public safety risks associated with Hawaiian monk seals in the wild are extremely low. Monk seals are not aggressive by nature and only exhibit aggressive behavior toward humans when they feel threatened or when previous interactions have been encouraged, causing the animal to seek out human contact. Through our MHI management efforts and planning we will continue to conduct activities to prevent and mitigate these human-seal interactions, and work with the public to increase awareness and understanding to foster peaceful coexistence in Hawaii's coastal areas. With regard to the concern about sharks, there is currently no evidence that more monk seals in the MHI will lead to more shark attacks on humans. While the monk seal population has increased in the MHI over the past 10 years, incidents of shark attacks on people have shown no corresponding increase. Additionally, there is no evidence that the population growth of Hawaiian monk seals in the MHI presents an increased disease risk to humans.

Activities Affected by the Designation

Comment 39: The National Defense Center of Excellence for Research in Ocean Research (CEROS) program requested that categorical exceptions be considered for routine ocean science field activities, which they suggested could be seriously affected by the proposed designation. CEROS requested clarification about the procedural steps associated with the section 7 consultation process and noted concerns that the procedure could include reviews or public comment periods that may make it impossible for the research to be carried out within the 12-month contracted period of performance.

Response: In designating critical habitat we are not able to provide categorical exceptions from section 7 obligations for specific activities. Although section 4(b)(2) of the ESA allows for the consideration of exclusion for particular areas where the benefits of exclusion may outweigh the benefits of designation, impacts to these types of activities are expected to be low (Industrial Economics 2014). Therefore, we did not exclude areas where these activities are prevalent (see also response to comment 52).

For clarification, procedural steps associated with the Section 7 process may be found at the following Web site: *http://www.fpir.noaa.gov/PRD/prd_esa_section_7.html.* A final critical habitat designation does not create new or unknown procedures, nor does it create a new public comment period associated with Federal actions. The final critical habitat designation creates an additional obligation for Federal agencies under section 7 of the ESA to insure that actions that they carry out, fund, or authorize (permit) are not likely to destroy or adversely modify critical habitat. As consultation is already required for federally funded research activities under the jeopardy standard, we do not anticipate the additional consultation standard of destruction or adverse modification of critical habitat to result in significant, additional project delays.

Comment 40: Comments requested that restrictions be placed on jet skis, long-term camping and permanent structures, such as homes with leaking septic systems, to prevent disturbance and pollution in critical habitat areas.

Response: Protections for critical habitat are established under section 7 of the ESA and are specific to Federal activities that may affect Hawaiian monk seal critical habitat, including those activities that are authorized, funded or carried out by a Federal

agency. Private activities, such as jet skiing or camping that are not linked to a Federal activity are not subject to section 7 consultation requirements. See our response to comment 14 for further information on the protections that critical habitat provides for a listed species.

Comment 41: We received comments from the Center for Biological Diversity and KAHEA: The Hawaiian-Environmental Alliance expressing concerns and providing details about the threats of sea level rise, global warming and ocean acidification to monk seal critical habitat. The comment asserted that the global scope of these threats did not excuse the need to manage anthropogenic greenhouse gas contributions that are affecting monk seals and their habitat.

Response: The biological report (NMFS 2014a) recognizes that processes associated with global climate change may alter the availability of coastal habitat and/or the range and distribution of Hawaiian monk seal prey species. Unfortunately, at this time, the scope of existing science does not allow us to predict the resultant impacts to Hawaiian monk seal critical habitat with any certainty. We recognize the need to manage for this threat and as impacts from these forces are better understood, activities that exacerbate impacts to the essential features will be further scrutinized and associated management efforts may be pursued. At this time, no single activity has been identified as contributing specifically to these threats in the economic analysis (Industrial Economics 2014). Nonetheless, climate change impacts will be accounted for through the individual consultation process when individual project details are known.

Comment 42: One comment stated that the proposed critical habitat and the 2007 Hawaiian Monk Seal Recovery Plan do not adequately factor future critical habitat loss to erosion and global sea level rise, especially in the low elevation of the NWHI. This comment suggested that the recovery plan must be revised before implementing critical habitat.

Response: We disagree. Both the 2007 Hawaiian Monk Seal Recovery Plan and the critical habitat designation consider the impacts of habitat loss to erosion and sea level rise, based on the best available science at the time of publication. The Hawaiian monk seal recovery plan (NMFS 2007) recognizes the threat of habitat loss to Hawaiian monk seal habitat and provides recommendations to assist in conserving habitat throughout the species' range. Among these, the plan recommends maintaining and expanding the current ESA critical habitat designation and recommends exploring habitat restoration in the low lying areas of the NWHI.

For this critical habitat designation we considered the threat of habitat loss linked to erosion and sea level rise in both the proposed rule (74 FR 27988; June 12, 2009) and the biological report (NMFS 2014), and how these threats may affect the features essential to Hawaiian monk seal conservation. Specifically, we considered how habitat in the NWHI and the MHI may be affected by this threat and we incorporated features that will support recovery for the Hawaiian monk seal in this predominantly low-lying coastal and marine habitat.

The low lying areas of the NWHI experience erosion and saltwater inundation throughout the year due to storm activity and storm surges, and we anticipate flooding and inundation from future storm activities and/or future variations in sea level (Baker 2006). With these considerations in mind, we determined that essential features exist across these low-lying and dynamic islands and islets and we included all islands and islets existing within the specific areas previously designated in 1988. In the MHI where coastal habitat may not shift as dramatically, we have determined that essential features exist within a relatively short distance from the shoreline, where Hawaiian monk seals haul out to rest, molt, or pup. We included habitat 5 m inland of the shoreline to ensure that terrestrial habitat inland of the shoreline which provides space for hauling out remains incorporated in the designation.

We believe that we have considered the threats identified in the comment using the best available information to inform this designation. We find no reason to support delaying the critical habitat revision until such time that the Recovery Plan is updated. A revised designation assists recovery efforts by providing protections from some activities that may exacerbate threats associated with habitat loss and provides important planning information for government agencies. Further, should additional information become available regarding features or areas that are essential to conservation of the Hawaiian monk seal outside of this designation we may revise the designation to protect those features or areas.

Comment 43: A few comments requested clarification about whether the following activities may be subject to section 7 consultations as a result of the proposed designation: all Army Corps of Engineers Clean Water Act section 401 and section 404 permits, National Pollutant Discharge Elimination System (NPDES) permits, Federal highway projects in proximity to the ocean or which cross waters flowing to the ocean, state programs that are funded by Federal money such as the Dingell-Johnson funds, open ocean effluent dumping, and federally funded community and education programs. One comment questioned whether consultation could result in delays in funding or if permitting or increased fees were possible. Additionally, this commenter asked whether NMFS has the capacity to process such permits or consultations.

Response: The requirement for section 7 consultation is triggered when an activity is (1) carried out, funded, or authorized by a Federal agency (*i.e.*, a Federal nexus is established), (2) the agency retains discretionary involvement or control over the activity, and (3) the activity may affect an ESA-listed species or its designated critical habitat. In some cases, Federal agencies may determine that the action will have no effect on a listed species or its critical habitat, in which case the agencies' obligations under section 7 are satisfied. The activities identified in the comment have a Federal nexus and therefore must undergo section 7 consultation.

As noted in the economic report (Industrial Economics 2014), Clean Water Act section 404 permits are issued by the Army Corps of Engineers for the discharge of dredged or fill material into wetlands and other waters of the U.S. Any Federal permit or license authorizing a discharge into the waters of the United States also requires a Clean Water Act section 401 Certification from the State of Hawaii indicating that State water quality standards have been met. Activities subject to this type of federal permit and which may have the potential to impact Hawaiian monk seal essential features are described under three activity categories in the economic report: in-water and coastal construction, dredging and disposal of dredged materials, and energy projects (discussions about these activities may be found in Chapters 3, 5, and 6 of the economic report respectively). Federal highway projects in proximity to the ocean or which cross waters flowing to the ocean are also discussed under Chapter 3, in-water and coastal construction. Impacts to these three activities (in Chapters 3, 5, and 6) from the consultation process are described as largely administrative in nature; however, depending on the location and scope of the project (*e.g.*,

adjacent to preferred pupping and nursing areas) additional project modifications may be required to avoid impacts to Hawaiian monk seal critical habitat.

As identified in Chapter 9 of the economic report (Industrial Economics 2014), the EPA has delegated its authority to implement and enforce the Clean Water Act to the Hawaii Department of Health Clean Water Branch (CWB), which includes the issuance of NPDES permits. Once EPA has approved a state's NPDES permitting program and transfers responsibility for issuing water pollution permits to that state, section 7 will not apply to permitting decisions. Recognizing this, the EPA signed a Memorandum of Agreement with the Fish & Wildlife Service and NMFS (66 FR 11202, February 22, 2001) through which the EPA, in exercising its continuing oversight of state permitted discharges, may communicate and address protected species concerns to state pollution permitting agencies and work collaboratively to reduce the detrimental impacts of those permits. In appropriate circumstances, and where consistent with the EPA's CWA authority, EPA may object to and federalize the permit. However, in no circumstances are states bound to directly consult under section 7 with NMFS or USFWS on their permitting decisions.

State programs that are funded by Federal money such as the Dingell-Johnson funds, and federally funded community and education programs may be subject to section 7 consultation if activities associated with the funding may affect Hawaiian monk seals or their designated critical habitat. The USFWS issues funding under the Sport Fish Restoration Act (commonly referred to as the Dingell-Johnson Act) and consults with NMFS on activities that receive funding under this Act which may affect Hawaiian monk seals. Impacts to these types of fisheries-related Federal aid activities are described in Chapter 4 of the economic report and the anticipated administrative costs of these types of consultations are factored into the overall costs to fisheries activities, which are described as largely administrative in nature.

In general, during the consultation process the Services assist Federal agencies in fulfilling their duties to avoid jeopardy and destruction of critical habitat, and to otherwise minimize the impacts of their activities. The Effects of Critical Habitat Designation section of this rule provides information about the consultation process. There is no additional permitting process established with the designation of critical habitat, just the additional process associated with section 7 consultation, which may result in some administrative costs that are estimated for identifiable activities in the final economic analysis report (Industrial Economics 2014). As consultation is already required for many federally funded activities that may affect Hawaiian monk seals, we expect to meet our stakeholders' needs for consultation and do not anticipate the additional consultation standards associated with Hawaiian monk seal critical habitat to result in significant, additional project delays. Accordingly, we anticipate that Federal funding associated with these activities will be received in a manner similar to years past.

Comment 44: A commenter wished to clarify if the proposed designation would end or affect a variety of activities, including ocean fish-farming, and fishpond restoration or creation, or if it would affect 501(c)3 funding (for tax-exempt nonprofit organizations), the National Park Service's lands and trails, and underwater heiaus (Hawaiian temple).

Response: Because the categories of activities identified by the commenter may be expected to vary in place, scope, and duration, and involve different authorizing agencies, we cannot specifically address particular consultation requirements here. However, as a general statement, if such activities are carried out, funded, or authorized by a Federal agency (*i.e.*, a Federal nexus is established), the agency retains discretionary involvement or control over the activities, and the activities may affect an ESA-listed species or its designated critical habitat, then consultation is required. While the great majority of activities that require a Federal agency to consult with us can proceed upon satisfaction of section 7(a)(2) requirements, in some cases modifications may be necessary to avoid adversely affecting critical habitat, and to otherwise minimize the impacts of their activities.

The final economic analysis report (Industrial Economics 2014) provides additional detail regarding activities in the Hawaiian Islands that are anticipated to require critical habitat considerations during the section 7 consultation process. In particular, activities associated with ocean fish-farming are discussed under the aquaculture/mariculture section of the report, and impacts associated with fish pond restoration or creation are discussed under activities associated with the in-water and coastal construction section of the report.

To the extent that the other activities identified meet the criteria established to require section 7 consultation (*i.e.*, they have a Federal nexus and may affect Hawaiian monk seal essential features), we will work with the Federal action agency, and where appropriate other entities, to ensure that activities are not likely to destroy or adversely modify Hawaiian monk seal critical habitat.

Comments on Ineligibilities and Exclusions

We received a number of comments regarding DOD activities and their potential impacts on cetaceans and other marine mammals. Because these comments are outside the scope of this revision of critical habitat for Hawaiian monk seals, no response is provided.

Comment 45: Several comments expressed concern and confusion over the areas that were ineligible for designation under section 4(a)(3) of the ESA, in comparison to those areas that were proposed for exclusion under section 4(b)(2) of the ESA. Many of these comments requested clarification in the rule (and on maps) to distinguish how and why areas were omitted from the designation and to understand the protections that would exist in those areas for monk seals. Among these comments people also questioned why military areas were the only ones excluded, how those areas or protecting monk seals is related to national defense, why Nimitz and White Plains Beach were excluded given the areas are not used for national defense, and how monk seals would be affected if wave energy projects go forward and Kaneohe Bay is omitted from the designation. Additionally, one comment identified that all DOD areas should be included in the revision of critical habitat, while another comment asserted that seals should not be more important than protecting national security.

Response: Section 4(a)(3) and section 4(b)(2) of the ESA establish two different standards under which areas that otherwise qualify for critical habitat will not be incorporated into a final designation of critical habitat. Standards under section 4(a)(3) are unique to areas managed under a Department of Defense (DOD) integrated natural resources management plan (INRMP) and review focuses on whether the INRMP provides a benefit to the listed species and its habitat. Standards under section 4(b)(2) focus on the impacts of the critical designation and review focuses on the economic, national security and other relevant impacts of designating critical

habitat in any particular area. We provide additional information below to help distinguish these two review processes and to address associated concerns identified above.

Section 4(a)(3)(B)(i) of the ESA was amended by the National Defense Authorization Act (NDAA) of 2004. This section of the ESA does not allow the Services to designate critical habitat in areas where we have determined that a DOD INRMP provides a benefit to the listed species for which critical habitat is proposed for designation. Section 4(a)(3) requires that we evaluate INRMPs that overlap with areas under consideration for critical habitat and make a determination as to whether the INRMP provides adequate conservation measures, programs, and/or plans to support the conservation of a listed species. Areas managed under INRMPs that we determine to be a benefit to a listed species and its habitat are often referred to as ''ineligible'' or ''precluded'' from critical habitat designation for that species. During the 4(a)(3) review for this designation, we evaluated three INRMPs that overlapped with areas under consideration for Hawaiian monk seal critical habitat (see *Military Areas Ineligible for Designation* section) using specific criteria to ensure that Hawaiian monk seals and their habitat are provided conservation benefits through structured management programs. Those areas that have been identified as ''ineligible'' for this designation (under 4(a)(3)), are managed under DOD INRMPs that we have determined provide benefits to Hawaiian monk seals' and their habitat, because these INRMPs implement conservation measures that support Hawaiian monk seal recovery. Examples of conservation measures that are implemented in these areas include seal monitoring programs, marine debris removal, feral animal control, and public education. In addition to these conservation measures, Hawaiian monk seals continue to receive protections associated with listing throughout these ineligible areas and the military must consult with NMFS under section 7(a)(2) of the ESA, as appropriate, to ensure that their activities do not jeopardize the species.

Section 4(b)(2) of the ESA requires that we consider the economic, national security, and any other relevant impacts of designating any particular area as critical habitat. Under this section of ESA, we have the discretion to exclude particular areas from a critical habitat designation if the benefits of excluding the area outweigh the benefits of designating the area, as long as exclusion will not result in the extinction of the species. During the designation process we considered the impacts relevant to the aforementioned categories and we describe the exclusion process in the ESA Section 4(b)(2) Analysis section of this rule. In our analysis of impacts, we found four areas (Kingfisher Underwater Training area, the Pacific Missile Range Facility Offshore Areas, the Puuloa Underwater Training, and the Shallow Water Minefield Sonar Training Range) where we determined that the benefits of exclusion (*e.g.*, avoiding modifications to DOD activities) outweighed the benefits of designation. Specifically, the Navy considers these particular areas as important for national defense because the areas are used for military training exercises that support troop preparedness (see Exclusions Based on Impacts to National Security section below). Although these areas are identified for exclusion because military activities have some likelihood of causing impacts to habitat, these areas are not devoid of protection for Hawaiian monk seals. The DOD is subject to Federal ESA consultation for actions that have the potential to adversely affect Hawaiian monk seals in all areas where the species exists and their activities are evaluated during consultation to ensure that these activities are not likely to result in jeopardy to the species. Additionally, as identified in our 4(b)(2) weighing process for national security exclusion, the DOD sometimes already provides some protection for Hawaiian monk seal essential features through existing DOD environmental safeguards. For example, standard operating procedures may already work to minimize the impacts to marine habitat from military activities, and Hawaiian monk seals may inherently receive some protections from other threats (*e.g.*, hookings) due to the limited access to certain military sites.

With regard to Nimitz and White Plains Beach, in the proposed rule we included these areas despite the Navy's request for national security exclusion under section 4(b)(2) of the ESA because the areas are not used for military training activities and we were provided no specific justification for national security exclusion (76 FR 32026; June 2, 2011). This remains true; however, since the 2011 proposal the Navy enhanced their conservation measures implemented under the Navy's Joint Base Pearl Harbor-Hickam (JBPHH) INRMP, and we have determined that the INRMP provides a benefit to the Hawaiian monk seal and its habitat in accordance with section 4(a)(3) of the ESA. Because Nimitz and White Plains Beach are managed under the JBPHH INRMP, these areas are ineligible for designation under section 4(a)(3). At these publicly used beaches the Navy maintains conservation benefits for Hawaiian monk seals, including supporting monitoring, education, and enforcement efforts.

We recognize that opinions vary regarding the balance to be struck between national security concerns and the conservation needs of listed species; however, we believe that we have properly evaluated these two needs such that areas excluded for national security reasons can support troop preparedness while not impeding the recovery of Hawaiian monk seals. Finally, in response to public recommendations we have distinguished those areas that are ineligible for critical habitat under 4(a)(3)(B)(i) of the ESA, from those areas that have been excluded from the critical habitat designation under 4(b)(2) of the ESA in the maps that depict this designation.

Comment 46: Several comments expressed concern about whether the DOD would provide adequate protection for monk seals in areas that were ineligible for designation under 4(a)(3)(B)(i) of the ESA. Citing military settlement impacts on the NWHI population, one comment suggested that NMFS should ensure that DOD conservation actions are commensurate with the standards that would otherwise have been afforded under a critical habitat designation. Another comment warned that review of INRMPs should include not only whether a plan exists, but also whether the plan is implemented and funded. An additional comment argued that 4(a)(3)(B)(i) ineligibilities undermined protections for listed species and that NMFS should analyze the potential impacts of excluding military areas and voice its criticism.

Response: As identified in the *Military Areas Ineligible for Designation* section of this rule and our response to comment 45, during review of DOD INRMPs we consider the conservation benefits to the species. Specifically, we consider whether the responsible division of DOD has a demonstrated history of implementation, whether the plan is likely to be implemented (funded), as well as whether the plan is likely to be effective. We have found plans to be effective when they have a structured process to gain information (through monitoring and reporting), a process for recognizing program deficiencies and successes (review), and a procedure for addressing any

deficiencies (allowing for management adaptation to suit conservation needs). In some cases, we identified concerns about the management plans and provided recommendations that would strengthen the overall effectiveness of these plans. In all cases in which we have determined that a management plan provides a benefit to the Hawaiian monk seal and its habitat, the military installations have dedicated natural resource staff that have worked to ensure that procedures, programs, and/or staff are available to implement the various conservation measures that support Hawaiian monk seal conservation. As previously stated, a critical habitat designation implements a consultation process that ensures that Federal agencies are not likely to destroy or adversely modify critical habitat. The benefits of the conservation measures implemented under an INRMP may not directly replicate the benefits of a critical habitat designation; however, in our reviews of the INRMPs, we have emphasized the importance of Hawaiian monk seal essential features and the importance of implementing conservation measures that would protect those features. Further, we will continue to work with DOD staff to provide guidance with regard to Hawaiian monk seal management issues through participation in annual INRMP review processes, through outreach and education efforts, and as requested by the various military installations.

Comment 47: Earthjustice submitted a comment in opposition to the Department of Army's request for 4(a)(3)(B)(i) INRMP review and/or 4(b)(2) exclusion for the Makua Military Reservation (MMR). The comment indicated that there is no basis for review pursuant to 4(a)(3)(B)(i), because the shoreline areas near MMR are State lands which are neither ''owned'' nor ''controlled by the Department of Defense, or designated for its use,'' as required by the ESA. The comment also indicated that the Army did not provide a valid reason for excluding the area under 4(b)(2) of the ESA because the live-fire exercises that the Army's letter claimed would be affected by the designation were unlikely to occur at MMR.

Response: The coastal areas of Makua Military Reservation are not included in the final designation, because these areas do not support the refined essential features for significant haul-out areas or preferred pupping areas and therefore do not meet the definition of Hawaiian monk seal critical habitat. Therefore, we provide no further consideration regarding this area.

Comment 48: Several comments expressed concern about areas that were proposed for national security exclusions under 4(b)(2) of the ESA, and questioned the protections that would be in place for monk seals or their habitat in these areas, now and in the future. Among these comments, one noted that NMFS should take additional precaution in reviewing military actions in the excluded areas since the habitat won't receive protections. Another comment suggested that we should impose additional mitigation measures to protect monk seals from the adverse effects (as described in Nowacek and Tyack 2007; NRC 2003; Richardson *et al.* 1995; Weilgart 2007) associated with sound generated by military active sonar in excluded areas in order to ensure that seals are offered adequate protections from all activities, including noise pollution. Lastly, a comment expressed particular concerns that the exclusion does not take into account the possibility that military facilities, such as PMRF, could be closed, leaving the areas without protection.

Response: As noted in our response to comment 45, monk seals continue to remain protected under the ESA throughout areas that are excluded from a critical habitat designation, because Federal agencies, including the DOD, remain subject to Federal ESA consultation for actions that may affect Hawaiian monk seals wherever they exist. Additionally, as identified in the ESA Section 4(b)(2) Analysis section of this rule and our response to comment 45, existing DOD safeguards may provide additional protections for habitat in these areas.

With regard to the comment on active sonar, the articles referenced by the commenter are more specific to cetaceans, a group of marine mammals known to be highly dependent on sound as their principal sense, and the associated impacts described in these references are not necessarily relevant to Hawaiian monk seal critical habitat or Hawaiian monk seals themselves. The commenter's concerns regarding sonar appear to be focused on impacts to individual animals and not to the essential features of Hawaiian monk seal critical habitat. Impacts to Hawaiian monk seals, including those associated with sound, are already analyzed during ongoing section 7 consultations.

Finally with regard to the comment that expressed concern that the 4(b)(2) exclusion process could leave areas unprotected if military facilities were to close, section 4(b)(2) of the ESA provides the Services with discretion to exclude areas when the benefits of exclusion outweigh the benefits of designation, as long as the exclusion does not result in extinction of the species. Although activities and use of areas may be subject to change, we are limited by the available information to inform our 4(b)(2) decision-making process. We have received no information to indicate that the military would discontinue use of areas that were excluded from monk seal critical habitat designation for national security reasons. Although we may exercise discretion and include areas where national security impacts are expected to occur, we cannot exercise our discretion based on speculation or surmise that a future event may occur. Further, if future circumstances were to change regarding the use of particular areas, we may consider revising the designation to protect features and areas that are essential to Hawaiian monk seal recovery.

Comment 49: The USFWS Hawaiian and Pacific Islands National Wildlife Refuge Complex submitted comments stating that they do not believe there is any conservation value to the Hawaiian monk seal from designation of critical habitat within the Papahanaumokuakea Marine National Monument, especially at Midway Atoll National Wildlife Refuge. These comments highlighted the existing protections for monk seals throughout this area, and stated that the designation would delay impending necessary repairs to the failing cap in the bulky dump on Midway or create additional administrative burdens, which would take away from other necessary conservation management actions over time. The comment further stated that, at a minimum, the final rule should not include a majority of the shoreline at Sand Island, because these shoreline areas either do not meet the definition of critical habitat for Hawaiian monk seals or will not provide an increased conservation benefit to the species compared to current conservation benefits being implemented by the Refuge and Monument.

Response: First, while we acknowledge that the protected areas identified by USFWS may provide various forms of protection for different aspects of the environment or for wildlife, under the ESA, the protections within these areas may not serve as a substitute for a critical habitat designation nor is the benefit of designation negated by other existing protections. If the occupied habitat contains those features that are essential to conservation and we determine that they may require special management considerations or protection, then the habitat area is subject to critical habitat

designation, unless an appropriate exclusion applies. We believe that the benefits from designation described in this final rule will accrue to the Hawaiian monk seal, even in those areas currently protected by Papahanaumokuakea Marine National Monument and USFWS National Wildlife Refuges. However, because of the level of protection already afforded the monk seal and other protected species in these areas, we do not anticipate that significant conservation measures or project modifications will be needed above and beyond those already required to avoid jeopardy to the species.

As noted in our response to comment 1, the revision and expansion of critical habitat for this species, at a minimum, informs Federal agencies and the public of the importance of these areas to the species' recovery, and through the consultation process, allows for the consideration of specific project modifications and best management practices that reduce impacts to habitat areas. We acknowledge that the designation of critical habitat may create some additional administrative burdens; however, given the clear directive to Federal agencies to avoid jeopardy and adverse modification under section 7, we do not believe that the administrative cost and burden of the consultation process alone justifies relief from critical habitat designation. The consideration of impacts to critical habitat during consultation allows for improved planning for Federal agencies and is a benefit of the designation.

However, we have conferred with USFWS Hawaiian and Pacific Islands National Wildlife Refuge staff and are aware that manmade structures exist within the NWHI similar to those areas which were not included in the MHI designation because the areas fail to meet the definition of critical habitat for the species. To address the inconsistency in the proposed designation between the two geographic regions of the monk seal's range, and in response to this comment, we have revised the description of critical habitat in the NWHI to no longer include those areas of manmade structures in the NWHI which do not meet the definition of critical habitat for the Hawaiian monk seal. Refer to the Summary of Changes from the Proposed Designation section of this rule for these revisions.

Additionally, we have considered concerns raised by USFWS staff about delays to impending projects; however, as consultation is already required under the jeopardy standard, we do not anticipate the additional consultation standard of destruction or adverse modification of critical habitat to result in significant, additional project delays. In the specific example provided (delays to the repairs for the failing bulky dump cap), the area of Sand Island where repair is necessary is not included in the designation because it is a manmade landfill that is surrounded on the three seaward sides by approximately 10-foot-thick bands of concrete and stone rip rap. As noted above, this area does not meet the definition of critical habitat for the species. Provided this project is planned carefully to avoid impacts to any nearby essential features, we anticipate no delays to this project that would be attributed to the designation.

Comment 50: The Hawaii DLNR submitted comments requesting the exclusion of multiple areas, including unsuitable habitat areas and those areas that are already protected by the State of Hawaii and which effectively serve to protect monk seals. DLNR recommended exclusion of heavily populated areas and areas of high runoff because these areas present the highest risk of frequent human interaction, and exposure to contaminants and disease, and because these areas do not enhance monk seal's health and vitality. Heavily populated areas were described as Hilo and Kailua-Kona, on Hawaii; Kahului, Kihei, and Lahaina, on Maui; Kanakakai, Kamalo, and Pukoo, on Molokai; Manele, and Kumalapau harbors on Lanai; Waikiki, Honolulu, Pearl Harbor, Ewa, Kalaeloa, Nanakuli, Maili, Waianae, Haleiwa, Kaneohe, Kailua, Waimanalo, and Maunulua Bay, on Oahu; and Lihue, Kapaa, Hanalei Bay, and Hanapepe, on Kauai. Additionally, high runoff areas were described as those areas with consistently high rainfall and runoff.

The areas identified as protected by the State by the DLNR include 11 Marine Life Conservation Districts, Fishery Management Areas that occupy 30 percent of the West Hawaii coastline, a marine environment natural area reserve on Maui, ''no-netting'' areas on all islands, the Hawaiian Islands Humpback Whale National Marine Sanctuary, and protective subzone designations of coastal and submerged land areas within the State's conservation district.

Response: Section 4(b)(2) of the ESA provides the Secretary of Commerce with the discretion to exclude areas from critical habitat if the Secretary determines the benefits of such exclusion outweigh the benefits of designation, provided the exclusion would not result in extinction of the species. The State's request that we exclude the above identified areas does not specifically describe the benefit of excluding these particular areas with regard to the impacts of the designation.

In consideration of the request to exclude heavily populated areas, we note that either the entire area or large portions of the areas that the State has asked us to exclude were not included in the proposed Hawaiian monk seal critical habitat because the harbors and manmade structures that are found throughout many of the identified areas do not meet the definition of critical habitat. The same is true for the final designation: Many of the identified areas do not meet the definition of critical habitat and were not included in the designation. However, significant haul-out areas have been identified along the coastline of Ewa, Nanakuli, Maili, and Waianae on Oahu and on Kapaa on Kauai. Additionally, significant haul-out areas have been identified in coastal areas adjacent to Hilo and Kailua-Kona on Hawaii and Kahului on Maui. Coastal habitat segments (but not including manmade structures within these segments) have been included in the designation along these areas because they meet the definition of Hawaiian monk seal critical habitat by supporting Hawaiian monk seal essential features which may require special management considerations or protections. We recognize that some areas present higher risks to monk seals and we will continue to work with our State partners to try to ameliorate those threats. However, we believe that the State's method of excluding habitat from the designation based on the presence of threats would eliminate large portions of the Hawaiian monk seals' range upon which essential features are found and that may require protection to support recovery. Additionally, we believe the State's approach does not adequately consider the ecology of the species or the best scientific information available regarding Hawaiian monk seal habitat use to identify areas that are consistently used to support resident populations of seals.

With regard to State protected areas, the State argues that the benefits of including these areas are reduced because they already offer protections to Hawaiian monk seal critical habitat. We acknowledge that the protected areas identified by the State may provide various forms of protection for different aspects of the environment or for wildlife; however, under the ESA, the protections within these areas may not serve as a substitute for a critical habitat designation, nor is the benefit of designation negated by other existing protections. The phrase ''which may require special management

considerations or protection'' does not mean that designation must provide ''additional'' protection to already existing conservation measures. Furthermore, as noted in our response to comment 15, we know of no such State area whose purpose specifically includes the conservation of monk seal habitat or their essential features. We believe that the benefits from designation described in this final rule will accrue to the Hawaiian monk seal, even in those areas currently protected for other purposes by the State of Hawaii, such as the MLCDs and the sanctuary.

Although the State did not provide specific evidence of the benefits of excluding the identified protected areas, in responding to this comment we also considered economic impacts associated with the designation in areas identified by the State and included in the designation; however, the analysis indicates that the majority of impacts are associated with the requirement to consult on Federal actions under section 7 of the ESA, which would occur regardless of the critical habitat designation. In the Hawaiian Islands, most Federal actions that require consultation tend to occur in those areas that were not included in the designation (because the area did not meet the definition of critical habitat). Within the areas identified for designation, most costs were estimated to be minimal and associated with administrative costs. In conclusion, we find that the benefits of designating the areas identified by the DLNR for exclusion, including those benefits associated with section 7 consultations that may occur in the areas, and the educational benefits associated with the designation, outweigh the benefits of exclusion.

Comment 51: We received a comment that stated that fishing communities would benefit greatly from exclusion. Specifically this comment identified that traditional konohiki fishing grounds, marine kuleana awards, and traditional limu and opihi beaches should be excluded from the designation.

Response: We disagree that an exclusion for the referenced areas, which support traditional and customary fishing and gathering practices, is warranted, and we note that the commenter does not describe specifically how these areas may benefit from exclusion (*i.e.*, describe impacts or harms from the designation). We are unable to base an exclusion under section 4(b)(2) on speculative impacts. We emphasize that where no Federal authorization, permit, or funding exists (*i.e.*, there is no Federal nexus), the activity is not subject to section 7 of the ESA and therefore effects to these activities due to designation are not anticipated.

In an attempt to identify potential impacts we considered, through our economic impacts analysis, whether a particular activity or area may be affected by the designation. Chapter 12 of the final economic analysis (Industrial Economics 2014) discusses the potential impacts to Native Hawaiian activities (in response to concerns raised through public comments), such as changes to beach or other coastal area access and fishing activities. The chapter identifies that Native Hawaiians may be affected by the designation if they are engaged in activities which already are subject to section 7 consultation, such as fishing activities or fishpond restoration, both of which have a Federal nexus. However, as described in the Benefits of Exclusion Based on Economic Impacts section of this rule, economic impacts involved with these activities are expected to be low and we found the impacts did not outweigh the benefits of designating critical habitat for the Hawaiian monk seal. Therefore, no areas were excluded for economic reasons.

With no additional information to suggest that the above activities may be subject to other relevant impacts as a result of the designation, we cannot conclude that the benefits of excluding these areas from designation outweigh the benefits of inclusion as critical habitat for other reasons.

Comment 52: CEROS is a State of Hawaii program that is supported by Federal funds. CEROS has provided more than $100 million in research contracts to the Hawaiian high-technology sector in 19 years to carry out basic and applied ocean science research. The commenter suggested the CEROS program could be seriously affected by the proposed designation and noted that the proposed rule does not adequately evaluate the potential adverse effects on routine ocean research activities such as use of ocean gliders, seafloor surveys, current surveys, underwater cabling, moored or seabed instrument arrays, research and installation of renewable energy equipment and systems, use of submersibles and other activities. CEROS requested that coastal areas of historically high research activity (*e.g.*, the leeward coasts of the islands of Oahu and Hawaii) be excluded.

Response: We have considered CEROS' comments about federally funded research efforts, and note that the draft economic report did use historical section 7 consultations to determine the potential costs of the designation, which included consultations on federally funded research efforts throughout Hawaii, similar to those described by CEROS. However, these consultations on research activities were grouped under other activity headings based on the type of activity that this research supported. For example, we considered past consultations for research efforts associated with renewable energy development off Hawaii and added those costs into our predicted costs for future energy development in those areas. For clarification, the final economic report does consider impacts to research activities separately; however, the final analysis found the costs associated with these efforts to be minimal. This is because most Federal actions (funded, authorized or carried out) associated with research activities are already subject to section 7 consultation to ensure that Federal actions are not likely to jeopardize Hawaiian monk seals (and other listed species).

We have considered the exclusion of areas with historically high research activities based on economic impacts from the designation; however, we have not excluded these areas because the economic impacts are expected to be generally low (Industrial Economics 2014) and areas off the leeward coast, such as Oahu, are highly used by monk seals and therefore are of high conservation value to the species. Therefore, we have determined that the benefits of exclusion do not outweigh the benefits of designation.

Comment 53: We received a comment that agreed with our decision to not propose areas for economic exclusions. This commenter noted that although baseline protections are strong, they are not enough to protect critical habitat for monk seals. Additionally, the commenter noted that the uncertainty associated with the impacts of future activities on critical habitat requires project-by-project consideration to prevent harm to critical habitat.

Response: The economic report describes the baseline protections as including those habitat protections already afforded the monk seal, either as a result of its listing as an endangered species or as a result of other Federal, State, and local regulations (Industrial Economics 2014). The report does provide evidence that baseline protections are strong for marine and coastal areas in Hawaii; however, as noted in our response to comment 15, these protections do not provide specific protections for Hawaiian monk

seal essential features. Accordingly, we believe that this designation will ensure that Federal actions are not likely to destroy or adversely modify Hawaiian monk seal critical habitat.

Economic Impacts and Effects of the Designation

Comment 54: Several comments expressed concerns that there may be unanticipated impacts that result from the designation. Concerns expressed included the designation of critical habitat being a stepping stone for future restrictions or closures either at the State or local level, or the designation being used by nonprofit organizations to file lawsuits.

Response: We recognize that local, State and Federal agencies may choose to manage areas differently once aware of a critical habitat designation; however, in our discussions with local, State, and other Federal agencies we have been made aware of no plans to institute future restrictions or closures to provide habitat protections for monk seals. We cannot speculate regarding future management actions that may be taken in response to this critical habitat revision. Moreover, we cannot speculate regarding the likelihood of future litigation resulting from this critical habitat revision, and the mere risk of litigation is not a legal basis for refusing to designate critical habitat supported by the best available scientific information under the processes of the ESA.

Comment 55: A couple of comments suggested that we had inadequately considered the economic impacts of the proposed designation on offshore and inshore aquaculture industries. These comments stated that aquaculture projects invest millions of dollars and require investor confidence which may be derailed by a critical habitat designation.

Response: The final economic analysis (Industrial Economics 2014) includes additional information regarding the impacts of this designation on aquaculture/mariculture activities. The report describes the industry in Hawaii, including both offshore and inshore activities, and acknowledges that the industry is expected to continue to grow in the future. Impacts associated with this designation are expected to be largely administrative in nature and experienced by those projects that require cages or pens to be anchored to the seafloor, where Hawaiian monk seal foraging habitat may be disturbed by such activities. To the extent that a project avoids disturbance of benthic habitat, using anchorless systems offshore, the activity will be less likely to affect monk seal foraging habitat and therefore less likely to be affected by the monk seal critical habitat designation. For those projects using anchors, Best Management Practices and compliance with existing regulations and permits (see Chapter 8 of the economic analysis) help to mitigate or avoid major impacts to the seafloor. While ESA section 7 consultation is expected to occur for those projects that are funded, permitted, or carried out by Federal agencies, additional project modifications beyond those that are implemented under the current regulatory environment are not anticipated. Given the relatively low impacts described, we have no reason to believe critical habitat designation will diminish investor and/or public support for marine aquaculture in Hawaii, particularly where NMFS and the State have also committed resources to supporting this emerging industry.

Comment 56: Many comments expressed concern that restrictions on beach access and ocean use activities may result from the proposed designation. Some comments expressed concern that beaches or campgrounds would be closed due to the designation. One of these comments suggested that beach closings or restrictions will affect tourism, which is one of the top industries in Hawaii. Other comments suggested that restrictions or bans may be placed on certain activities such as fishing, diving, or surfing. Another comment asserted that critical habitat will encourage seal population growth and that blocked areas of beach will increase with 10 to 20 animals on the beach.

Response: Chapter 12 of the economic analysis report addresses concerns with regard to beach recreation and tourism (Industrial Economics 2014). We emphasize that critical habitat designations do not restrict beach access or place bans on the areas identified or on specific activities. As previously noted, the designation of critical habitat creates a second obligation under section 7 of the ESA for Federal agencies to ensure that activities that they carry out, authorize, or fund are not likely to destroy or adversely modify critical habitat. Those activities that have a Federal connection may be subject to Federal section 7 consultation if the activity has the potential to impact critical habitat; however, these projects are likely already undergoing Federal section 7 consultation to ensure that actions that they take are not likely to jeopardize Hawaiian monk seals or other listed species (see our response to comment 43).

With regard to the comment about blocked areas of beach due to large numbers of seals, we refer to our response to comment 38 regarding the likelihood that critical habitat will influence population growth in a measurable manner. Monk seals are known to be a relatively solitary species, and it is rare for a large number of monk seals to haul out in a given area. Even with increased numbers in the MHI, seals using this habitat are unlikely to congregate in large numbers. In addition, we will continue to work on addressing ocean resource conflicts as they pertain to Hawaiian monk seals through our MHI management planning efforts.

Comment 57: One comment questioned whether the designation may affect property values for shoreline property.

Response: Critical habitat has been shown to have both positive and negative impacts on property values, depending on local land use regulations (Auffhammer and Sunding 2009). We anticipate that the critical habitat designation is not likely to have a large impact on shoreline property values, in part because most future residential, commercial, and resort development activity in Hawaii is anticipated to occur outside of the designated areas (Industrial Economics 2014). Even within designated critical habitat, we anticipate that the consultation process will result in recommendations to mitigate impacts to essential features, and largely duplicate those existing recommendations and measures for the listed species. We refer the commenter to Chapter 7 of the Economic analysis, which discusses development along shoreline areas of the designation in more detail.

Comment 58: One comment suggested that the protection of areas with low levels of anthropogenic disturbance would prevent plans for increasing public access to an area now or in the future. The commenter also expressed concern about what this would mean for the island of Hawaii which has a lot of undeveloped land that is privately owned with little public access.

Response: As more fully discussed in our response to comment 22, we have removed low levels of anthropogenic disturbance as an essential feature (see response to comment 22); therefore, only those locations which support preferred pupping and nursing areas and/or significant haul out areas will be evaluated when planning for development in coastal areas to ensure that the development is not likely to destroy or adversely modify critical habitat.

Comment 59: The Western Pacific Regional Fishery Management Council (the Council) provided multiple comments regarding the insufficiency of the draft economic analysis and the lack of a systematic approach for the economic analysis in the draft 4(b)(2) report.

The Council commented that the draft economic report is incomplete, because it does not sum the impacts by area, as outlined in the analysis approach of the report. Additionally, the Council argued that the quality of the draft economic analysis is not comparable to recent similar analyses and does not meet the regulatory analysis guidelines set forth by the Office of Management and Budget (OMB), which notes that a cost effective analysis (CEA) should be conducted when primary benefits cannot be expressed in monetary units. They argue the report also underestimates the impacts to fishing and aquaculture activities. With regard to fisheries, the Council commented that the report does not quantify the value of federally managed fisheries as an activity, the potential costs of modification to the fisheries, or the economic value of recreational and subsistence fisheries (which have a Federal nexus in the form of the new National Saltwater Angler Registry). Additionally, the Council argued that the report does not properly consider the impacts to offshore aquaculture operations, which are promoted through the National Offshore Aquaculture Act of 2007.

The Council also noted that the draft 4(b)(2) report lacks a rigorous and systematic approach in weighing the benefits of designation against the benefits of exclusion to determine if any area should be excluded based on economic impacts. The Council requested that NMFS reconsider the analysis for the draft 4(b)(2) report so that determination of exclusion due to economic impacts is conducted in a thorough manner consistent with other recent critical habitat designations.

Response: After considering this and other comments received, we have revised and updated the final economic analysis (Industrial Economics 2014) to better demonstrate the spatial distribution of the economic impacts across the specific areas (see our response to peer review comments 8 and 9 on economics). The final economic analysis also provides additional information about the types of activities that are likely to be affected by the designation. This includes a thorough discussion and evaluation of the economic value of fisheries activities in Chapter 4 and aquaculture related activities in Chapter 8.

The final economic analysis (Industrial Economics 2014) provides an assessment of both monetized and unquantified impacts, a framework that allows us to apply a modified cost-effectiveness analysis for the purposes of 4(b)(2) decision-making. In the ESA Section 4(b)(2) Analysis section of this rule and the 4(b)(2) report (NMFS 2014b), we further describe how the economic impacts were considered for the analysis and provide conservation values for the particular areas, similar to other NMFS critical habitat designations, in weighing the benefits of exclusion against the benefits of designation.

Comment 60: Several comments suggested that impacts to the bottomfish fisheries were not fully considered. Specifically, comments indicated that the proposed rule did not quantify economic impacts to this fishery and did not address the impacts that monk seal foraging would have on the fishery. One comment claimed that the economic impacts to the bottomfish fishery should outweigh the benefits of the designation. This commenter stated that the MHI critical habitat designation could result in restrictions to, or closure of, this fishery. This comment also claimed that the rule would provide conservation groups with another opportunity to file suit when the Hawaiian monk seal population within the MHI exceeds carrying capacity of resources and will result in closure of the well-managed bottomfish fishery, as was done in the NWHI.

Response: We do not believe that the economic impacts of this designation outweigh the benefits of designation based on this fishery because expected economic impacts are relatively low overall, including fishery-related impacts, and we believe that areas in the MHI are of medium to high conservation to the Hawaiian monk seals and therefore are appropriate for designation. The impacts to all fishery activities, including specifics on the bottomfish fishery, are discussed in Chapter 4 of the economic analysis (Industrial Economics 2014). As discussed later in this rule, we do not anticipate modifications to Federal fisheries management programs in order to avoid adverse modification of critical habitat because these activities generally do not use destructive gear or fishing practices that may significantly alter foraging areas, or their essential features. To date, ESA consultations on listed species and federally managed fisheries in the MHI have not identified jeopardizing impacts for monk seals. Moreover, MHI seals do not appear to face food limitations in MHI foraging areas where fishery activities overlap with the designation, and the overlap between targeted species for these fisheries and monk seal diet is considered low and may not extend beyond the family taxonomic level (Cahoon 2011; Sprague *et al.* 2013). In addition, as noted by the commenter, the bottomfish fishery is actively managed under annual catch limits in order to ensure a sustainable market supply of fish on a continuing basis.

We acknowledge that environmental conditions in the future are difficult to predict and some uncertainty remains regarding the relative importance of particular prey species for Hawaiian monk seals. Consequently, we cannot rule out the possibility that future modifications to these fisheries may be required, either to avoid jeopardy or destruction or adverse modification of critical habitat. Nor can we speculate on the likelihood of future litigation resulting from this critical habitat revision.

Comment 61: One comment indicated that fishermen are already affected by seals in the MHI (referring to near-shore interactions with gear and fishing spots) and that designating critical habitat in the MHI will cause more impacts to fishing, including impacts to jobs and food resources. Another commenter suggested that the designation could be linked to increased Hawaiian monk seal population growth and that this growth will deplete MHI fisheries.

Response: We recognize the importance of fishing to the lives of many Hawaii residents and our Hawaiian monk seal recovery program is working on mitigation measures designed to address concerns regarding the adverse impacts of fisherman-monk seal interactions. However, as noted in the above responses to comments about fishing activities, economic impacts in the MHI area that will result from this critical habitat designation are expected to be low, because impacts are expected to be largely administrative in nature and limited to those activities with a Federal nexus. See also Chapter 4 of the economic analysis (Industrial Economics 2014) for further detail on fishery-related impacts.

With regard to the comment on resource depletion associated with Hawaiian monk seal growth in the MHI, the Hawaiian monk seal has been an integral part of a healthy Hawaiian marine ecosystem for many millions of years. We have no information to indicate that competition from a recovered Hawaiian monk seal population in the MHI would deplete

MHI fisheries resources, which are managed to ensure sustainability. We refer the commenter to our response to comment 20 for further information about Hawaiian monk seal feeding habits.

Comment 62: Multiple comments expressed concerns about impacts to Hawaii's fisheries activities, especially near-shore fisheries and fisheries-related actions that receive Federal funding. Many of these comments requested additional information about the types of fishery activities that may be impacted by designation. Some comments claimed that the proposed rule would result in impacts such as fishery restrictions, economic impacts, restrictions on tours, closed fishing areas, new fishing licenses, or decreased fishing seasons or limits. Comments noted that consultation on potential impacts to critical habitat could cause unnecessary delays in the management of ongoing Federal fisheries programs such as the National Saltwater Angler Registry, or add additional costs for federally-funded processes like the Dingle-Johnson and Wallop-Breaux Funds. The latter commenter noted that a registry for shoreline fishers was discussed when the National Saltwater Angler registry was created and the commenter claimed it is not inconceivable that shore fishermen may have a Federal nexus in the future.

Response: As noted in our response to comments above, the impacts to Fishery activities are discussed in Chapter 4 of the economic analysis (Industrial Economics 2014). The report identifies that there have been at least 14 past section 7 consultations on fisheries programs potentially affecting the Hawaiian monk seal within the designated areas; three were consultations related to fisheries management plans, five were related to fishery plan amendments, and five were related to Federal aid for recreational fishing. As discussed in our response to comment 59 above, the impacts to fisheries activities associated with this designation are expected to be low and largely administrative in nature. At this time, we have no reason to anticipate modifications to Federal fisheries management programs in order to avoid adverse modification of critical habitat (see our response to comment 60).

The consultation process requires Federal agencies to consider the potential impacts on monk seal critical habitat of programs that they fund, authorize, or carry out, so as to reduce and, where possible, avoid adverse impacts to its critical habitat. In many cases, we expect that the designation of critical habitat will impose little or no additional burden on agencies where consultation is already required for the listed species. Although we cannot eliminate all potential for Federal project delays, we are prepared to work closely with Federal agencies to ensure that consultations are completed as thoroughly and efficiently as possible. Moreover, while we cannot predict future determinations by Federal action agencies, we expect that many Federal projects, federally-administered grant programs, and Federal administrative activities will have no impact on monk seal critical habitat, and therefore will not be subject to formal consultation at all. In any event, because we designate critical habitat to support species' recovery needs (subject only to limited exceptions), and because Federal agencies are required by the ESA to ensure that their Federal activities are not likely to jeopardize the species or destroy or adversely modify critical habitat, the possibility that consultations may result in additional administrative delay is not a basis for failing to designate critical habitat.

Comment 63: One comment expressed concern that the boundary of critical habitat 5 m inland from the shoreline will migrate mauka (towards the mountains or inland) as sea level rise continues and will result in more economic impacts to Federal projects. The commenter also asked whether there must be a State certified shoreline to determine where 5 m begins, and if there is a setback or management criteria associated with this.

Response: We recognize that as sea levels change, the boundary of the designation may shift over time at the inland extent as well as the seaward extent of the designation. The boundaries of the designation were identified to incorporate those features that are essential to the conservation of the Hawaiian monk seal and we anticipate that Hawaiian monk seal use of areas will reflect shifts in habitat and biological communities over time. The economic analysis considers the impacts of this designation out to 10 years because the activities and resulting impacts across the study area become uncertain beyond this timeframe (Industrial Economics 2014). Although we are limited in our ability to predict future impacts, we do expect that development patterns will also migrate inland overtime to reflect the changing shoreline in Hawaii and to ensure stability of the project as well as to protect Hawaii's natural coastlines and resources.

Critical habitat applies only to section 7 of the ESA, which applies only to Federal agencies (see Comment 17). During consultations, Federal agencies use the best available information to avoid destruction or adverse modification of critical habitat. For purposes of section 7 consultation under the ESA, there is no requirement to obtain a State certified shoreline. We are satisfied that our definition provides sufficient notice to the public and Federal agencies that their activities may affect essential features within designated areas and may require consultation. We note, however, that projects may be required to provide this certification to meet other Federal or State regulatory or permitting requirements independent of this critical habitat designation. As noted in earlier responses to comments and the economic analysis, modification recommendations associated with Hawaiian monk seal critical habitat, if any, are likely to be project-specific, based on the location and scope of the project. Accordingly, there are no designation-wide established setback guidelines.

Comment 64: Several comments stated that the impacts to the State's energy projects were not fully realized in the draft economic analysis for this proposed rule. Particularly, the State Department of Business, Economic Development and Tourism (DBEDT) presented concerns that the Hawaii Clean Energy Initiative to reduce Hawaii's dependence on imported fossil fuels by 70 percent by 2030 may be hindered by the designation. Renewable energy projects that would help support this goal include on-shore wind, solar, geothermal, wave energy, ocean energy, and off-shore wind resources. Currently there are several projects in the areas of ocean thermal energy conversion on the island of Hawaii and off the coast of Oahu, wave energy projects near Kaneohe Marine Corps Base and off the coast of Maui, sea water air conditioning on Oahu, as well as proposed off-shore wind energy in Hawaii's windward areas. The proposed rulemaking could hinder progress in developing a new energy industry and affect jobs or job growth in Hawaii.

Response: We have updated the economic analysis after considering public comments requesting a more complete description of the economic impacts of this designation. For energy impacts in particular, the Hawaii State Energy Office provided additional information which is captured in Chapter 6 of the final economic analysis (Industrial Economics 2014). The expected impact to energy projects over the next 10 years is $7,740 per year. This cost reflects additional administrative effort to consider critical

habitat designation as part of formal consultation on seven proposed energy developments in marine or coastal habitat in the MHI, including wind, geothermal, and wave energy projects mentioned in the comment. Even with the additional information provided by the State, the final economic analysis indicates that impacts to these types of activities are expected to be low, in part because these activities are already subject to many conservation requirements that provide existing baseline protections for Hawaiian monk seal essential features. Further, the protective measures that have been identified for the PEIS prepared by the State and the Bureau of Ocean Energy Management, for Hawaii's energy development provides best management practices that largely complement our recommendations to avoid adverse modification (Industrial Economics 2014). In addition, recommendations for this PEIS also include avoiding Hawaiian monk seal pupping and haul-out areas.

Comment 65: Comments submitted through the public comment process by the Hawaiian monk seal recovery team noted that there is a common misconception that critical habitat may affect every activity that occurs within it, when in fact many activities will not be affected at all. They recommended that NMFS develop some tentative positions describing what will be involved in management of critical habitat that provide potentially affected parties with a clearer understanding of what this means to them, particularly with regard to fisheries that have a Federal nexus and would be subject to section 7 review.

Response: We agree that protections associated with critical habitat are commonly misunderstood and we have revised the biological report (NMFS 2014a) and economic analysis (Industrial Economics 2014), as well as provided information throughout this rule to clarify the types of activities that have a Federal nexus and are likely to be subject to Federal ESA section 7 consultation as a result of this designation. In particular, Chapter 4 of the economic analysis provides an in-depth look at activities, including federally managed fisheries, which have a Federal nexus, and the expected impacts associated with future consultations.

Comment 66: Several comments indicated that the draft economic analysis (EcoNorthwest 2010) did not adequately address impacts of the designation to specific Native Hawaiian activities. One comment noted that impacts to Native Hawaiian activities, including traditional and cultural practices, traditional fishing, taro farming and gathering practices were not adequately addressed.

Response: The final economic analysis (Industrial Economics 2014) provides an in-depth analysis of the potential impacts of this designation on Native Hawaiian activities in Chapters 4 and 12 as they relate to fishing activities. As noted in our response to Comment 51, if there is no Federal authorization, permit, or funding associated with the activity (*i.e.,* no Federal agency action exists), the activity is not subject to section 7 of the ESA. To the extent that Native Hawaiian activities may seek Federal grants or approval, ESA consultation may be required and we will work with Federal agencies to ensure that the federally-funded or approved activity would not result in destruction or adverse modification of Hawaiian monk seal critical habitat.

Comment 67: Comments requested that NMFS clarify how fishponds may be affected by the designation. One comment requested clarification regarding what ''existing'' structures means in the proposed rule, and whether repairs, restorations or extensions of existing fishponds will be affected by the designation. Another commenter questioned whether fishponds are excluded from the designation.

Response: The Hawaiian monk seal critical habitat designation does not include areas of manmade structures in existence prior to the effective date of the rule (see **DATES** section), including fishponds. These manmade structures do not meet the definition of Hawaiian monk seal critical habitat (see the revisions to 50 CFR 226.201 below). This exclusion includes structures that are in disrepair, but persisting in the environment. As noted in the economic analysis (Industrial Economics 2014) activities associated with building, repair, or restoration of fishponds in Hawaiian waters are subject to Federal permitting under the U.S. Army Corps of Engineers and already undergo section 7 consultation to ensure that activities are not likely to jeopardize Hawaiian monk seals. All past consultations have been informal in that adverse impacts to monk seals are unlikely to occur, and only one has been along a coastline included in the designation.

Fishponds in need of repair or restoration that are present prior to the effective date of the designation are not within Hawaiian monk seal critical habitat and ESA consultations are expected to remain largely similar to the current requirements, though the economic analysis (Industrial Economics 2014) conservatively estimates that these consultations may be subject to some administrative costs associated with ensuring that activities are not likely to destroy or adversely modify adjacent areas of critical habitat. These costs are calculated with expected impacts to aquaculture activities in the Hawaiian Islands and are projected to be approximately $1,120 per year. For new fishponds (where no previous structure exists), similar to new construction, location and the scope of the activity will play the largest roles in determining what essential features may be affected and what modifications may be recommended to meet Federal obligations under the ESA. We found no information to indicate that new fishponds are under consideration within areas being designated for Hawaiian monk seal critical habitat.

Comment 68: The Clean Islands Council indicated that the use of dispersants is pre-authorized for oil spill response in and around a majority of the Hawaiian Islands, and it provides a powerful tool to help mitigate the potential impacts of a large oil spill. Currently a ''net environmental benefit'' decision is made by the Unified Command, which weighs the impacts to multiple elements, including wildlife, and decides if dispersants are appropriate for a specific spill incident. The Clean Islands Council expressed concern that the proposed regulation would be used by some individuals as a means to prevent the use of dispersants in the event of a large oil spill and requested that the rule include language that recognizes the special circumstances of an emergency oil spill response, reinforces the current policies of the Regional Response Team, and recognizes the value of enabling the cognizant Unified Command to use all the response tools at their disposal.

Response: We have added additional information to the Special Management Considerations or Protection section of the biological report (NMFS 2014a) detailing how decisions are made consistent with Hawaii's Area Contingency Plan to protect sensitive habitat, including those areas used by Hawaiian monk seals. As recognized by the comment, decisions during an oil spill are made by the Unified Command, under the direction of the Federal On-scene Coordinator. We note, however, that in an oil spill, the Federal action is the response activity, not the spill itself. Accordingly, under the ESA, Federal agencies continue to have the responsibility to ensure that their

response activities are not likely to jeopardize listed species or destroy or adversely modify critical habitat and, to this end, must consult with NMFS and/or the USFWS when adverse impacts may result. The ESA and its implementing regulations recognize the necessity to respond immediately to emergencies and provide special procedures that allow Federal agencies the latitude necessary to complete their emergency responses in order to secure human life and property, while still providing them with protections that normal compliance under the ESA would have afforded. In addition, an inter-agency Memorandum of Agreement sets forth principles for cooperation and understanding among agencies involved in ESA compliance at every stage of oil spill planning and response (available at *http://www.nmfs.noaa.gov/op/pds/documents/02/301/02-301-25.pdf*). To this end, NMFS provides expertise during the emergency response planning process, as well as through emergency consultation, to identify any measures that may minimize and mitigate impacts on the species and their habitat. We do not expect the designation to alter this planning process as decisions are made based on area-specific factors associated with the spill.

Benefits of Critical Habitat

Comment 69: Twenty-eight nongovernmental organizations submitted a comment suggesting that the designation would protect seals' habitat by providing a refuge for monk seals and protect Hawaii's beaches by preventing projects from interfering with beach access, degrading ocean quality, or contributing to shoreline armament.

Response: As noted in our response to comment 16, the protections associated with a critical habitat designation are limited to activities that are carried out, funded or authorized by a Federal agency. We agree that these protections are meant to safeguard the essential features that will support Hawaiian monk seal recovery and that natural coastal areas may be provided some ancillary benefits from these protections. To the extent that the activities mentioned above are linked to Federal activities that are likely to result in destruction or adverse modification of Hawaiian monk seal critical habitat, this designation may provide protections for Hawaii's beaches.

Finally, while we agree that this critical habitat designation may be expected to provide conservation benefits to monk seals, we want to be clear that it does not establish a refuge for monk seals. As discussed above, a critical habitat designation requires Federal agencies to consult to ensure that their activities are not likely to destroy or adversely modify critical habitat. A critical habitat designation does not directly limit private activities conducted on designated lands, nor does it restrict, regulate, or prohibit access to those areas. References to critical habitat areas as being refuges or preserves can be misleading and can potentially undermine public support for designation.

Comment 70: We received several comments that either expressed concern or disbelief that a revised critical habitat designation would provide benefits to the Hawaiian monk seal. Comments that expressed concern often questioned what additional benefits the designation could provide the species, especially in the MHI where the population appears to be doing well. One such commenter requested further explanation of the benefits to the species and questioned whether a critical habitat designation is actually something that is going to help or if it's required. One of these commenters suggested that NMFS did not consider this designation to be a necessary action because it was not included in the suite of recovery and management actions listed under the PEIS and was instead initiated by petition. This commenter went on to assert that the USFWS identified in the final critical habitat rule for the Mexican spotted owl that designation of critical habitat provides little additional protection to most listed species.

Response: We disagree that there are no benefits to the designation of critical habitat. At a minimum, this designation protects the essential features that will support Hawaiian monk seal recovery and ensures that Federal agencies, through the Federal section 7 consultation process, consider the impacts of their activities and projects on Hawaiian monk seal critical habitat. Further, including the MHI in this revised designation indicates the significant role that this habitat will play in Hawaiian monk seal recovery and provides stakeholders with educational information to support Hawaiian monk seal conservation.

The Benefits of Designation section of this final rule provides a description of the benefits associated with the designation of critical habitat for the Hawaiian monk seal. In addition, our response to comment 5 discusses why these protections are different and important compared to other protections that are currently in place for coastal and marine resources, and our response to comment 4 describes our purpose for revising this designation.

Comment 71: We received many comments that acknowledged the benefits that critical habitat designation provides for listed species as well as the benefits it provides for the listed species' resources and communities using those resources. Some of these comments described critical habitat as a planning tool for future development. These comments generally expressed approval for providing increased scrutiny on large development or government projects and often mentioned that the protections established through this review may benefit communities using those resources. One comment stated that critical habitat would disseminate enhanced information for natural resource planning at the Federal, State, and local levels as well as increase access to information about projects or activities that may affect the coastal areas, and raise public awareness about the ecosystem in general.

Response: We agree that critical habitat may be seen as a tool to support thoughtful and well planned development at the Federal, State, or local levels because critical habitat designations provide important information about the resources that listed species depend upon for recovery. Additionally, we agree that protections associated with the designation of Hawaiian monk seal critical habitat may provide some ancillary benefits to communities or species using the same resources.

Comment 72: One comment acknowledged the important role that critical habitat plays in incorporating seal protection into Hawaii's local planning and developing decisions and stated that the critical habitat rule change was an important step in educating the government officials and civic and business leaders who design Hawaii's communities. This commenter also asserted that, currently, only a handful of Hawaii's leaders have taken an interest in the decline of the monk seal and more leadership is needed to develop public policies that secure Hawaiian monk seal critical habitat rather than hinder seal habitat. The commenter also suggested that the designation would provide further education and a cultural acknowledgement to the public about sharing resources with the monk seal, which is important to the public's understanding of their role in the recovery of the monk seal.

Response: We agree that a revised Hawaiian monk seal critical habitat designation provides important and up-

to-date educational information about the ecological needs of the species to support thoughtful and well planned development at the Federal, State, or local levels, regardless of whether these entities are bound by the provisions of section 7 of the ESA. We believe that successful recovery planning for Hawaiian monk seals will depend on the support of all levels of government as well as Hawaii's communities. To gain this support, we will continue to work with all stakeholder groups to provide further education about the ecology of this endangered seal and encourage stakeholders to take an active role in the recovery of this species.

Comment 73: One comment stated that the draft economic analysis (EcoNorthwest 2010) may have undervalued the benefits of the critical habitat designation. This commenter suggested that the designation may lead to more monk seal related tourism, enhance a tourist's experience, and/or bring additional tourism to areas commonly used by seals. The designation also provides an educational benefit, which may create a greater general awareness of anthropogenic threats to the ocean and increase ocean conservation. This commenter also agreed with the draft economic analysis that the critical habitat designation could lead to cleaner water, reductions of pollution, and limits on coastal development that will benefit ocean goers and users.

Response: As noted in the final economic analysis (Industrial Economics 2014), the benefits of a critical habitat designation are difficult to quantify and monetize, because we are unable to measure how this designation may support Hawaiian monk seal population growth and recovery separately from all other actions that are taken to support this species. We also lack data on the public's willingness to pay for any incremental change to support Hawaiian monk seal recovery. Lacking this information, the final economic analysis (Industrial Economics 2014) does not attempt to place a value on these benefits; rather it provides a qualitative discussion regarding the value that the public may place on Hawaiian monk seal conservation as well as the ancillary benefits that may result from designation. We have no information that suggests that the designation will affect tourism either by enhancing or detracting from the industry specifically. However, the economic analysis report (Industrial Economics 2014) does recognize, and we agree, that conservation efforts taken for the monk seal to minimize impacts to the marine and/or coastal environment may protect the health of these ecosystems and as well as those people or species that use these areas for other purposes.

General Comments

Comment 74: The Marine Mammal Commission commented that ''critical habitat is one of the least well understood recovery tools that Federal agencies have to promote species recovery. Given the anxiety that the term often causes among the public, it is worth noting that critical habitat regulations apply only to actions that Federal agencies authorize, fund, or carry out. They do not apply directly to the public, nor are they aimed at restricting the activities of the public.''

Response: We agree that the protections associated with critical habitat are often misunderstood and/or misconstrued. Our response to comment 14 provides further detail about the protections that apply to critical habitat, and attempts to clarify misconceptions that we received in public comments.

Comment 75: We received multiple comments that requested that NMFS provide additional outreach and education about critical habitat to allay common misconceptions or fears about the proposed designation. Several of these comments noted that this regulatory effort was easily confused with the Hawaiian Monk Seal Recovery Action PEIS and that NMFS should attempt to clarify the two conservation initiatives. One comment questioned why the PEIS was not included as part of the critical habitat proposal and suggested that there must be an administrative policy to minimize duplication.

Response: We recognize that the proposed critical habitat rule and the Hawaiian Monk Seal Recovery Action PEIS may have confused some people because these two conservation actions were moving forward at the same time. However, the two actions are distinct in the role they play in supporting Hawaiian monk seal conservation and proceed under separate legal authorities. Below we provide more detail about the distinct nature of these actions.

Critical habitat is a regulatory protection established to protect habitat from the adverse impacts of Federal activities under section 4 of the ESA. The Services are required, when prudent and determinable, to identify critical habitat for newly listed species and from time to time the Services may revise a designation to reflect current information about the species' recovery needs. This revision to Hawaiian monk seal critical habitat was prompted by a petition under section 4 of the ESA (see our response to comment 13). As discussed in our response to comment 10, we are not required to complete a NEPA analysis for the proposed rule. The final designation is codified in the Code of Federal Regulations (CFR), and identifies the critical habitat areas subject to section 7 requirements. Once critical habitat is designated, all Federal agencies are responsible for insuring that actions that they carry out, authorize, or fund are not likely to destroy or adversely modify critical habitat for a listed species under section 7 of the ESA.

The PEIS for Hawaiian Monk Seal Recovery Actions was an analysis to evaluate the impacts of research and management actions to be executed by NMFS to support Hawaiian monk seal recovery over a 10-year period that require scientific research and enhancement permits under section 10 of ESA, as well as under the MMPA. Actions proposed in the PEIS were subject to NEPA and a draft PEIS was prepared and released to the public for review and comment, identifying the potential environmental impacts of the proposed actions on the environment. Because the research and enhancement activities are separate and distinct from the critical habitat revision, and involve different public processes to implement, they were not combined as one action. However, since NMFS will be funding and authorizing the research activities within designated areas of Hawaiian monk seal critical habitat (in the NWHI), NMFS is responsible for ensuring that the activities carried out under research and enhancement permits, as analyzed in the PEIS, are not likely to destroy or adversely modify critical habitat. More information about these activities may be found at: *http://www.nmfs.noaa.gov/pr/permits/eis/hawaiianmonkseal.htm.*

Finally, we reopened the public comment period for the proposed critical habitat rule for an additional 60 days after the PEIS comment period was closed to ensure that the public was able to comment on both the PEIS and the proposed critical habitat designation. In addition, we increased our efforts to provide clarification to the public, and local, State and Federal agencies and officials.

Comments 76: We received several comments regarding the regulatory process associated with the critical habitat designation and how public comments were received and considered. Some comments expressed concern that the public was not given an appropriate amount of time or opportunities to provide input to the process, while other comments suggested that the decision had been

finalized prior to coming out for public comment. One comment requested public hearings on all main islands.

Response: Our discussion at the beginning of the Summary of Comments and Responses section describes the number and timing of opportunities for public comment. We provided 150 days for public comment, well in excess of the minimum 60 days required for a proposed rule to revise critical habitat (50 CFR 424.16(c)(2)). We believe that this process allowed for robust public participation and meaningful opportunities for concerned citizens to comment on this proposed action. We considered all comments received throughout the comment period and at the public hearings pertaining to Hawaiian monk seal critical habitat prior to issuing this final rule.

Critical Habitat Identification

In the following sections, we describe our methods for evaluating the areas considered for designation of critical habitat, our final determinations, and the final critical habitat designation. This description incorporates the changes described above in response to public comments and peer reviewers' comments.

Methods and Criteria Used To Identify Critical Habitat

In accordance with section 4(b)(2) of the ESA and our implementing regulations (50 CFR part 424), this final rule is based on the best scientific information available concerning the range, habitat, biology, and threats to habitat for Hawaiian monk seals.

To assist with the final Hawaiian monk seal critical habitat, we reconvened the CHRT. The CHRT used the best available scientific data and its best professional judgment to help us (1) identify the physical and biological features essential to the conservation of the species that may require special management considerations or protection; (2) identify specific areas within the occupied area containing those essential physical and biological features; and (3) identify activities that may affect any designated critical habitat. The CHRT's evaluation and conclusions are described in the following sections, as well as in the final biological report (NMFS 2014a). We then did the remaining steps of the designation including military exclusions and 4b2.

Physical or Biological Features Essential for Conservation

The ESA does not specifically define physical or biological features; however, consistent with recent designations, the Services have published a proposed rule giving examples and describing the physical or biological features as those habitat features which support the life history needs of the listed species (79 FR 27066; May 12, 2014). Physical or biological features may include, for example, specific prey species, water conditions, temperatures, or sites that support reproduction, rearing of offspring or shelter. In considering whether features are essential to the conservation of the species, the Services may consider an appropriate quality, quantity, and spatial and temporal arrangement of habitat characteristics in the context of the life-history needs, condition, and status of the listed species. Accordingly, the description of physical and biological features varies from one listed species to another and may be described simply by a single element or by a complex combination of characteristics depending on the ecological needs of the species. As described earlier, throughout this rule we describe the physical and biological features essential to the conservation of the Hawaiian monk seal as essential features.

Essential Features

As described above in the section, Summary of Changes From the Proposed Designation, public comments and supplementary information about Hawaiian monk seal habitat use in the MHI led us to take a closer look at the essential features we proposed for designation to protect important reproductive, resting, and foraging habitat. We have identified two terrestrial and one marine essential feature for the conservation of Hawaiian monk seals, which are described below.

1. *Terrestrial areas and adjacent shallow, sheltered aquatic areas with characteristics preferred by monk seals for pupping and nursing.*

Hawaiian monk seals have been observed to give birth and nurse in a variety of terrestrial coastal habitats; however, certain beaches may be preferred for pupping at the various atolls and islands within the range. Preferred pupping areas generally include sandy, protected beaches located adjacent to shallow sheltered aquatic areas where the mother and pup may nurse, rest, swim, thermoregulate, and shelter from extreme weather. Additionally, this habitat provides relatively protected space for the newly weaned pup to acclimate to life on its own. The newly weaned pup uses these areas for swimming, exploring, socializing, thermoregulatory cooling and the first attempts at foraging. Characteristics of terrestrial pupping habitat may include various substrates such as sand, shallow tide-pools, coral rubble, or rocky substrates, as long as these substrates provide accessibility to seals for hauling out. Some preferred sites may also incorporate areas with low lying vegetation used by the pair for shade or cover, or relatively low levels of anthropogenic disturbance. Characteristics of the adjacent sheltered aquatic sites may include reefs, tide pools, gently sloping beaches, and shelves or coves that provide refuge from storm surges and predators. Certain coastal areas with these characteristics may attract multiple mothers to the same area year after year for birthing; however, due to the solitary nature of the species, some mothers may prefer to return to a lesser used location year after year. Accordingly, preferred areas that serve an essential service or function for Hawaiian monk seal conservation are defined as those areas where two or more females have given birth or where a single female chooses to return to the same site more than one year.

2. *Marine areas from 0 to 200 m in depth that support adequate prey quality and quantity for juvenile and adult monk seal foraging.*

Hawaiian monk seals are considered foraging generalists that feed on a wide variety of bottom-associated prey species and use a wide range of benthic habitat to maximize foraging efficiency in tropical ecosystems, which are characterized by low and variable productivity. Inshore, benthic and offshore teleosts, cephalopods, and crustaceans are commonly found in monk seal scat with 31 families of teleosts and 13 families of cephalopods currently identified (Goodman and Lowe 1998). Relative importance of particular prey species is uncertain and may vary between individuals and/or according to environmental conditions that influence productivity. Knowledge of the foraging habits of seals helps to identify areas and habitat types that are regularly used for foraging, including sand terraces, talus slopes, submerged reefs and banks, nearby seamounts, barrier reefs, and slopes of reefs and islands (Parrish *et al.* 2000; Parrish *et al.* 2002). Foraging techniques vary among individuals, but monk seals use bottom habitats to flush or pin desired prey; therefore, areas of importance to monk seals are limited in vertical height from the bottom. Although monk seals may forage at deeper depths, nearly all foraging behavior is captured at depths less than 200 m in the NWHI and in the MHI (Stewart *et al.* 2006; NMFS 2012). Within these essential foraging areas, habitat conditions support growth and

recruitment of bottom-associated prey species that support monk seals. As a marine mammal, the Hawaiian monk seal has adapted to a tropical system defined by low productivity and environmental variability by feeding on a wide variety of bottom-associated prey species across a wide range of depths; accordingly, foraging areas essential to this species incorporate a wide range of foraging areas.

3. *Significant areas used by monk seals for hauling out, resting, or molting.*

Hawaiian monk seals use terrestrial habitat to haul out for resting and molting. Although many areas may be accessible for hauling out and are occasionally used, certain areas of coastline are more often favored by Hawaiian monk seals for these activities as demonstrated by non-random patterns in monk seal haul-out observations. These favored areas may be located close to preferred foraging areas, allow for relatively undisturbed periods of rest, and/or allow small numbers of Hawaiian monk seals to socially interact as young seals and reproductive adults. These haul-out sites are generally characterized by sandy beaches, sand spits, or low shelving reef rocks accessible to seals. Significant haul-out areas are defined by the frequency with which local populations of seals use a stretch of coastline or particular beach. To accommodate the ecology of this species as a solitary but wide-ranging pinniped, significant haul-out areas are defined as natural coastlines that are accessible to Hawaiian monk seals and frequented by Hawaiian monk seals at least 10 percent as often as the highest used haul out site(s) on individual islands, or islets. Significant haul-out areas are essential to Hawaiian monk seal conservation, because these areas provide space that supports natural behaviors important to health and development, such as resting, molting, and social interactions.

Geographical Area Occupied and Specific Areas

One of the first steps in the critical habitat process was to define the geographical area occupied by the species at the time of listing and to identify specific areas within this geographically occupied area that contain at least one of the essential features that may require special management considerations or protections. The range of the Hawaiian monk seal was defined in the 12-month finding on June 12, 2009 (74 FR 27988) as throughout the Hawaiian Archipelago and including Johnston Atoll. Using the identified range, we identified ''specific areas'' within the geographical area occupied by the species that may be eligible for critical habitat designation under the ESA. For an occupied area to meet the criteria of critical habitat, it must contain one or more of the essential features that may require special management considerations or protection.

We reviewed all available information on Hawaiian monk seal distribution, habitat use, and features essential to the conservation of the species. Within the occupied geographical area we identified sixteen specific areas as potential critical habitat for the Hawaiian monk seal for the proposed rule. These specific areas were identified across the NWHI and MHI. After considering public comments we did not change the definition of the geographical area occupied by the species at the time of listing. We did refine the essential features to clarify further how each feature supports Hawaiian monk seal ecology and conservation. Consequently, we re-examined the sixteen specific areas identified in the proposed rule and revised the boundaries of the specific areas to identify more precisely where those features exist. The biological report describes in detail the methods used to assess the specific areas and provides the biological information supporting the assessment (NMFS 2014a). We present brief descriptions of the specific areas identified and reasons why they meet the definition of critical habitat for the Hawaiian monk seal, below.

Specific Areas in the NWHI

Within the NWHI, we identified ten specific areas that contain essential features for Hawaiian monk seals. Each specific area in the NWHI, unless otherwise noted, includes beach areas, sand spits and islets, including all beach crest vegetation to its deepest extent inland, lagoon waters, inner reef waters, and marine habitat through the water's edge, including the seafloor and all subsurface waters and marine habitat within 10 m of the seafloor, out to the 200-m depth contour line (relative to mean lower low water) around the following 10 areas: (1) Kure Atoll, (2) Midway Islands, (3) Pearl and Hermes Reef, (4) Lisianski Island, (5) Laysan Island, (6) Maro Reef, (7) Gardner Pinnacles, (8) French Frigate Shoals, (9) Necker Island, and (10) Nihoa Island. Some areas of coastline in the NWHI lack the essential features of monk seal critical habitat because these areas are inaccessible to seals for hauling out (*e.g.,* cliffs on Nihoa and Necker), or they lack the areas necessary to support monk seal conservation (*e.g.,* buildings on Tern Island, Sand Island, and Green Island). Accordingly, cliffs, and manmade structures (and the land on which they are located) in existence prior to the effective date of this rule do not meet the definition of critical habitat and are not included. In areas where essential features do not extend inland, the specific area ends at a line that marks mean lower low water.

Specific Area 1: Located at the northwestern end of the archipelago and within the Papahanaumokuakea Marine National Monument, Kure atoll is comprised of the major island, Green Island, and a few small sand spits. Kure atoll supports one of the 6 major NWHI breeding subpopulations described under the NMFS stock assessment for the species (Carretta *et al.* 2013). The Atoll provides habitat and characteristics that support all three essential features for Hawaiian monk seal conservation, and the specific area is estimated to include 124 mi^2 (321 km^2) of marine and terrestrial habitat. Manmade structures (and the land on which they are located) in existence prior to the effective date of this rule do not meet the definition of critical habitat and are not included in the specific area.

Specific Area 2: Located northwest of Honolulu and within the Papahanaumokuakea Marine National Monument, Midway Islands consists of three islands, Sand, Eastern, and Spit, located within a circular-shaped atoll. Midway Islands support one of the 6 major NWHI breeding subpopulations described under the NMFS stock assessment for the species (Carretta *et al.* 2013). The islands and surrounding atoll provide habitat and characteristics that support all three essential features for Hawaiian monk seal conservation, and the specific area is estimated to include 137 mi^2 (354 km^2) of marine and terrestrial habitat. Although not included in the 1988 critical habitat designation, Sand Island is included here because it supports Hawaiian monk seal preferred pupping areas and significant haul-out areas. Today Sand Island supports a full time refuge staff, including residents that support and maintain a runway and a visitor program. Manmade structures (and the land on which they are located) in existence prior to the effective date of this rule do not meet the definition of critical habitat and are not included in the specific area.

Specific Area 3: The first land area southeast of Midway and within the Papahanaumokuakea Marine National Monument, the atoll of Pearl and Hermes Reef, consists of numerous islets, seven of which are above sea

level. Pearl and Hermes Reef's support one of the 6 major NWHI breeding subpopulations described under the NMFS stock assessment for the species (Carretta *et al.* 2013). The islands and surrounding atoll provide habitat and characteristics that support all three essential features for Hawaiian monk seal conservation, and the specific area is estimated to include 289 mi² (749 km²) of marine and terrestrial habitat. Manmade structures (and the land on which they are located) in existence prior to the effective date of this rule do not meet the definition of critical habitat and are not included in the specific area.

Specific Area 4: The single island of Lisianski and its surrounding reef is located about 1,667 km northwest of Honolulu within the Papahanaumokuakea Marine National Monument. This low sandy island measures approximately 1.8 km long and 1.0 km wide (NMFS 1983). Lisianski supports one of the 6 major NWHI breeding subpopulations described under the NMFS stock assessment for the species (Carretta *et al.* 2013). The island and surrounding marine areas provide habitat and characteristics that support all three essential features for Hawaiian monk seal conservation, and the specific area is estimated to include 469 mi² (1,214 km²) of marine and terrestrial habitat.

Specific Area 5: Laysan Island is the second largest land area in the NWHI located within the Papahanaumokuakea Marine National Monument. This coral-sand island encloses a hyper-saline lake in the middle of the island. Laysan supports one of the 6 major NWHI breeding subpopulations described under the NMFS stock assessment for the species (Carretta *et al.* 2013). The island is about 1.5 miles long (2.4 km) and 1 mile (1.6 km) wide and is partially surrounded by a fringing reef. The island and surrounding marine habitat provide habitat and characteristics that support all three essential features for Hawaiian monk seal conservation, and the specific area is estimated to include 220 mi² (570 km²) of marine and terrestrial habitat. Manmade structures (and the land on which they are located) in existence prior to the effective date of this rule do not meet the definition of critical habitat and are not included in the specific area.

Specific Area 6: Maro Reef is the largest coral reef in the NWHI, located on top of a seamount and within the Papahanaumokuakea Marine National Monument. The reef is a complex maze of linear reefs that radiate out from the center and provide foraging habitat for the Hawaiian monk seal. This specific area incorporates approximately 776 mi² (2,009 km²) of marine habitat.

Specific Area 7: Gardener Pinnacles consists of two pinnacles of volcanic rock between Maro Reef and French Frigate Shoals and within the Papahanaumokuakea Marine National Monument. Underwater shelves surround the pinnacles, and land and the marine habitat within this specific area was estimated to be approximately 957 mi² (2,478 km²). Home to a wide variety of prey species, Gardner Pinnacles provides marine foraging habitat and haul-out area for the Hawaiian monk seal (NMFS 1983).

Specific Area 8: French Frigate Shoals atoll, open to the west and partially enclosed by a crescent-shaped reef to the east, is located within the Papahanaumokuakea Marine National Monument. The Atoll lies about midpoint in the Hawaiian Archipelago and consists of several small sandy islets, the largest of which is Tern Island. French Frigate Shoals supports one of the 6 major NWHI breeding subpopulations described under the NMFS stock assessment for the species (Carretta *et al.* 2013). The islands and surrounding marine habitat provide all three essential features for the Hawaiian monk seal conservation, and the specific area is estimated to include 367 mi² (950 km²) of marine and terrestrial habitat. Manmade structures (and the land on which they are located) in existence prior to the effective date of this rule do not meet the definition of critical habitat and are not included in the specific area.

Specific Area 9: The Island also known as Mokumanamana is a small basalt island that is about 46 acres (19 hectares) in size and is located within the Papahanaumokuakea Marine National Monument. Habitat used by Hawaiian monk seals includes accessible rocky benches for hauling out, marine habitat for foraging, and areas where pupping has been recorded. Although the island is small in size, marine habitat surrounding the island is large. The islands and surrounding marine habitat provide habitat and characteristics that support all three essential features for Hawaiian monk seal conservation, and the specific area was estimated to be approximately 592 mi² (1,533 km²), including land and marine habitat.

Specific Area 10: Nihoa is the easternmost island described in the NWHI within the Papahanaumokuakea Marine National Monument. The Island consists of a remnant volcanic peak with large foot cliffs, basalt rock surface, and a single beach. Hawaiian monk seals use the single beach and some accessible rock ledge areas for hauling out and giving birth. The islands and surrounding marine habitat provide habitat and characteristics that support all three essential features for Hawaiian monk seal conservation. The specific area is estimated to be approximately 214 mi² (554 km²) incorporating all land and marine habitat.

Specific Areas in the MHI

Within the MHI, we identified six specific areas that contain essential features for Hawaiian monk seals. In the MHI, unless otherwise noted, specific areas are defined in the marine environment by a seaward boundary that extends from the 200-m depth contour line (relative to mean lower low water), including the seafloor and all subsurface waters and marine habitat within 10 m of the seafloor, through the water's edge into the terrestrial environment where the inland boundary extends 5 m (in length) from the shoreline between identified boundary points listed in the table below around the following areas: (i) Kaula Island, (ii) Niihau, (iii) Kauai, (iv) Oahu, (v) Maui Nui (including Kahoolawe, Lanai, Maui, and Molokai), and (vi) Hawaii. The shoreline is defined as the upper reaches of the wash of the waves, other than storm or seismic waves, at high tide during the season in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth or the upper limit of debris. Locations for coastal segments included in the designation of each MHI specific area are described in Table 1. Some areas of coastline in the MHI lack the essential features of monk seal critical habitat because these areas are inaccessible to seals for hauling out or they lack the natural areas necessary to support monk seal conservation (*e.g.,* cliffs on Lanai, buildings set close to the water, seawalls, riprap, or breakwaters). Accordingly, cliffs and manmade structures such as docks, seawalls, piers, fishponds, roads, pipelines, boat ramps, platforms, buildings and pilings in existence prior to the effective date of the rule, do not meet the definition of critical habitat and are not included in the designation. In areas where essential features do not extend inland, the specific area ends at a line that marks mean lower low water.

Specific Area 11: This specific area includes only the marine areas that surround the island of Kaula. These marine areas provide important foraging areas for Hawaiian monk seal conservation, which likely supports seals that are resident to the island of Niihau, but may also support some

NWHI seals. The islet is located on a shoal that supports a large variety of marine life and is surrounded by 26 mi² (66 km²) of marine habitat that falls within the 200-m depth contour. The U.S. Navy has jurisdiction over the island and the 3-nautical mile (5.6 km) danger zone surrounding the island.

Specific Area 12: This specific area includes marine habitat from 10 m in depth out to the 200-m depth contour line around the island of Niihau and including the marine habitat and terrestrial shorelines surrounding Lehua islet. The specific area is located southwest of Kauai and provides approximately 115 mi² (298 km²) of marine foraging habitat that supports the largest number of seals in the MHI. As a privately owned island, access to Niihau is limited to Niihau residents, the U.S. Navy, and invited guests. Lehua Island, a tuff crater located a half mile (0.8 km) north of Niihau, provides shelves and benches that provide significant haul-out areas for Hawaiian monk seals. Lehua is administered by the U.S. Coast Guard, and activities are subject to Hawaii Department of Land and Natural Resources regulations because it is a Hawaii State Seabird Sanctuary. The coastal habitat around Lehua is included in the specific area.

Specific Area 13: Kauai's beaches and coastline are used by Hawaiian monk seals, and approximately 28 mi (45 km) of the Island's coastline provides habitat that supports preferred pupping and nursing areas and significant haul-out areas that are essential to Hawaiian monk seal conservation. In addition, marine waters surrounding the Island of Kauai provide marine foraging areas that are essential to Hawaiian monk seal conservation. The specific area incorporates 215 mi² (557 km²) of marine habitat.

Specific Area 14: Oahu is the third largest island in the MHI chain. Oahu's beaches and coastline are used by Hawaiian monk seals and approximately 48 mi (78 km) of the Island's coastline provides habitat that supports preferred pupping and nursing areas and significant haul-out areas that are essential to Hawaiian monk seal conservation. In addition, marine waters surrounding the Island of Oahu provide marine foraging areas that are essential to Hawaiian monk seal conservation. The specific area incorporates 363 mi² (940 km²) of marine habitat.

Specific Area 15: Maui Nui includes the islands Molokai, Lanai, Kahoolawe, and Maui and the surrounding marine waters. This specific area incorporates 1,445 mi² (3,742 km²) of marine habitat, 72 mi (116 km) of coastline on Maui, 7 miles (12 km) of coastline on Molokai, 31 miles (49 km) of coastline on Lanai, and 7 miles (12 km) of coastline on Kahoolawe. Molokai and Kahoolawe's coastlines provide habitat that supports preferred pupping and nursing areas and significant haul-out areas that are essential to Hawaiian monk seal conservation. Coastlines on Lanai and Maui provide significant haul-out areas that support Hawaiian monk seal conservation, and marine waters surrounding the Maui Nui area provide marine foraging areas that are essential to Hawaiian monk seal conservation.

Specific Area 16: Hawaii is the largest island in the MHI. The specific area incorporates 404 mi² (1048 km²) of marine habitat. Although the number of seals using this habitat is small, Hawaii's beaches and coastline are used by Hawaiian monk seals and approximately 49 mi (79 km) of the island's coastline provides habitat that supports preferred pupping and nursing areas and significant haul-out areas that are essential to Hawaiian monk seal conservation. In addition, marine waters surrounding the Island of Hawaii provide marine foraging areas that are essential to Hawaiian monk seal conservation.

TABLE 1—MAIN HAWAIIAN ISLAND TERRESTRIAL SPECIFIC AREA SEGMENT LOCATIONS

Area	Island	Textual description of segment	Boundary points	Latitude	Longitude
13	Kauai	Southeast coast of Kauai (Nomilu Fishpond area through Mahaulepu).	KA 11	21°53′08″ N.	159°31′48″ W.
			KA 12	21°53′34″ N.	159°24′25″ W.
13	Kauai	Kawelikoa Point to Molehu	KA 21	21°54′26″ N.	159°23′26″ W.
			KA 22	21°54′48″ N.	159°23′08″ W.
13	Kauai	Lydgate Park through Wailua canal	KA 31	22°02′11″ N.	159°20′08″ W.
			KA 32	22°02′41″ N.	159°20′11″ W.
13	Kauai	Wailua canal through Waikaea canal	KA 41	22°02′45″ N.	159°20′10″ W.
			KA 42	22°04′14″ N.	159°18′60″ W.
13	Kauai	Waikaea canal through Kealia	KA 51	22°04′15″ N.	159°19′01″ W.
			KA 52	22°05′59″ N.	159°18′08″ W.
13	Kauai	Anahola and Aliomanu areas	KA 61	22°07′46″ N.	159°17′35″ W.
			KA 62	22°09′28″ N.	159°18′18″ W.
13	Kauai	Moloaa Bay through Kepuhi Point	KA 71	22°11′38″ N.	159°19′46″ W.
			KA 72	22°12′52″ N.	159°21′14″ W.
13	Kauai	Southeast of Kilauea	KA 81	22°13′48″ N.	159°23′52″ W.
			KA 82	22°13′55″ N.	159°24′06″ W.
13	Kauai	Wainiha Beach Park through Kee Beach Park	KA 91	22°12′60″ N.	159°32′30″ W.
			KA 92	22°13′13″ N.	159°35′01″ W.
13	Kauai	Milolii State Park Beach Area	KA 101	22°09′13″ N.	159°42′52″ W.
			KA 102	22°08′59″ N.	159°43′21″ W.
14	Oahu	Keana Point Area	OA 11	21°34′43″ N.	158°15′37″ W.
			OA 12	21°32′45″ N.	158°14′25″ W.
14	Oahu	Maili Beach through Kalaeloa Barbers Point Harbor.	OA 21	21°25′43″ N.	158°10′48″ W.
			OA 22	21°19′24″ N.	158°07′20″ W.
14	Oahu	Kalaeloa Barbers Point Harbor through Iroquois Point.	OA 31	21°19′18″ N.	158°07′17″ W.
			OA 32	21°19′20″ N.	157°58′17″ W.
14	Oahu	Diamond Head area	OA 41	21°15′27″ N.	157°49′05″ W.
			OA 42	21°15′24″ N.	157°47′45″ W.
14	Oahu	Hanauma Bay through Sandy Beach	OA 51	21°16′05″ N.	157°41′50″ W.
			OA 52	21°17′45″ N.	157°39′27″ W.
14	Oahu	Makapuu Beach Area	OA 61	21°18′36″ N.	157°39′31″ W.
			OA 62	21°18′58″ N.	157°39′55″ W.

TABLE 1—MAIN HAWAIIAN ISLAND TERRESTRIAL SPECIFIC AREA SEGMENT LOCATIONS—Continued

Area	Island	Textual description of segment	Boundary points	Latitude	Longitude
14	Oahu	Lori Point through Waimea Bay	OA 71	21°40′26″ N.	157°56′00″ W.
			OA 72	21°38′18″ N.	158°03′56″ W.
14	Oahu	Kapapa Island (Kaneohe Bay)	OAi1	21°28′36″ N.	157°47′55″ W.
14	Oahu	Mokulua—Moku Nui	OAi2	21°23′30″ N.	157°41′56″ W.
14	Oahu	Mokulua—Moku Iki	OAi3	21°23′16″ N.	157°41′52″ W.
14	Oahu	Manana (Rabbit Island)	OAi4	21°19′44″ N.	157°39′24″ W.
15	Molokai	Laau Point Area	MO 11	21°07′49″ N.	157°17′47″ W.
			MO 12	21°05′21″ N.	157°15′50″ W.
15	Molokai	Kalaupapa Area	MO 21	21°12′33″ N.	156°58′52″ W.
			MO 22	21°11′28″ N.	156°59′06″ W.
15	Molokai	Moku Hooniki	MOi1	21°07′59″ N.	156°42′10″ W.
15	Lanai	Shipwreck Beach Area	LA 11	20°54′45″ N.	156°53′45″ W.
			LA 12	20°55′20″ N.	156°56′45″ W.
15	Lanai	Northwest Lanai (Including Polihua Beach)	LA 21	20°55′42″ N.	156°59′47″ W.
			LA 22	20°52′02″ N.	157°02′33″ W.
15	Lanai	North of Kamalapau Harbor	LA 31	20°48′38″ N.	156°59′15″ W.
			LA 32	20°47′17″ N.	156°59′24″ W.
15	Lanai	Kamalapau Harbor through Kaholo Pali	LA 41	20°47′13″ N.	156°59′27″ W.
			LA 42	20°46′59″ N.	156°59′31″ W.
15	Lanai	Kaholo Pali through Manele Harbor	LA 51	20°44′13″ N.	156°58′01″ W.
			LA 52	20°44′29″ N.	156°53′15″ W.
15	Lanai	Manele Harbor through Nakalahale Cliff	LA 61	20°44′35″ N.	156°53′14″ W.
			LA 62	20°44′49″ N.	156°52′16″ W.
15	Lanai	Nakalahale Cliff through Lopa Beach	LA 71	20°45′07″ N.	156°51′50″ W.
			LA 72	20°48′21″ N.	156°48′24″ W.
15	Lanai	Puupehe*	LAi1	20°44′04″ N.	156°53′25″ W.
15	Kahoolawe	Mid-North coast (including Kaukamoku and Ahupuiki).	KH 11	20°34′36″ N.	156°37′36″ W.
			KH 12	20°34′10″ N.	156°38′15″ W.
15	Kahoolawe	Eastern coast of Kahoolawe (Honokoa through Sailer's Hat).	KH 21	20°33′08″ N.	156°40′35″ W.
			KH 22	20°30′04″ N.	156°40′23″ W.
15	Maui	Kuloa Point through Hana Wharf and Ramp	MA 11	20°40′02″ N.	156°02′27″ W.
			MA 12	20°45′21″ N.	155°58′54″ W.
15	Maui	Hana Wharf and Ramp through Kainalimu Bay.	MA 21	20°45′20″ N.	155°58′56″ W.
			MA 22	20°46′08″ N.	155°59′04″ W.
15	Maui	Keanae Pennisula to Nauailua Bay	MA 31	20°51′56″ N.	156°08′46″ W.
			MA 32	20°51′41″ N.	156°08′55″ W.
15	Maui	Maliko Bay through Papaula Point	MA 41	20°56′11″ N.	156°21′11″ W.
			MA 42	20°54′30″ N.	156°25′06″ W.
15	Maui	Kahului Harbor West through Waihee Beach Park.	MA 51	20°53′53″ N.	156°28′47″ W.
			MA 52	20°56′04″ N.	156°30′15″ W.
15	Maui	Punalau Beach through to Mala Wharf	MA 61	21°01′20″ N.	156°37′28″ W.
			MA 62	20°53′09″ N.	156°41′10″ W.
15	Maui	Southeast of Mala Wharf through to Lahaina Harbor.	MA 71	20°53′04″ N.	156°41′12″ W.
			MA 72	20°52′26″ N.	156°40′43″ W.
15	Maui	Southeast of Lahaina Harbor through to Papalaua.	MA 81	20°52′12″ N.	156°40′39″ W.
			MA 82	20°47′34″ N.	156°34′00″ W.
15	Maui	East of Maalaea Harbor through to Kihei boat ramp.	MA 91	20°47′32″ N.	156°30′34″ W.
			MA 92	20°42′29″ N.	156°26′46″ W.
15	Maui	South of Kihei Boat Ramp through Ahihi Bay	MA 101	20°42′27″ N.	156°26′47″ W.
			MA 102	20°37′39″ N.	156°26′40″ W.
15	Maui	La Perouse Bay from Kalaeloa Point through Pohakueaea Point.	MA 111	20°35′43″ N.	156°25′33″ W.
			MA 112	20°34′45″ N.	156°23′29″ W.
15	Maui	Molokini Crater	MAi1	20°37′51″ N.	156°29′43″ W.
16	Hawaii	Waimanu through Laupahoehoenui	HA 11	20°08′35″ N.	155°37′59″ W.
			HA 12	20°09′54″ N.	155°39′18″ W.
16	Hawaii	Keokea Bay through Kauhola Point	HA 21	20°13′39″ N.	155°44′49″ W.
			HA 22	20°14′44″ N.	155°46′18″ W.
16	Hawaii	Kapaa Beach County Park to Mahukona Harbor.	HA 31	20°12′16″ N.	155°54′06″ W.
			HA 32	20°11′04″ N.	155°54′05″ W.
16	Hawaii	South of Mahukona Harbor	HA 41	20°10′60″ N.	155°54′03″ W.
			HA 42	20°10′51″ N.	155°54′07″ W.
16	Hawaii	Pauoa Bay to Makaiwa Bay area	HA 51	19°57′03″ N.	155°51′49″ W.
			HA 52	19°56′38″ N.	155°52′10″ W.
16	Hawaii	Anaehoomalu Bay area through Keawaiki Bay area.	HA 61	19°54′42″ N.	155°53′26″ W.
			HA 62	19°53′09″ N.	155°54′34″ W.
16	Hawaii	Puu Alii Bay Area through Mahaiula Bay	HA 71	19°47′37″ N.	156°01′33″ W.
			HA 72	19°46′53″ N.	156°02′18″ W.
16	Hawaii	Keahole Point through Kaloko-Honokohau National Historic Park.	HA 81	19°43′54″ N.	156°03′26″ W.
			HA 82	19°40′28″ N.	156°01′34″ W.
16	Hawaii	South of Oneo Bay area through to Holualoa Bay area.	HA 91	19°38′10″ N.	155°59′29″ W.
			HA 92	19°36′31″ N.	155°58′41″ W.

TABLE 1—MAIN HAWAIIAN ISLAND TERRESTRIAL SPECIFIC AREA SEGMENT LOCATIONS—Continued

Area	Island	Textual description of segment	Boundary points	Latitude	Longitude
16	Hawaii	Kahaluu Bay Area through Keauhou Bay Area.	HA 101	19°34′49″ N.	155°57′59″ W.
			HA 102	19°33′43″ N.	155°57′43″ W.
16	Hawaii	Kealakekua Bay Area	HA 111	19°28′38″ N.	155°55′13″ W.
			HA 112	19°28′25″ N.	155°55′10″ W.
16	Hawaii	Honaunau Bay Area	HA 121	19°25′35″ N.	155°55′02″ W.
			HA 122	19°25′01″ N.	155°54′42″ W.
16	Hawaii	Milolii Bay Area through Honomalino Bay Area.	HA 131	19°11′07″ N.	155°54′29″ W.
			HA 132	19°10′04″ N.	155°54′35″ W.
16	Hawaii	Ka Lae National Historic Landmark District through Mahana Bay.	HA 141	18°54′54″ N.	155°40′59″ W.
			HA 142	18°55′00″ N.	155°40′09″ W.
16	Hawaii	Papakolea Green Sand Beach Area	HA 151	18°56′10″ N.	155°38′47″ W.
			HA 152	18°56′11″ N.	155°38′45″ W.
16	Hawaii	Kaalualu Bay Area	HA 161	18°58′14″ N.	155°37′01″ W.
			HA 162	18°58′18″ N.	155°36′49″ W.
16	Hawaii	Whittington Beach Area through Punaluu Beach Area.	HA 171	19°05′04″ N.	155°33′03″ W.
			HA 172	19°08′06″ N.	155°30′09″ W.
16	Hawaii	Halape Area through Keauhou Point Area	HA 181	19°16′14″ N.	155°15′20″ W.
			HA 182	19°15′45″ N.	155°13′59″ W.
16	Hawaii	Kapoho Bay Area	HA 191	19°29′38″ N.	154°49′01″ W.
			HA 192	19°30′10″ N.	154°48′46″ W.
16	Hawaii	Lehia Beach Park through to Hilo Harbor	HA 201	19°44′07″ N.	155°00′38″ W.
			HA 202	19°43′56″ N.	155°03′02″ W.
16	Hawaii	Papaikou Area	HA 211	19°46′39″ N.	155°05′18″ W.
			HA 212	19°46′43″ N.	155°05′18″ W.
16	Hawaii	Onomea Bay Area	HA 221	19°48′33″ N.	155°05′34″ W.
			HA 222	19°48′37″ N.	155°05′22″ W.
16	Hawaii	Hakalau Area	HA 231	19°54′02″ N.	155°07′32″ W.
			HA 232	19°54′05″ N.	155°07′43″ W.

Unoccupied Areas

Section 3(5)(A)(ii) of the ESA defines critical habitat to include ''specific areas outside the geographical areas occupied by the species at the time it is listed'' if those areas are determined to be essential to the conservation of the species. In our proposed rule we stated that we did not identify any specific areas outside the geographic area occupied by Hawaiian monk seals that may be essential for the conservation of the species. We did not receive any public or peer review comments on this topic; therefore, no unoccupied areas will be included in this analysis.

Special Management Considerations or Protections

An occupied area may be designated as critical habitat only if it contains physical or biological features essential to the conservation of the species that ''may require special management considerations or protection.'' We have identified a number of activities that may threaten or adversely affect our identified essential features and which, therefore, may require special management considerations or protection. In our proposed rule, we grouped these activities into eight categories: (1) In-water and coastal construction, (2) dredging and disposal of dredged material, (3) energy development (renewable energy projects), (4) activities that generate water pollution, (5) aquaculture, (6) fisheries, (7) oil spills and vessel groundings response activities, and (8) military activities.

We received several comments that suggested that impacts for certain activities were not recognized within the scope of our impacts analysis. In review we noted that several of these activities were included in our analysis, but that the broad title provided for the category did not make this easy to discern. We have revised the titles for several of these categories to identify more clearly the eight categories: (1) In-water and coastal construction (including development), (2) dredging (including disposal of dredged materials), (3) energy development (including renewable energy projects), (4) activities that generate water pollution, (5) aquaculture (including mariculture), (6) fisheries, (7) environmental response activities (including oil spills, spills of other substances, vessel groundings, and marine debris clean-up activities), and (8) military activities. All of the identified activities have the potential to affect one or more of the essential features by altering the quantity, quality or availability of the essential features for Hawaiian monk seals. The biological report (NMFS 2014a) and economic analysis report (Industrial Economics 2014) provide a more detailed description of the potential effects of each category of activities and threats on the essential features.

Military Areas Ineligible for Designation (section 4(a)(3) Determinations)

The ESA precludes the Secretary from designating military lands as critical habitat if those lands are subject to an INRMP under the Sikes Act Improvement Act of 1997 (Sikes Act; *http://www.gpo.gov/fdsys/pkg/USCODE-2013-title16/pdf/USCODE-2013-title16-chap5C-subchapI-sec670.pdf*) and the Secretary certifies in writing that the plan benefits the listed species (section 4(a)(3), Pub. L. 108–136).

Refining the essential features (described above), after considering public comment and available information, has reduced the size of the specific areas under consideration for critical habitat (*i.e.,* those areas where the essential features exist). Consequently, the overlap between areas under consideration for critical habitat and areas managed under certain DOD INRMPs has changed since the 2011 proposed designation. Additionally, since 2011, several INRMPs have been revised to incorporate new management measures as well as newly managed areas; these changes, and our determinations as to whether the INRMP provides a benefit to the species, are discussed below.

Although the Army and the Air Force provided INRMPs for review, areas under consideration for Hawaiian monk seal critical habitat no longer overlap with Army or Air Force INRMP managed areas; therefore, these INRMPs require no review under section 4(a)(3)(B)(i).

The Marine Corps' MCBH, and the Navy's PMRF and the JBPHH INRMPs continue to overlap with areas under consideration for monk seal critical habitat, and these INRMPs were reviewed in accordance with section 4(a)(3)(B)(i) of the ESA. Areas subject to the MCBH INRMP that overlap with the areas under consideration for critical habitat include the 500-yard buffer zone in marine waters surrounding the MCBH–KB on the Mokapu Peninsula, Oahu; and Puuloa Training Facility, on the Ewa coastal plain, Oahu. Overlap areas for the PMRF INRMP include Kaula Island and coastal and marine areas out to 10 m in depth around the island of Niihau, which are leased for naval training activities and use. Overlap areas for the JBPHH INRMP include Nimitz Beach, White Plains Beach, the Naval Defensive Sea Area, the Barbers Point Underwater Range, and the Ewa Training Minefield, all on Oahu.

To determine whether a plan provides a benefit to the species, we evaluated each plan with regard to the potential conservation benefits to the species, the past known implementation of management efforts, and the management effectiveness of the plan. Plans determined to be a benefit to the species demonstrated strengths in all three areas of the review. While considering the third criterion, we determined that an effective management plan must have a structured process to gain information (through monitoring and reporting), a process for recognizing program deficiencies and successes (review), and a procedure for addressing any deficiencies (allowing for adaption for conservation needs).

Although we previously determined that the 2006 MCBH INRMP provided a benefit to the Hawaiian monk seal (76 FR 32026; June 2, 2011), the 2012 MCBH INRMP was evaluated for this final rule to ensure that conservation measures implemented under the renewed INRMP continue to provide a benefit to the Hawaiian monk seal as well as the refined essential features. In review, the MCBH INRMP identifies multiple conservation measures that may confer benefits to the Hawaiian monk seal or its habitat, including debris removal, prohibitions against lay nets and gill nets in the 500-yard buffer zone, restrictions on fishing, enforcement of established rules by a Conservation Law Enforcement Officer, interagency cooperation for rehabilitation events, use of established procedures for seal haul-out and pupping events, educational outreach for protected species (including classroom briefs, Web page, news articles, brochures, service projects, and on-site signage and monitoring), protected species scouting surveys prior to training exercises along the beach; invasive species removal (*e.g.,* removing invasive mangroves to support native species habitat), ecological assessments in marine resources surveys and inventories, and water quality projects (minimizing erosion and pollution). Additionally, management effectiveness and plan implementation are demonstrated in the plan's appendices, which outline the conservation measures goals and objectives, provide reports and monitoring efforts from past efforts, report on the plan's implementation, and describe the achievement of the goals and objectives. Meeting all three criteria for review, we have determined that the MCBH INRMP provides a benefit to the Hawaiian monk seal and its habitat.

In 2011, we found the Navy's two INRMPs did not meet the benefit criteria established for review and identified concerns with plan implementation and management effectiveness (76 FR 32026; June 2, 2011). Since 2011, the Navy has worked with us to recognize and revise plan deficiencies. Additionally, the Navy has enhanced the management efforts associated with Hawaiian monk seal conservation that are implemented under the JBPHH and PMRF INRMPs. Plan effectiveness has been addressed for both INRMPs by including a performance monitoring element to the INRMPs, which creates an annual review with State and Federal wildlife agencies. During review, management measures and outcomes are evaluated to ensure that plan deficiencies are identified and addressed. Additionally, the Navy has enhanced the management efforts associated with Hawaiian monk seal conservation that are implemented under these INRMPs as follows. In review, the JBPHH INRMP demonstrates conservation benefits for the species, including marine debris removal, monitoring, and prevention; pet restrictions; restriction of access; protocol to prevent disturbance during naval activities; staff and public education; training to prevent ship groundings; marine mammal stranding and response training and protocols; enforcement (through base police and the game warden); and compliance and restoration programs for contaminants. Based on these benefits provided for the Hawaiian monk seal, and in combination with the concerted effort made by the Navy to enhance the plan's implementation and management effectiveness, we determined that the JBPHH INRMP provides a benefit to the Hawaiian monk seal and its habitat.

Since 2011, the Navy has revised the PMRF INRMP's monitoring plan for Kaula Island to better reflect logistical constraints and accurately identify monitoring capabilities for this area. Additionally, the Navy has coordinated with NMFS staff to improve the effectiveness of monitoring activities for the Island. In addition to these changes, the Navy has amended the PMRF INRMP to include coastal and marine areas out to 10 m in depth surrounding the Island of Niihau, which are leased for Navy training activities and use. Conservation measures on Niihau related to Hawaiian monk seals or their habitat include the following: a coastal monitoring program for Hawaiian monk seals and sea turtles, periodic removal of feral pigs, bans on ATVs (to preserve the sand dunes and coastal areas), bans on dogs (to prevent disturbance to native wildlife), and continued limited access for guests. In review, the PMRF INRMP demonstrates elements of a successful conservation program that will benefit the species, including marine debris removal, monitoring, and prevention; trapping of feral pigs, cats, and dogs; pet restrictions; restriction of public access in certain areas; protocols to prevent wildlife disturbance; public education; training to prevent ship groundings; monk seal monitoring and reporting; and compliance and restoration programs for contaminants. Based on these benefits provided for the Hawaiian monk seal, and in combination with the concerted effort made by the Navy to enhance the plan's implementation and management effectiveness, we determined that the PMRF INRMP provides a benefit to the Hawaiian monk seal and its habitat.

In conclusion, we have determined that the INRMPs for the MCBH, the PMRF, and the JBPHH each confer benefits to the Hawaiian monk seal and its habitat, and therefore the areas subject to these INRMPs are precluded from Hawaiian monk seal critical habitat.

ESA Section 4(b)(2) Analysis

Section 4(b)(2) of the ESA requires the Secretary to consider the economic, national security, and any other relevant impacts of designating any particular area as critical habitat. Any particular

area may be excluded from critical habitat if the Secretary determines that the benefits of excluding the area outweigh the benefits of designating the area. The Secretary may not exclude a particular area from designation if exclusion will result in the extinction of the species. Because the authority to exclude is discretionary, exclusion is not required for any areas. In this final designation, the Secretary has applied statutory discretion as described below to exclude five occupied areas from critical habitat where the benefits of exclusion outweigh the benefits of designation.

The first step in conducting the ESA section 4(b)(2) analysis is to identify the ''particular areas'' to be analyzed. The ''particular areas'' considered for exclusion are defined based on the impacts identified. Where we considered economic impacts and weighed the economic benefits of exclusion against the conservation benefits of designation, we used the same biologically-based ''specific areas'' we had identified under section 3(5)(A) (*e.g.,* Niihau, Kauai, Oahu, etc.) above. Delineating the ''particular areas'' as the same units as the ''specific areas'' allowed us to consider the conservation value of the designation most effectively. We also considered exclusions of smaller particular areas based on impacts on national security and other relevant impacts (*i.e.,* for this designation, impacts on areas managed by USFWS in the NWHI). Delineating particular areas based on impacts to national security or other relevant impacts was based on land ownership or control (*e.g.,* land controlled by the DOD within which national security impacts may exist or land owned or controlled by the USFWS). The next step in the ESA section 4(b)(2) analysis involves identification of the impacts of designation (*i.e.,* the benefits of designation and the benefits of exclusion). We then weigh the benefits of designation against the benefits of exclusion to identify areas where the benefits of exclusion outweigh the benefits of designation. These steps and the resulting list of areas excluded from designation are described in detail in the sections below.

Impacts of Designation

The primary impact of a critical habitat designation stems from the requirement under section 7(a)(2) of the ESA that Federal agencies insure that their actions are not likely to result in the destruction or adverse modification of critical habitat. Determining this impact is complicated by the fact that section 7(a)(2) also contains the requirement that Federal agencies must also insure their actions are not likely to jeopardize the species' continued existence. Accordingly, the incremental impact of designation of critical habitat is the extent to which Federal agencies modify their actions to insure their actions are not likely to destroy or adversely modify the critical habitat of the species beyond any modifications they already would be required to make because of the species' listing and the requirement to avoid jeopardy. When a project modification would be required due to impacts to both the species and critical habitat, the impact of the designation is considered co-extensive with the impact of the ESA listing of the species. Additional impacts of designation include state and local protections that may be triggered as a result of the designation and the benefits from educating the public about the importance of each area for species conservation. Thus, the impacts of the designation include conservation impacts for Hawaiian monk seal and its habitat, economic impacts, impacts on national security, and other relevant impacts that may result from the designation and the application of ESA section 7(a)(2).

In determining the impacts of designation, we focused on the incremental change in Federal agency actions as a result of critical habitat designation and the adverse modification provision, beyond the changes expected to occur as a result of listing and the jeopardy provision. Following a line of recent court decisions, including: *Arizona Cattle Growers Association* v. *Salazar,* 606 F. 3d 1160 (9th Cir. 2010)) (*Arizona Cattle Growers*); and *Home Builders Association of Northern California et al.* v. *U.S. Fish and Wildlife Service,* 616 F.3d 983 (9th Cir. 2010) (Home Builders) economic impacts that occur regardless of the critical habitat designation are treated as part of the regulatory baseline and are not factored into the analysis of the effects of the critical habitat designation. In other words, consistent with the *Arizona Cattle Growers* and *Home Builders* decisions, we focus on the potential incremental impacts beyond the impacts that would result from the listing and jeopardy provision. In some instances, potential impacts from the designation could not be distinguished from protections that may already occur under the baseline (*i.e.,* protections already afforded Hawaiian monk seals under its listing or under other Federal, state, and local regulations). For example, the project modifications to prevent the disturbance to an area of critical habitat may be similar to the project modifications necessary to prevent jeopardy to the species in an area. The extent to which these modifications differ may be project specific, and the incremental changes or impacts to the project may be difficult to tease apart without further project specificity. Thus, the analysis may include some impacts or project modifications that may have been required under the baseline regardless of the critical habitat rule.

Once we determined the impacts of the designation, we then determined the benefits of designation and the benefits of exclusion based on the impacts of the designation. The benefits of designation include the conservation benefits for Hawaiian monk seals and their habitat that result from the critical habitat designation and the application of ESA section 7(a)(2). The benefits of exclusion include the economic impacts, impacts on national security, and other relevant impacts (*e.g.,* impacts on Native lands) of the designation that would be avoided if a particular area were excluded from the critical habitat designation. The following sections describe how we determined the benefits of designation and the benefits of exclusion and how those benefits were weighed as required under section 4(b)(2) of the ESA to identify particular areas that may be eligible for exclusion from the designation. We also summarize the results of this weighing process and determinations of the areas that are eligible for exclusion.

Benefits of Designation

The primary benefit of designation is the protection afforded under section 7 of the ESA via requiring all Federal agencies to insure their actions are not likely to destroy or adversely modify designated critical habitat. This is in addition to the requirement that all Federal agencies insure their actions are not likely to jeopardize the continued existence of the species. In addition to the protections described above, the designation may also result in other forms of benefits, such as educational awareness about monk seals and their habitat needs. The economic analysis report (Industrial Economics 2014) discusses additional benefits in detail, including use benefits (associated with wildlife-viewing), non-use benefits (associated with the value that people place on the species' existence), or ancillary ecosystem benefits. Such ancillary benefits may include preserved water quality and enhanced or sustained marine habitat conditions supporting other marine and coastal

species as well as other area uses (*e.g.,* recreational use).

Most of these benefits are not directly comparable to the costs of designation for purposes of conducting the section 4(b)(2) analysis described below. Ideally, benefits and costs should be compared on equal terms; however, there is insufficient information regarding the extent of the benefits and the associated values to monetize all of these benefits. We have not identified any available data to monetize the benefits of designation (*e.g.,* estimates of the monetary value of the essential features within areas designated as critical habitat, or of the monetary value associated with the designation supporting recovery). Further, section 4(b)(2) also requires that we consider and weigh impacts other than economic impacts that do not lend themselves to quantification in monetary terms, such as the benefits to national security of excluding areas from critical habitat. Given the lack of information that would allow us either to quantify or monetize the benefits of the designation for Hawaiian monk seals discussed above, we determined that conservation benefits should be considered from a qualitative standpoint.

In determining the benefits of designation, we considered a number of factors. We took into account the essential features present in the area, the habitat functions provided by each area, and the importance of protecting the habitat for the overall conservation of the species. In doing so, we acknowledged that, as pinnipeds, Hawaiian monk seals are uniquely adapted to a tropical system defined by low productivity and environmental variability, which is reflected in their foraging and reproductive patterns. Ecologically, monk seals find success in this environment by foraging independently on assorted bottom-associated prey species, at various depths, across a wide-range, and their lifestyle reflects a solitary nature with no distinct breeding season. Therefore, habitat that supports this species' recovery must reflect and support these ecological requirements. We also acknowledged that variability associated with prey resources in this tropical environment means that the island/atoll habitats are likely to only support small resident numbers of these tropical seals (NMFS 2007). Thus, recovery for this species requires that multiple independent sub-populations are sufficiently populated across the Hawaiian Archipelago such that they may sustain ''random decline'', as outlined in the Recovery Plan for the Hawaiian Monk Seal (NMFS 2007).

The specific areas (*i.e.,* areas 1–16) identified in this final rule are aimed at supporting the sub-populations located throughout the range. Given the significant roles that these areas play in supporting monk seal conservation, the CHRT did not distinguish relative value amongst the 16 specific areas. However, we have determined that specific areas which provide all three essential features provide a high conservation value to the species, because these areas provide habitat features necessary to support the multiple independent subpopulations identified in the recovery plan. In the NWHI, eight of the specific areas, Kure Atoll, Midway Islands, Pearl and Hermes Reef, Lisianski Island, Laysan Island, French Frigate Shoals, Necker Island, and Nihoa Island, support all three essential features (foraging, preferred pupping, and significant haul-out areas) for seals. In the MHI, five specific areas, Niihau, Kauai, Oahu, Maui Nui, and Hawaii, support all three essential features. Two of the areas in the NWHI, Maro Reef and Gardner Pinnacles provide important foraging areas that may be used by several subpopulations, in a portion of the range where food limitations are known to be a critical threat (Stewart *et al.* 2006; NMFS 2007). Marine areas around Kaula Island include marine foraging areas that may support seals from the NWHI and the MHI, and the island (which is precluded from designation) supports significant haul out areas. Relative to specific areas that provide all three essential features, we find that Maro Reef, Gardner Pinnacles, and Kaula Island provide a medium conservation value for Hawaiian monk seals because these three areas provide marine foraging areas that support seals from several subpopulations. We recognize that the contribution to conservation value of smaller particular areas within these larger specific areas may vary widely based on the size of the particular area in question and the number and type of the essential features present within the particular area. Therefore, factors attributed to the benefits of the designation of areas were individually considered within each particular area during the exclusion discussions.

Benefits of Exclusion Based on Economic Impacts

The economic benefits of exclusion are the economic impacts (above those costs that result from the species' listing) that would be avoided by excluding particular areas from the designation. To determine these economic impacts, we identified activities within each specific area that may affect Hawaiian monk seal critical habitat. The draft biological report (NMFS 2014a) identified eight categories of activities: (1) In water and coastal construction (including development), (2) dredging (including disposal of dredged materials), (3) energy development (including renewable energy projects), (4) activities that generate water pollution, (5) aquaculture (including mariculture) (6) fisheries, (7) environmental response activities (including oil spills, spills of other substances, vessel groundings, and marine debris clean-up activities), and (8) military activities. We then considered the range of modifications that we might seek in these activities to avoid destroying or adversely modifying Hawaiian monk seal critical habitat. Where possible, we focused on changes beyond those that may be required to avoid jeopardy to the continued existence of the species (*i.e.,* protections in place resulting from listing the species). We relied on information from other ESA section 7 consultations and NMFS expertise to determine the types of activities and potential range of changes. In addition to the above information, we reviewed comments received on the 2011 proposed rule (76 FR 32026; June 2, 2011). The economic analysis (Industrial Economics 2014) was revised and updated to incorporate analysis appropriate to the revised delineation, information received in comments, as well as additional information solicited and/or received from Federal and State agencies. The final economic analysis (Industrial Economics Inc. 2014) discusses the 8 activities highlighted above and provides discussions regarding development activities (a subset of in-water and construction activities), and response to spills of other substances. Additionally, the report discusses impacts that were identified in public comments, including activities associated with the NWHI, beach recreation and tourism, scientific research, and Native Hawaiian activities.

The final economic analysis (Industrial Economics 2014) identifies the total estimated present value of the quantified impacts at $2.04 million over the next 10 years; on an annualized basis, this is equivalent to impacts of $290,000 per year. Impacts reflect additional administrative effort to consider critical habitat in section 7 consultation and are largely associated with the designation of areas in the MHI. Across the MHI, impacts are projected to be experienced strongest in the Maui Nui (40 percent of the

quantified impacts) and Oahu (27 percent of the quantified impacts) specific areas, likely because of the larger economic activity in these areas and the larger size of the Maui Nui area. Looking at impacts across the activities, 81 percent of the quantified impacts (*i.e.,* $1.65 million) are associated with coastal construction and in-water construction activities (Industrial Economics 2014). Beyond the quantified impacts of the analysis, the report also emphasizes the potential for critical habitat to change the scope and scale of future projects or activities, which is difficult to quantify due to the uncertainty associated with the nature and scope of any future project modifications that will be necessary. This includes considerations associated with potential impacts to federally-managed fisheries under the Hawaii Fisheries Ecosystem Plan, coastal development projects requiring Federal or State permitting, and impacts associated with the military use of Niihau.

At this time, Federal fishery management modifications to avoid adverse modification are not expected, because these activities generally do not adversely modify foraging areas. This assessment is based on the fact that MHI seals do not appear to face food limitations in MHI foraging areas where fishery activities overlap with the designation. Additionally, the overlap between targeted species for these fisheries and monk seal diet is considered low, and may not extend beyond the family taxonomic level (Cahoon 2011; Sprague *et al.* 2013). However, future modifications were not ruled out, because future revised management measures could result as more information is gained about monk seal foraging ecology.

Impacts to development projects may not be fully realized for projects situated close to terrestrial critical habitat areas. This is in part because project-specific details are necessary to assess the true impact that development may have on the characteristics that support local preferred pupping and significant haul-out areas in order to distinguish how mitigation measures may differ from existing baseline protections. The final economic report (Industrial Economics 2014) identifies two areas on Kauai and one on Oahu where development projects are scheduled to occur near areas proposed for critical habitat and where characteristics of the sites may be described as relatively remote. Generally, existing State coastline protections, including those associated with the Coastal Zone Management Act, limit development such that the large developments are not located close to shore, *i.e.,* within areas proposed for Hawaiian monk seal critical habitat. However, recommendations could be made on projects, once project-specific details associated with community developments are available, if they have the potential to alter important characteristics at preferred pupping areas or significant haul-out sites. Additionally, Hawaii's DLNR has recognized the potential for the designation to result in increased management recommendations associated with State land permits or leases, as necessary, but provided no detail as to how recommendations may deviate from existing measures.

Military activities associated with the use of Niihau Island do not appear to affect the essential features of Hawaiian monk seal critical habitat and the designation is not expected to directly impact training or research activities surrounding Niihau. However, Niihau Ranch has expressed concerns that the designation of Niihau areas may result in diminished work with the DOD, because military officials may wish to avoid public scrutiny associated with military activities taking place in designated areas. Niihau Ranch indicates that 90 percent of the income on Island is derived from supporting DOD research and training (Industrial Economics 2014). Thus, losing this source of income could create an economic hardship for Niihau Ranch and the islands' residents.

In summary, economic impacts from the proposed designation are expected largely as a result of the additional administrative effort necessary to consider the impacts that activities could have on Hawaiian monk seal essential features. Therefore, activities that are regularly occurring throughout these areas and already consulted on under section 7 in a jeopardy analysis of potential impacts to Hawaiian monk seals (such as in-water and coastal construction) reflect a majority of the burden of the designation. Similarly, those specific areas where economic activity is higher and/or where the specific area is larger also reflect the majority of the burden (*e.g.,* Oahu and Maui Nui). The predicted impacts (or costs of designation) are expected to be spread across the specific area and no additional particular areas were identified within these units where the costs of the designation are expected to be disproportionately higher. Throughout the specific areas, we found that the activities of concern are already subject to multiple environmental laws, regulations, and permits that afford the proposed essential features a high level of baseline protection. For example, energy projects require extensive consideration of environmental impacts, and existing conservation recommendations that are outlined by the State and the Bureau of Ocean Energy Management (in a PEIS) to support Hawaii's energy development include measures that parallel NMFS' recommendations to avoid adverse modification to monk seal critical habitat. Thus, industry representatives agree that project modifications associated with this designation are not anticipated to result in increased burdens (Industrial Economics 2014). Despite these protections, uncertainty remains regarding the true extent of the impacts that some activities may have on the essential features, and economic impacts of the designation may not be fully realized. However, we considered the quantified impacts and found that the highest estimated annual economic cost associated with the designation of Hawaiian monk seal critical habitat is $116,000 annually for a large unit in the MHI, estimated impacts of most other units in the MHI are below or well below $100,000, and in the NWHI portion of the chain impacts are expected to be less than $1,100. Typically, to be considered ''high,'' an economic value would need to be above several million dollars (sometimes tens of millions), and ''medium'' may fall between several hundred thousand and millions of dollars. Accordingly, we consider the economic costs associated with this designation to be ''low'' economic impact for all particular areas.

Exclusions of Particular Areas Based on Economic Impacts

Because all particular areas identified for Hawaiian monk seal critical habitat have a high to medium conservation value and because the economic impacts associated with designation is expected to be low in all particular areas, we find that the benefits of designation outweigh the benefits of exclusion, and that no areas are appropriate for exclusion. This has not changed from the proposed rule. Because no areas are being excluded based on economic impacts, we did not need to further consider whether exclusions would result in extinction of the Hawaiian monk seal.

Exclusions Based on Impacts to National Security

The national security benefits of exclusion are the national security impacts that would be avoided by excluding particular areas from the designation. For the 2011 proposed rule, we evaluated 13 areas for exclusion

based on national security impacts and proposed to exclude 5 areas in the MHI (76 FR 32026; June 2, 2011). We received comments on the June 2, 2011 proposed rule (76 FR 32026) from the U.S. Navy, the U.S. Army, and the U.S. Air Force, requesting that certain areas be re-evaluated and/or that additional areas be excluded due to national security impacts. The U.S. Navy, the USMC, and the U.S. Army identified areas where national security impacts may exist if critical habitat were designated based on the boundaries of the 2011 proposed designation; however, after refining the essential features, not all of the areas requested for exclusion overlap with the areas that meet the definition of critical habitat. For this final rule we have considered the national security impacts for 10 sites that overlap with the areas meeting the definition of Hawaiian monk seal critical habitat. These 10 areas were considered for exclusion for the 2011 proposed rule; however, we have re-evaluated all of these requests for exclusion to consider information presented in public comments, as well as to evaluate differences in the proportion of habitat being requested for exclusion. To make our decision we weighed the benefits of exclusion (*i.e.,* the impacts to national security that would be avoided) against the benefits of designation.

The primary benefit of exclusion is that potential costs associated with conservation measures for critical habitat would be avoided and the DOD would not be required to consult with NMFS under section 7 of the ESA regarding DOD actions that may affect critical habitat in those areas. To assess the benefits of exclusion, we evaluated the intensity of use of the particular area by the DOD, the likelihood that DOD actions in the particular area would affect critical habitat and trigger an ESA section 7 consultation, and the potential conservation measures that may be required and that may result in delays or costs that affect national security. We also considered the level of protection provided to critical habitat by existing DOD safeguards, such as regulations to control public access and use of the area and other means by which the DOD may influence other Federal actions in the particular area.

The primary benefit of designation is the protection afforded Hawaiian monk seals under the section 7 critical habitat provisions. To evaluate the benefit of designation for each particular area, we considered what is known regarding Hawaiian monk seal use of the particular area, the size of the particular area when compared to the specific area and the total critical habitat area, and the likelihood that other Federal actions occur in the area that may affect critical habitat and trigger a consultation.

As discussed in ''The Benefits of Designation'' section, the benefits of designation may not be directly comparable to the benefits of exclusion for purposes of conducting the section 4(b)(2) analysis, because neither may be fully quantified or monetized. We identified that Hawaiian monk seal use of the area and conservation need for the habitat should be most heavily considered against the impacts (*i.e.,* activity modification costs) that the designation, if finalized, may have on DOD activities; however, all factors discussed played a role in the decision. Table 2 outlines the determinations made for the 10 particular areas identified and the factors that weighed significantly in that process. Notably, in 2011 we proposed the PMRF Main Base at Barking Sands, Kauai for exclusion. However, this area does not support Hawaiian monk seal essential features as refined and does not overlap with the areas under consideration for Hawaiian monk seal critical habitat; therefore, consideration of exclusion is no longer necessary. Additionally, several areas previously considered for national security exclusions in 2011 are now ineligible for designation because they are managed under the JBPHH or the PMRF INRMPs. Therefore, these areas will not be considered for national security exclusion.

TABLE 2—SUMMARY OF THE ASSESSMENT OF PARTICULAR AREAS REQUESTED FOR EXCLUSION BY THE DOD BASED ON IMPACTS ON NATIONAL SECURITY

DOD Site (size); Agency	Overlapping particular area (size)	Exclusion warranted?	Significant weighing factors
(1) 3-mile danger zone in marine waters around Kaula Island (14 mi^2, or 37 km^2)—Navy.	Area 11—Kaula (26 mi^2, or 66 km^2).	No	This area provides Hawaiian monk seal foraging habitat that may support seals from the NWHI and the MHI, and we have not been provided information identifying specific impacts to national security. The benefits of designation outweigh the benefits of exclusion.
(2) Marine waters from 10 m in depth to 12 nmi offshore of Niihau (115+ mi^2, or 298+ km^2)—Navy.	Area 12—Niihau (115 mi^2, or 298 km^2).	No	The island of Niihau and the surrounding waters are of high value to Hawaiian monk seal conservation because it supports the highest number of seals in the MHI. The request for exclusion includes the entire marine area surrounding this important habitat but provides no specific justification for this larger marine area. The benefits of designation outweigh the benefits of exclusion.
(3) Kingfisher Underwater Training Area off of Niihau 2 mi^2, or 4 km^2)—Navy.	Area 12—Niihau (115 mi^2, or 298 km^2).	Yes	The Island of Niihau supports the highest number of seals in the MHI; however, the particular area requested is relatively small in comparison to the overall area. Impacts to national security may result from section 7 consultations specific to the construction and maintenance of the training range. The benefits of exclusion outweigh the benefits of designation for this area.
(4) PMRF Offshore areas (including PMRF restricted area and the Shallow Water Training Range (SWTR)) (58 mi^2, or 149 km^2)—Navy.	Area 13—Kauai (215 mi^2, or 557 km^2).	Yes	Impacts to national security may result from section 7 consultations specific to the installation of hydrophones on the range. Although the area is used by monk seals, current protocols in place provide protections for monk seals in this area. The benefits of exclusion outweigh the benefits of designation for this area.
(5) Puuloa Underwater Training Range (10 mi^2, or 25 km^2)—Navy.	Area 14—Oahu (363 mi^2, or 940 km^2).	Yes	Impacts to national security may result from section 7 consultations specific to activities that occur within the range and this type of training area is only found in one other location nationwide. The marine foraging features located within this particular area are believed to be of lower value to Hawaiian monk seal conservation. The benefits of exclusion outweigh the benefits of designation.

TABLE 2—SUMMARY OF THE ASSESSMENT OF PARTICULAR AREAS REQUESTED FOR EXCLUSION BY THE DOD BASED ON IMPACTS ON NATIONAL SECURITY—Continued

DOD Site (size); Agency	Overlapping particular area (size)	Exclusion warranted?	Significant weighing factors
(6) Commercial Anchorages B, C, D (1 mi², or 2.6 km²)—Navy.	Area 14—Oahu (363 mi², or 940 km²).	No	It is unlikely that Navy activities will affect essential features at this site and the Navy has no control over other Federal activities occurring within this area. The benefits of designation outweigh the benefits of exclusion.
(7) Fleet Operational Readiness Accuracy Check Site (FORACS) (9 mi², 22 km²)—Navy.	Area 14—Oahu (363 mi², or 940 km²).	No	This area is believed to be of high conservation value to Hawaiian monk seals. It is unlikely that Navy activities will affect essential features at this site and other Federal activities occurring within this area may affect these features. The benefits of designation outweigh the benefits of exclusion.
(8) Marine Corps Training Area Bellows Offshore—Navy and USMC (size not estimated).	Area 14—Oahu (363 mi², or 940 km²).	No	The boundaries of this area remain ill-defined and other Federal activities occurring within this area may affect essential features. The benefits of designation outweigh the benefits of exclusion.
(9) Shallow Water Minefield Sonar Training Range off Kahoolawe (4 mi², or 11 km²)—Navy.	Area 15—Maui Nui (1,445 mi², or 3,742 km²).	Yes	The area requested is relatively small in comparison to the total area. Impacts to national security may result from section 7 consultations specific to the construction and maintenance of the training range. The benefits of exclusion outweigh the benefits of designation for this area.
(10) Kahoolawe Danger Zone (49 mi², or 127 km²)—Navy.	Area 15—Maui Nui (1,445 mi², or 3,742 km²).	No	Area supports all three essential features and is considered of high conservation value for Hawaiian monk seals. Navy activities in this area are infrequent and other Federal activities may benefit from section 7 consultation requirements for this area. The benefits of designation outweigh the benefits of exclusion.

Exclusions Based on Other Relevant Impacts

Section 4(b)(2) of the Act also allows for the consideration of other relevant impacts associated with the designation of critical habitat. Prior to the proposed rule we received comments from the USFWS requesting exclusion for Sand Island at Midway Islands due to economic and administrative burdens from the proposed designation. Similar to the National Security Analysis, we could not quantify the impacts on the USFWS in monetary terms or in terms of some other quantitative measure. To assess the benefits of excluding Sand Island, we evaluated the relative proportion of the area requested for exclusion, the intensity of use of the area, and the likelihood that actions on site will destroy or adversely modify habitat requiring additional section 7 delays, costs, or burdens. We also considered the likelihood of future section 7 consultations and the level of protection provided to critical habitat by existing USFWS safeguards. Sand Island at Midway Islands provides important habitat with the essential features of significant haul-out areas and preferred pupping areas in the northwest end of the NWHI chain. USFWS noted that their management plans provide protections for Hawaiian monk seals from disturbance and revealed no additional plans to encroach on haul-out areas. In considering the above-listed factors we were not able to identify any additional costs, *i.e.,* activities that the USFWS wished to engage in at this site that would require additional management measures or modifications to protect Hawaiian monk seal essential features. Therefore, Sand Island at Midway Islands was not proposed for exclusion in the proposed rule (76 FR 32026; June 2, 2011) because we found that the benefit of designation outweighed the benefits of exclusion.

For the final designation, due to the refinements made to the designation and additional comments received from USFWS, we re-evaluated the benefit of excluding Sand Island. Because Sand Island provides Hawaiian monk seals with preferred pupping and significant haul-out areas and we have no new information regarding the extent to which consultations would produce an outcome that has economic or other impacts, we conclude that the benefits of designation outweigh the benefits of exclusion. Therefore, this area has not been excluded from designation.

Critical Habitat Designation

Based on the information provided above, the public comments received and the further analysis that was done since the proposed rulemaking, we hereby designate as critical habitat for Hawaiian monk seals Specific Areas 1–16, of marine habitat in Hawaii, excluding the four military areas discussed under Exclusions Based on Impacts to National Security and in this section. The designated critical habitat areas include approximately 6,712 mi² (17,384 km²) and contain the physical or biological features essential to the conservation of the species that may require special management considerations or protection. This rule excludes from the designation the following areas based on national security impacts: Kingfisher Underwater Training area in marine areas off the northeast coast of Niihau; PMRF Offshore Areas in marine areas off the western coast of Kauai; the Puuloa Underwater Training Range in marine areas outside Pearl Harbor, Oahu; and the Shallow Water Minefield Sonar Training Range off the western coast of Kahoolawe in the Maui Nui area. Based on our best scientific knowledge and expertise, we conclude that the exclusion of these areas will not result in the extinction of the species, nor impede the conservation of the species. Additional areas are precluded from designation under section 4(a)(3) of the ESA because the areas are subject to management under three different DOD INRMPs that we found to provide a benefit to Hawaiian monk seals. These areas include Kaula Island; coastal and marine areas out to 10 m in depth around the Island of Niihau; and, on Oahu, the 500-yard buffer zone in marine waters surrounding the Marine Corps Base Hawaii (on the Mokapu Peninsula) (MCBH–KB), Puuloa Training Facility on the Ewa coastal plain, Nimitz Beach, White Plains Beach, the Naval Defensive Sea Area, the Barbers Point Underwater Range, and the Ewa Training Minefield.

Effects of Critical Habitat Designation

Section 7(a)(2) of the ESA requires Federal agencies, including NMFS, to insure that any action authorized, funded, or carried out by the agency (agency action) does not jeopardize the continued existence of any threatened or endangered species or destroy or adversely modify designated critical habitat. When a species is listed or critical habitat is designated, Federal agencies must consult with us on any agency action to be conducted in an area where the species is present and that may affect the species or its critical habitat. During the consultation, we evaluate the agency action to determine whether the action may adversely affect listed species or adversely modify critical habitat and issue our finding in a biological opinion. If we conclude in the biological opinion that the agency action would likely result in the destruction or adverse modification of critical habitat, we would also recommend any reasonable and prudent alternatives to the action. Reasonable and prudent alternatives are defined in 50 CFR 402.02 as alternative actions identified during formal consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid the destruction or adverse modification of critical habitat.

Regulations at 50 CFR 402.16 require Federal agencies that have retained discretionary involvement or control over an action, or where such discretionary involvement or control is authorized by law, to reinitiate consultation on previously reviewed actions in instances in which (1) critical habitat is subsequently designated, or (2) new information or changes to the action may result in effects to critical habitat not previously considered in the biological opinion. Consequently, some Federal agencies may request re-initiation of consultation with us on actions for which formal consultation has been completed if those actions may affect designated critical habitat. Activities subject to the section 7 consultation process include activities on Federal lands, and activities on private or state lands requiring a permit from a Federal agency (*e.g.,* a Clean Water Act section 404 dredge or fill permit from the U.S. Army Corps of Engineers) or some other Federal action, including funding (*e.g.,* ESA section 6, Federal Highway Administration, or Federal Emergency Management Agency funding). Section 7 consultation would not be required for Federal actions that do not affect listed species or critical habitat, nor for actions on non-Federal and private lands that are not carried out, funded, or authorized by a Federal agency.

Activities That May Be Affected

ESA section 4(b)(8) requires, to the maximum extent practicable, that any regulation to designate or revise critical habitat include a brief description and evaluation of those activities (whether public or private) that may adversely modify such habitat or that may be affected by such designation. A wide variety of activities may affect Hawaiian monk seal critical habitat and may be subject to the section 7 consultation processes when carried out, funded, or authorized by a Federal agency. The activities most likely to be affected by this critical habitat designation once finalized are (1) in water and coastal construction (including development), (2) dredging (including disposal of dredged materials), (3) energy development (including renewable energy projects), (4) activities that generate water pollution, (5) aquaculture (including mariculture), (6) fisheries, (7) environmental response activities (including oil spills, spills of other substances, vessel groundings, and marine debris clean-up activities), and (8) military activities. Private entities may also be affected by this critical habitat designation if a Federal permit is required, Federal funding is received, or the entity is involved in or receives benefits from a Federal project. These activities would need to be evaluated with respect to their potential to destroy or adversely modify critical habitat. Formal consultation under section 7(a)(2) of the ESA could result in changes to the activities to minimize adverse impacts to critical habitat or avoid destruction or adverse modification of designated critical habitat. We believe this final rule will provide Federal agencies, private entities, and the public with clear notification of critical habitat for the Hawaiian monk seal and the boundaries of such habitat. This designation will also allow Federal agencies and others to evaluate the potential effects of their activities on critical habitat to determine if section 7 consultation with NMFS is needed. Questions regarding whether specific activities would constitute destruction or adverse modification of critical habitat should be directed to NMFS (see **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**).

Information Quality Act and Peer Review

On December 16, 2004, the Office of Management and Budget (OMB) issued its Final Information Quality Bulletin for Peer Review (Bulletin). The Bulletin was published in the **Federal Register** on January 14, 2005 (70 FR 2664), and went into effect on June 16, 2005. The primary purpose of the Bulletin is to improve the quality and credibility of scientific information disseminated by the Federal government by requiring peer review of ''influential scientific information'' and ''highly influential scientific information'' prior to public dissemination. Influential scientific information is defined as ''information the agency reasonably can determine will have or does have a clear and substantial impact on important public policies or private sector decisions.'' The Bulletin provides agencies broad discretion in determining the appropriate process and level of peer review. Stricter standards were established for the peer review of ''highly influential scientific assessments,'' defined as information whose ''dissemination could have a potential impact of more than $500 million in any one year on either the public or private sector or that the dissemination is novel, controversial, or precedent-setting, or has significant interagency interest.'' The draft biological report (NMFS, 2010a) and economic analysis (ECONorthwest, 2010) supporting this rule to designate critical habitat for the Hawaiian monk seal are considered influential scientific information and subject to peer review. These two reports were distributed to three independent reviewers for review before the publication date of the proposed rule. The peer reviewer comments are addressed above and were compiled into a peer review report and are available at *http://www.cio.noaa.gov/services_programs/prplans/PRsummaries.html.*

Classification

Regulatory Planning and Review

Under Executive Order 12866, the Office of Management and Budget determined this rule is not a significant regulatory action.

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 publishes a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a

regulatory flexibility analysis describing the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). We prepared a final regulatory flexibility analysis (FRFA) pursuant to section 603 of the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*; Industrial Economics 2014), which is included as Appendix C to the final economic analysis (Industrial Economics 2014). The FRFA incorporates information from the initial regulatory flexibility analysis (IRFA). This document is available upon request (see **ADDRESSES** section above) and can be found on the NMFS Pacific Island Region's Web site at *http://www.fpir.noaa.gov/PRD/prd_critical_habitat.html.* The results are summarized below.

A statement of the need for and objectives of this final rule is provided earlier in the preamble and is not repeated here. This final rule will not impose any recordkeeping or reporting requirements.

Three types of small entities identified in the analysis are (1) small business, (2) small governmental jurisdiction, and (3) small organization. The regulatory mechanism through which critical habitat protections are enforced is section 7 of the ESA, which directly regulates only those activities carried out, funded, or permitted by a Federal agency. By definition, Federal agencies are not considered small entities, although the activities they may fund or permit may be proposed or carried out by small entities. This analysis considers the extent to which this designation could potentially affect small entities, regardless of whether these entities would be directly regulated by NMFS through the final rule or by a delegation of impact from the directly regulated entity.

The small entities that may bear the incremental impacts of this rulemaking are quantified in Chapters 3 through 12 of the final economic analysis (Industrial Economics 2014) based on seven categories of economic activity (in-water and coastal construction (including development); fisheries; energy projects; development; aquaculture; activities that generate water pollution; and research and other miscellaneous activities) potentially requiring modification to avoid destruction or adverse modification of Hawaiian monk seal critical habitat. Small entities also may participate in section 7 consultation as an applicant or may be affected by a consultation if they intend to undertake an activity that requires a permit, license, or funding from the Federal government. It is therefore possible that the small entities may spend additional time considering critical habitat during section 7 consultation for the Hawaiian monk seal. Potentially affected activities include in-water and coastal construction, fisheries, energy projects, development, aquaculture, activities that generate water pollution, and research and other miscellaneous activities. Of the activities identified in the Benefits of Exclusion Based on Economic Impacts and Proposed Exclusions section of this rule, consultations on dredging, environmental response activities, and military activities are not expected to affect third parties, and are therefore are not expected to affect small entities. Additionally, impacts are not quantified for development or for activities that generate water pollution and these activities are described qualitatively in the FRFA to reflect on the potential magnitude of impacts. Exhibit C–1 in the final economic analysis summarizes estimated impacts to small entities by industry, and Exhibit C–3 describes potentially affected small businesses by NAICS code, highlighting the relevant small business thresholds. Although businesses affected indirectly are considered, this analysis considers only those entities for which impacts would not be measurably diluted, *i.e.*, it focuses on those entities that may bear some additional costs associated with participation in section 7 consultation.

Based on the number of past consultations and information about potential future actions likely to take place within the critical habitat areas, the analysis forecasts the number of additional consultations that may take place as a result of critical habitat (see Chapters 3 through 12 of the economic analysis). Based on this forecast, incremental impacts associated with this rulemaking are expected to consist largely of administrative costs associated with section 7 consultations. In total, annualized incremental impacts are estimated at $290,000, of which approximately $121,000 may be borne by small entities. In addition to the quantified impacts, we also recognize that economic impacts that cannot be quantified are possible in the MHI related to fisheries, residential and commercial development, as well as military operations on Niihau. While most of these unquantified impacts would not be expected to change the relative rank of the affected units, unquantified impacts to Niihau could elevate that unit to be equal or greater in costs to the other MHIs.

Ideally this analysis would directly identify the number of small entities which may engage in activities that overlap with the proposed designation; however, while we track the Federal agencies involved in the consultation process, we do not track the identity of past permit recipients or the particulars that would allow us to determine whether the recipients were small entities. Nor do we track how often Federal agencies have hired small entities to complete various actions associated with these consultations. In the absence of this information, the analysis utilizes Dun and Bradstreet databases, with supplemental data for fisheries participation, to determine the number of small businesses operating within the NAICS codes identified in Exhibit C–3 in each affected Hawaiian county.

The final rule does not directly mandate ''reporting'' or ''record keeping'' within the meaning of the Paperwork Reduction Act, and does not impose record keeping or reporting requirements on small entities. A critical habitat designation requires Federal agencies to initiate a section 7 consultation to insure their actions do not destroy or adversely modify critical habitat. During formal section 7 consultation under the ESA, NMFS, the action agency (Federal agency), and a third party participant applying for Federal funding or permitting may communicate in an effort to minimize potential adverse impacts to the habitat and/or the essential features. Communication may include written letters, phone calls, and/or meetings. Project variables such as the type of consultation, the location, affected essential features, and activity of concern, may in turn dictate the complexity of these interactions. Third party costs may include administrative work, such as cost of time and materials to prepare for letters, calls, or meetings. The cost of analyses related to the activity and associated reports may be included in these administrative costs. In addition, following the section 7 consultation process, entities may be required to monitor progress during the activity to ensure that impacts to the habitat and features have been minimized.

A FRFA must identify any duplicative, overlapping, and conflicting Federal rules. The protections afforded to threatened and endangered species and their habitat are described in sections 7, 9, and 10 of the ESA. A final determination to designate critical habitat requires Federal agencies to consult, pursuant to section 7 of the ESA, with NMFS on any activities that Federal agency funds, authorizes or carries out, including permitting,

approving, or funding non-Federal activities (*e.g.*, a Clean Water Act section 404 dredge or fill permit from the U.S. Army Corps of Engineers). The requirement to consult is to ensure that any Federal action authorized, funded, or carried out will not likely jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat. The incremental impacts forecast in the economic analysis and contemplated in the analysis are expected to result from the critical habitat designation and not the listing of the species or other Federal regulations.

In accordance with the requirements of the RFA (as amended by SBREFA 1996), this analysis considered various alternatives to the critical habitat designation for the Hawaiian monk seal. The alternative of not designating critical habitat for the Hawaiian monk seal (Alternative 1) was considered and rejected because such an approach does not meet the legal requirements of the ESA. We considered the alternative of designating all specific areas (*i.e.*, no areas excluded) (Alternative 2); however, in some cases the benefits of excluding particular areas based on national security impacts outweighed the benefits of including them in the designation. Additionally, this alternative may increase the impacts that this rule may have on small businesses, to the extent that these businesses are involved in work associated with certain military activities. Thus, we also considered the preferred alternative (Alternative 3) of designating all specific areas, but excluding particular areas based on the impacts to national security. As discussed early in Chapter 1 of the economic analysis, four areas were identified for the purposes of exclusion on the basis of national security under this alternative because the benefits of exclusion due to national security outweigh the benefits of designation. Although these areas are being excluded due to national security concerns, the exclusion of these areas from the designation may also in turn lessen the economic impacts on small businesses that may be contracted for work in these areas by the Department of Defense or on small businesses that plan on utilizing parts of these areas for other activities. The extent to which the economic impact to small entities would be reduced has not been determined based on the available information. Based on this analysis, impacts to small businesses resulting from the preferred alternative appear to be small, resulting in costs of 0.04 percent or less of small business revenue (see Exhibit C–1 in the economic analysis report). In conclusion, we were unable to determine significant economic impacts (Industrial Economics 2014) based on this designation; and, current information does not suggest that small businesses will be disproportionately affected by this designation.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act, we make the following findings: The designation of critical habitat does not impose an ''enforceable duty'' on state, local, tribal governments, or the private sector and therefore does not qualify as a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an ''enforceable duty'' upon non-Federal governments or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.''

Under the ESA, the only direct regulatory effect of this final rule is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities who receive Federal funding, assistance, permits, or otherwise require approval or authorization from a Federal agency for an action may be indirectly affected by the designation of critical habitat, the legally binding duty to avoid the destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly affected because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply.

We do not believe that this rule will significantly or uniquely affect small governments because it is not likely to produce a Federal mandate of $100 million or greater in any year; that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. In addition, the designation of critical habitat imposes no obligations on local, state or tribal governments. Therefore, a Small Government Agency Plan is not required.

Takings

Under Executive Order 12630, Federal agencies must consider the effects of their actions on constitutionally protected private property rights and avoid unnecessary takings of property. A taking of property includes actions that result in physical invasion or occupancy of private property, and regulations imposed on private property that substantially affect its value or use.

In accordance with Executive Order 12630, the critical habitat designation does not pose significant takings implications. A takings implication assessment is not required. This final designation affects only Federal agency actions (*i.e.*, those actions authorized, funded, or carried out by Federal agencies). Therefore, the critical habitat designation does not affect landowner actions that do not require Federal funding or permits.

This critical habitat designation would not increase or decrease the current restrictions on private property concerning take of Hawaiian monk seals, nor do we expect the designation to impose substantial additional burdens on land use or substantially affect property values. Additionally, the final critical habitat designation does not preclude the development of Conservation Plans and issuance of incidental take permits for non-Federal actions. Owners of property included or used within the final critical habitat designation would continue to have the opportunity to use their property in ways consistent with the survival of listed Hawaiian monk seals.

Federalism

Pursuant to the Executive Order on Federalism, E.O. 13132, we determined that this rule does not have significant Federalism effects and that a Federalism assessment is not required. We requested information from and coordinated development of this final critical habitat designation with appropriate Hawaii State resources agencies. This designation may have some benefit to State and local resource agencies in that the areas essential to the conservation of the species are more clearly defined, and the essential features of the habitat necessary for the survival of Hawaiian monk seals are specifically identified. While this designation would not alter where and what non-federally sponsored activities may occur, it may assist local governments in long-range planning.

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the

legally binding duty to avoid destruction or adverse modification of critical habitat rests only on the Federal agency.

Civil Justice Reform

In accordance with E.O. 12988, the Department of Commerce has determined that this final rule does not unduly burden the judicial system and meets the requirements of section 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the ESA. This final rule uses standard property descriptions and identifies the essential features within the designated areas to assist the public in understanding the habitat needs of the Hawaiian monk seal.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This final rule does not contain new or revised information collections that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. This final rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses or organizations.

National Environmental Policy Act (NEPA)

We have determined that an environmental analysis as provided for under the NEPA of 1969 for critical habitat designations made pursuant to the ESA is not required. *See Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. 1995), *cert. denied*, 116 S. Ct. 698 (1996).

Coastal Zone Management Act (CZMA)

The CZMA emphasizes the primacy of state decision-making regarding the coastal zone. Section 307 of the CZMA (16 U.S.C. 1456), called the Federal consistency provision, is a major incentive for states to join the national coastal management program and is a powerful tool that states utilize to manage coastal uses and resources and to facilitate cooperation and coordination with Federal agencies.

Federal consistency is the CZMA requirement by which Federal agency activities that have reasonably foreseeable effects on any land or water use or natural resource of the coastal zone (also referred to as coastal uses or resources and coastal effects) must be consistent to the maximum extent practicable with the enforceable policies of a coastal state and federally approved coastal management program. We have determined that this final critical habitat designation is consistent to the maximum extent practicable with the enforceable policies of the approved Coastal Zone Management Program of Hawaii. This determination was submitted for review by the Hawaii Coastal Zone Management (CZM) Program. While the CZM program did generally express concerns about the expansiveness of the proposed designation and recommended only including areas that are vital for survival because monk seals are afforded protection outside of critical habitat areas under the ESA, the program concurred with our consistency determination in a letter issued on August 18, 2011. The program's concerns are addressed under our responses to comments 14 and 35 above.

Government to Government Relationship With Tribes

The longstanding and distinctive relationship between the Federal and tribal governments is defined by treaties, statutes, executive orders, judicial decisions, and agreements, which differentiate tribal governments from the other entities that deal with, or are affected by, the Federal Government. This relationship has given rise to a special Federal trust responsibility involving the legal responsibilities and obligations of the United States towards Indian Tribes and the application of fiduciary standards of due care with respect to Indian lands, tribal trust resources, and the exercise of tribal rights. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, outlines the responsibilities of the Federal Government in matters affecting tribal interests. If we issue a regulation with tribal implications (defined as having a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes), we must consult with those governments or the Federal Government must provide funds necessary to pay direct compliance costs incurred by tribal governments.

Federally recognized tribe means an Indian or Alaska Native tribe or community that is acknowledged as an Indian tribe under the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a. In the list published annually by the Secretary, there are no federally recognized tribes in the State of Hawaii (74 FR 40218; August 11, 2009). As identified in the proposed rule, Native Hawaiian lands are not tribal lands for purposes of the requirements of the President's Memorandum or the Department Manual. In the proposed rule, we noted that Native Hawaiian organizations have the potential to be affected by Federal regulations and, as such, that consideration of these impacts may be evaluated as other relevant impacts from the designation. We solicited comments regarding areas of overlap with the designation that may warrant exclusion from critical habitat for the Hawaiian monk seal due to such impacts, and/or information from affected Native Hawaiian organizations concerning other Native Hawaiian activities that may be affected in areas other than those specifically owned by the organization. We responded to comments received regarding these concerns in Summary of Comments and Responses section above and in final economic analysis (Industrial Economics 2014).

In conclusion we find that this critical habitat designation does not have tribal implications, because the final critical habitat designation does not include any tribal lands and does not affect tribal trust resources or the exercise of tribal rights.

Energy Effects

Executive Order 13211 requires agencies to prepare a Statement of Energy Effects when undertaking a ''significant energy action.'' According to Executive Order 13211 ''significant energy action'' means any action by an agency that is expected to lead to the promulgation of a final rule or regulation that is a significant regulatory action under Executive Order 12866 and is likely to have a significant adverse effect on the supply, distribution, or use of energy. We have considered the potential impacts of this action on the supply, distribution, or use of energy (see final economic analysis; Industrial Economics 2014). Energy projects may affect the essential features of critical habitat for the Hawaiian monk seal. Due to the extensive requirements of renewable energy projects to consider environmental impacts, including impacts on marine life, even absent critical habitat designation for the Hawaiian monk seal, we anticipate it is unlikely that critical habitat designation will change conservation efforts recommended during section 7 consultation for these projects. Consequently, it is unlikely the identified activities and projects will be affected by the designation beyond the quantified administrative impacts. Therefore, the designation is not expected to affect the level of energy production. It is unlikely that any impacts to the industry that remain

unquantified will result in a change in production above the one billion kilowatt-hour threshold identified in the Executive Order. Therefore, it is unlikely that the energy industry will experience ''a significant adverse effect'' as a result of the critical habitat designation for the Hawaiian monk seal.

References Cited

A complete list of all references cited in this rule making may be found on our Web site at *http://www.fpir.noaa.gov/PRD/prd_critical_habitat.html*, and is available upon request from the NMFS (see **ADDRESSES**).

List of Subjects in 50 CFR Part 226

Endangered and threatened species.

Dated: August 14, 2015.

Eileen Sobeck,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 226 is amended as follows:

PART 226—DESIGNATED CRITICAL HABITAT

■ 1. The authority citation for part 226 continues to read as follows:

Authority: 16 U.S.C. 1533.

■ 2. Section 226.201 is revised to read as follows:

§ 226.201 Critical habitat for the Hawaiian monk seal (Neomonachus schauinslandi).

Critical habitat is designated for Hawaiian monk seals as described in this section. The textual descriptions of critical habitat in this section are the definitive source for determining the critical habitat boundaries.

(a) *Critical habitat boundaries.* Critical habitat is designated to include all areas in paragraphs (a)(1) and (2) of this section and as described in paragraphs (b)(1) and (2) of this section:

(1) Northwestern Hawaiian Islands: Hawaiian monk seal critical habitat areas include all beach areas, sand spits and islets, including all beach crest vegetation to its deepest extent inland, lagoon waters, inner reef waters, and including marine habitat through the water's edge, including the seafloor and all subsurface waters and marine habitat within 10 m of the seafloor, out to the 200-m depth contour line (relative to mean lower low water) around the following 10 areas:

(i) Kure Atoll,

(ii) Midway Islands,

(iii) Pearl and Hermes Reef,

(iv) Lisianski Island,

(v) Laysan Island,

(vi) Maro Reef,

(vii) Gardner Pinnacles,

(viii) French Frigate Shoals,

(ix) Necker Island, and

(x) Nihoa Island.

(2) Main Hawaiian Islands: Hawaiian monk seal critical habitat areas surrounding the following islands listed below are defined in the marine environment by a seaward boundary that extends from the 200-m depth contour line (relative to mean lower low water), including the seafloor and all subsurface waters and marine habitat within 10 m of the seafloor, through the water's edge into the terrestrial environment where the inland boundary extends 5 m (in length) from the shoreline between identified boundary points listed in the table below around the areas listed in paragraphs (a)(2)(i)–(vi) of this section. The shoreline is described by the upper reaches of the wash of the waves, other than storm or seismic waves, at high tide during the season in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth or the upper limit of debris (except those areas identified in paragraph (c) of this section). In areas where critical habitat does not extend inland, the designation has a seaward boundary of a line that marks mean lower low water.

Area	Island	Textual description of segment	Boundary points	Latitude	Longitude
13	Kauai	Southeast coast of Kauai (Nomilu Fishpond area through Mahaulepu).	KA 11	21°53′08″ N.	159°31′48″ W.
			KA 12	21°53′34″ N.	159°24′25″ W.
13	Kauai	Kawelikoa Point to Molehu	KA 21	21°54′26″ N.	159°23′26″ W.
			KA 22	21°54′48″ N.	159°23′08″ W.
13	Kauai	Lydgate Park through Wailua canal	KA 31	22°02′11″ N.	159°20′08″ W.
			KA 32	22°02′41″ N.	159°20′11″ W.
13	Kauai	Wailua canal through Waikaea canal	KA 41	22°02′45″ N.	159°20′10″ W.
			KA 42	22°04′14″ N.	159°18′60″ W.
13	Kauai	Waikaea canal through Kealia	KA 51	22°04′15″ N.	159°19′01″ W.
			KA 52	22°05′59″ N.	159°18′08″ W.
13	Kauai	Anahola and Aliomanu areas	KA 61	22°07′46″ N.	159°17′35″ W.
			KA 62	22°09′28″ N.	159°18′18″ W.
13	Kauai	Moloaa Bay through Kepuhi Point	KA 71	22°11′38″ N.	159°19′46″ W.
			KA 72	22°12′52″ N.	159°21′14″ W.
13	Kauai	Southeast of Kilauea	KA 81	22°13′48″ N.	159°23′52″ W.
			KA 82	22°13′55″ N.	159°24′06″ W.
13	Kauai	Wainiha Beach Park through Kee Beach Park	KA 91	22°12′60″ N.	159°32′30″ W.
			KA 92	22°13′13″ N.	159°35′01″ W.
13	Kauai	Milolii State Park Beach Area	KA 101	22°09′13″ N.	159°42′52″ W.
			KA 102	22°08′59″ N.	159°43′21″ W.
14	Oahu	Keana Point Area	OA 11	21°34′43″ N.	158°15′37″ W.
			OA 12	21°32′45″ N.	158°14′25″ W.
14	Oahu	Maili Beach through Kalaeloa Barbers Point Harbor.	OA 21	21°25′43″ N.	158°10′48″ W.
			OA 22	21°19′24″ N.	158°07′20″ W.
14	Oahu	Kalaeloa Barbers Point Harbor through Iroquois Point.	OA 31	21°19′18″ N.	158°07′17″ W.
			OA 32	21°19′20″ N.	157°58′17″ W.
14	Oahu	Diamond Head area	OA 41	21°15′27″ N.	157°49′05″ W.
			OA 42	21°15′24″ N.	157°47′45″ W.
14	Oahu	Hanauma Bay through Sandy Beach	OA 51	21°16′05″ N.	157°41′50″ W.
			OA 52	21°17′45″ N.	157°39′27″ W.
14	Oahu	Makapuu Beach Area	OA 61	21°18′36″ N.	157°39′31″ W.
			OA 62	21°18′58″ N.	157°39′55″ W.
14	Oahu	Lori Point through Waimea Bay	OA 71	21°40′26″ N.	157°56′00″ W.
			OA 72	21°38′18″ N.	158°03′56″ W.

Area	Island	Textual description of segment	Boundary points	Latitude	Longitude
14	Oahu	Kapapa Island (Kaneohe Bay)	OAi 1	21°28′36″ N.	157°47′55″ W.
14	Oahu	Mokulua—Moku Nui	OAi 2	21°23′30″ N.	157°41′56"W.
14	Oahu	Mokulua—Moku Iki	OAi 3	21°23′16″ N.	157°41′52″ W.
14	Oahu	Manana (Rabbit Island)	OAi 4	21°19′44″ N.	157°39′24″ W.
15	Molokai	Laau Point Area	MO 11	21°07′49″ N.	157°17′47″ W.
			MO 12	21°05′21″ N.	157°15′50″ W.
15	Molokai	Kalaupapa Area	MO 21	21°12′33″ N.	156°58′52″ W.
			MO 22	21°11′28″ N.	156°59′06″ W.
15	Molokai	Moku Hooniki	MOi 1	21°07′59″ N.	156°42′10″ W.
15	Lanai	Shipwreck Beach Area	LA 11	20°54′45″ N.	156°53′45″ W.
			LA 12	20°55′20″ N.	156°56′45″ W.
15	Lanai	Northwest Lanai (Including Polihua Beach)	LA 21	20°55′42″ N.	156°59′47″ W.
			LA 22	20°52′02″ N.	157°02′33″ W.
15	Lanai	North of Kamalapau Harbor	LA 31	20°48′38″ N.	156°59′15″ W.
			LA 32	20°47′17″ N.	156°59′24″ W.
15	Lanai	Kamalapau Harbor through Kaholo Pali	LA 41	20°47′13″ N.	156°59′27″ W.
			LA 42	20°46′59″ N.	156°59′31″ W.
15	Lanai	Kaholo Pali through Manele Harbor	LA 51	20°44′13″ N.	156°58′01″ W.
			LA 52	20°44′29″ N.	156°53′15″ W.
15	Lanai	Manele Harbor through Nakalahale Cliff	LA 61	20°44′35″ N.	156°53′14″ W.
			LA 62	20°44′49″ N.	156°52′16″ W.
15	Lanai	Nakalahale Cliff through Lopa Beach	LA 71	20°45′07″ N.	156°51′50″ W.
			LA 72	20°48′21″ N.	156°48′24″ W.
15	Lanai	Puupehe*	LAi 1	20°44′04″ N.	156°53′25″ W.
15	Kahoolawe	Mid-North coast (including Kaukamoku and Ahupuiki).	KH 11	20°34′36″ N.	156°37′36″ W.
			KH 12	20°34′10″ N.	156°38′15″ W.
15	Kahoolawe	Eastern coast of Kahoolawe (Honokoa through Sailer's Hat).	KH 21	20°33′08″ N.	156°40′35″ W.
			KH 22	20°30′04″ N.	156°40′23″ W.
15	Maui	Kuloa Point through Hana Wharf and Ramp	MA 11	20°40′02″ N.	156°02′27″ W.
			MA 12	20°45′21″ N.	155°58′54″ W.
15	Maui	Hana Wharf and Ramp through Kainalimu Bay	MA 21	20°45′20″ N.	155°58′56″ W.
			MA 22	20°46′08″ N.	155°59′04″ W.
15	Maui	Keanae Pennisula to Nauailua Bay	MA 31	20°51′56″ N.	156°08′46″ W.
			MA 32	20°51′41″ N.	156°08′55″ W.
15	Maui	Maliko Bay through Papaula Point	MA 41	20°56′11″ N.	156°21′11″ W.
			MA 42	20°54′30″ N.	156°25′06″ W.
15	Maui	Kahului Harbor West through Waihee Beach Park	MA 51	20°53′53″ N.	156°28′47″ W.
			MA 52	20°56′04″ N.	156°30′15″ W.
15	Maui	Punalau Beach through to Mala Wharf	MA 61	21°01′20″ N.	156°37′28″ W.
			MA 62	20°53′09″ N.	156°41′10″ W.
15	Maui	Southeast of Mala Wharf through to Lahaina Harbor.	MA 71	20°53′04″ N.	156°41′12″ W.
			MA 72	20°52′26″ N.	156°40′43″ W.
15	Maui	Southeast of Lahaina Harbor through to Papalaua	MA 81	20°52′12″ N.	156°40′39″ W.
			MA 82	20°47′34″ N.	156°34′00″ W.
15	Maui	East of Maalaea Harbor through to Kihei boat ramp.	MA 91	20°47′32″ N.	156°30′34″ W.
			MA 92	20°42′29″ N.	156°26′46″ W.
15	Maui	South of Kihei Boat Ramp through Ahihi Bay	MA 101	20°42′27″ N.	156°26′47″ W.
			MA 102	20°37′39″ N.	156°26′40″ W.
15	Maui	La Perouse Bay from Kalaeloa Point through Pohakueaea Point.	MA 111	20°35′43″ N.	156°25′33″ W.
			MA 112	20°34′45″ N.	156°23′29″ W.
15	Maui	Molokini Crater	MAi 1	20°37′51″ N.	156°29′43″ W.
16	Hawaii	Waimanu through Laupahoehoenui	HA 11	20°08′35″ N.	155°37′59″ W.
			HA 12	20°09′54″ N.	155°39′18″ W.
16	Hawaii	Keokea Bay through Kauhola Point	HA 21	20°13′39″ N.	155°44′49″ W.
			HA 22	20°14′44″ N.	155°46′18″ W.
16	Hawaii	Kapaa Beach County Park to Mahukona Harbor	HA 31	20°12′16″ N.	155°54′06″ W.
			HA 32	20°11′04″ N.	155°54′05″ W.
16	Hawaii	South of Mahukona Harbor	HA 41	20°10′60″ N.	155°54′03″ W.
			HA 42	20°10′51″ N.	155°54′07″ W.
16	Hawaii	Pauoa Bay to Makaiwa Bay area	HA 51	19°57′03″ N.	155°51′49″ W.
			HA 52	19°56′38″ N.	155°52′10″ W.
16	Hawaii	Anaehoomalu Bay area through Keawaiki Bay area.	HA 61	19°54′42″ N.	155°53′26″ W.
			HA 62	19°53′09″ N.	155°54′34″ W.
16	Hawaii	Puu Alii Bay Area through Mahaiula Bay	HA 71	19°47′37″ N.	156°01′33″ W.
			HA 72	19°46′53″ N.	156°02′18″ W.
16	Hawaii	Keahole Point through Kaloko-Honokohau National Historic Park.	HA 81	19°43′54″ N.	156°03′26″ W.
			HA 82	19°40′28″ N.	156°01′34″ W.
16	Hawaii	South of Oneo Bay area through to Holualoa Bay area.	HA 91	19°38′10″ N.	155°59′29″ W.
			HA 92	19°36′31″ N.	155°58′41″ W.
16	Hawaii	Kahaluu Bay Area through Keauhou Bay Area	HA 101	19°34′49″ N.	155°57′59″ W.
			HA 102	19°33′43″ N.	155°57′43″ W.
16	Hawaii	Kealakekua Bay Area	HA 111	19°28′38″ N.	155°55′13″ W.
			HA 112	19°28′25″ N.	155°55′10″ W.

Area	Island	Textual description of segment	Boundary points	Latitude	Longitude
16	Hawaii	Honaunau Bay Area	HA 121	19°25′35″ N.	155°55′02″ W.
			HA 122	19°25′01″ N.	155°54′42″ W.
16	Hawaii	Milolii Bay Area through Honomalino Bay Area	HA 131	19°11′07″ N.	155°54′29″ W.
			HA 132	19°10′04″ N.	155°54′35″ W.
16	Hawaii	Ka Lae National Historic Landmark District through Mahana Bay.	HA 141	18°54′54″ N.	155°40′59″ W.
			HA 142	18°55′00″ N.	155°40′09″ W.
16	Hawaii	Papakolea Green Sand Beach Area	HA 151	18°56′10″ N.	155°38′47″ W.
			HA 152	18°56′11″ N.	155°38′45″ W.
16	Hawaii	Kaalualu Bay Area	HA 161	18°58′14″ N.	155°37′01″ W.
			HA 162	18°58′18″ N.	155°36′49″ W.
16	Hawaii	Whittington Beach Area through Punaluu Beach Area.	HA 171	19°05′04″ N.	155°33′03″ W.
			HA 172	19°08′06″ N.	155°30′09″ W.
16	Hawaii	Halape Area through Keauhou Point Area	HA 181	19°16′14″ N.	155°15′20″ W.
			HA 182	19°15′45″ N.	155°13′59″ W.
16	Hawaii	Kapoho Bay Area	HA 191	19°29′38″ N.	154°49′01″ W.
			HA 192	19°30′10″ N.	154°48′46″ W.
16	Hawaii	Lehia Beach Park through to Hilo Harbor	HA 201	19°44′07″ N.	155°00′38″ W.
			HA 202	19°43′56″ N.	155°03′02″ W.
16	Hawaii	Papaikou Area	HA 211	19°46′39″ N.	155°05′18″ W.
			HA 212	19°46′43″ N.	155°05′18″ W.
16	Hawaii	Onomea Bay Area	HA 221	19°48′33″ N.	155°05′34″ W.
			HA 222	19°48′37″ N.	155°05′22″ W.
16	Hawaii	Hakalau Area	HA 231	19°54′02″ N.	155°07′32″ W.
			HA 232	19°54′05″ N.	155°07′43″ W.

(i) Kaula Island,
(ii) Niihau,
(iii) Kauai,
(iv) Oahu,
(v) Maui Nui (including Kahoolawe, Lanai, Maui, and Molokai), and
(vi) Hawaii.

(b) *Essential features.* The essential features for the conservation of the Hawaiian monk seal are the following:

(1) *Terrestrial areas and adjacent shallow, sheltered aquatic areas with characteristics preferred by monk seals for pupping and nursing.* Preferred areas that serve an essential service or function for Hawaiian monk seal conservation are defined as those areas where two or more females have given birth or where a single female chooses to return to the same site more than one year. Preferred pupping areas generally include sandy, protected beaches located adjacent to shallow sheltered aquatic areas, where the mother and pup may nurse, rest, swim, thermoregulate, and shelter from extreme weather. Additionally, this habitat area provides relatively protected space for the newly weaned pup to acclimate to life on its own. The newly weaned pup uses these areas for swimming, exploring, socializing, thermoregulatory cooling and the first attempts at foraging. Characteristics of terrestrial pupping habitat may include various substrates such as sand, shallow tide pools, coral rubble, or rocky substrates, as long as these substrates provide accessibility to seals for hauling out. Some preferred sites may also incorporate areas with low lying vegetation used by the pair for shade or cover, or relatively low levels of anthropogenic disturbance. Characteristics of the adjoined sheltered aquatic sites may include reefs, tide pools, gently sloping beaches, and shelves or coves that provide refuge from storm surges and predators.

(2) *Marine areas from 0 to 200 m in depth that support adequate prey quality and quantity for juvenile and adult monk seal foraging.* Inshore, benthic and offshore teleosts, cephalopods, and crustaceans are commonly described as monk seal prey items. Habitat types that are regularly used for foraging include the sand terraces, talus slopes, submerged reefs and banks, nearby seamounts, barrier reefs, and slopes of reefs and islands. Monk seals focus foraging in bottom habitats on bottom-associated prey species, with most foraging occurring in waters between 0 to 200 m in depth. Habitat conditions, such as water quality, substrate composition and available habitat, should support growth and recruitment of bottom-associated prey species to the extent that monk seal populations are able to successfully forage.

(3) *Significant areas used by monk seals for hauling out, resting or molting.* Significant haul-out areas are defined by the frequency with which local populations of seals use a stretch of coastline or particular beach. Significant haul-out areas are defined as natural coastlines that are accessible to Hawaiian monk seals and are frequented by Hawaiian monk seals at least 10 percent as often as the highest used haul out site(s) on individual islands, or islets. Significant haul-out areas are essential to Hawaiian monk seal conservation because these areas provide space that supports natural behaviors important to health and development, such as resting, molting, and social interactions. Hawaiian monk seals use terrestrial habitat to haul out for resting, and molting. Certain areas of coastline are more often favored by Hawaiian monk seals for hauling out. These favored areas may be located near preferred foraging areas, allow for relatively undisturbed periods of rest, or allow small numbers of Hawaiian monk seals to socially interact as young seals and reproductive adults. These haul-out sites are generally characterized by sandy beaches, sand spits, or low shelving reef rocks accessible to seals.

(c) *Areas not included in critical habitat.* Critical habitat does not include the following particular areas where they overlap with the areas described in paragraph (a) of this section:

(1) Pursuant to ESA section 3(5)(A)(i), all cliffs and manmade structures, such as docks, seawalls, piers, fishponds, roads, pipelines, boat ramps, platforms, buildings, ramparts and pilings existing within the legal boundaries on September 21, 2015.

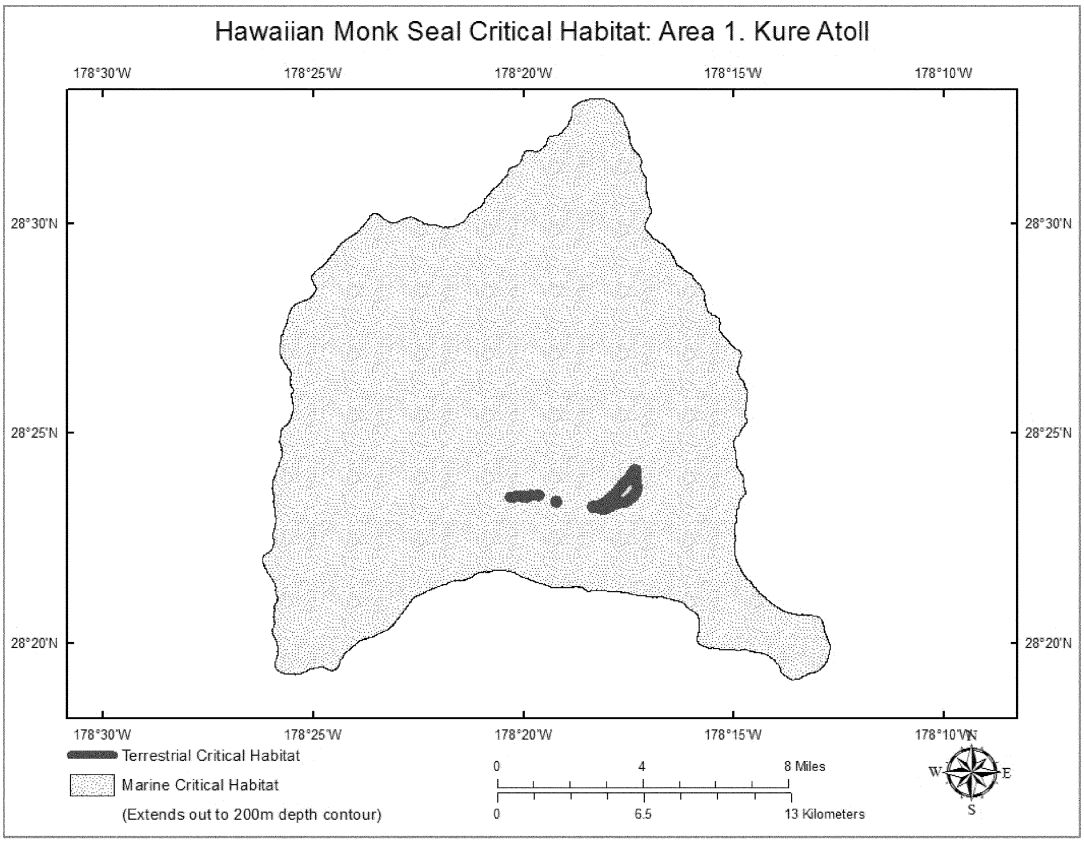
(2) Pursuant to ESA section 4(a)(3)(B) all areas subject to the Marine Corps Base Hawaii, the Joint Base Pearl Harbor-Hickam, and the Pacific Missile Range Facility Integrated Natural Resource Management Plans.

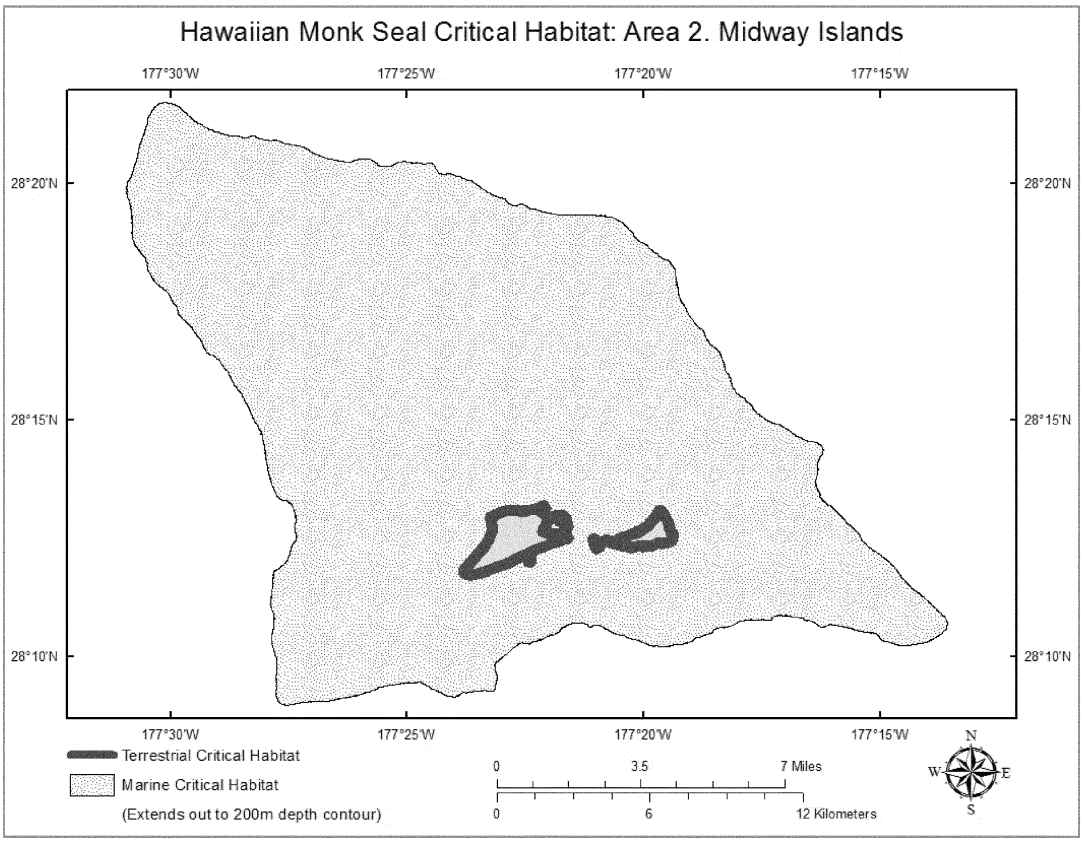
(3) Pursuant to ESA section 4(b)(2) the following areas have been excluded from the designation: The Kingfisher Underwater Training area in marine

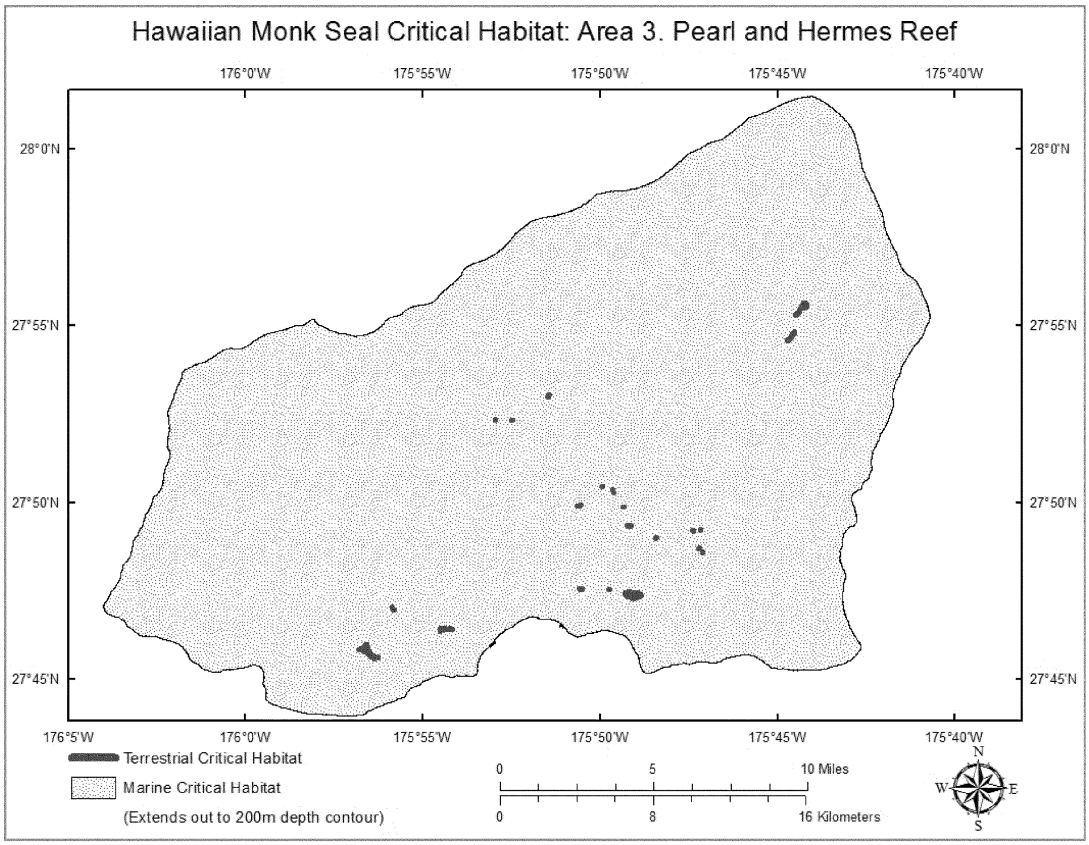
areas off the northeast coast of Niihau; the Pacific Missile Range Facility Offshore Areas in marine areas off the western coast of Kauai; the Puuloa Underwater Training Range in marine areas outside Pearl Harbor, Oahu; and the Shallow Water Minefield Sonar Training Range off the western coast of Kahoolawe in the Maui Nui area.

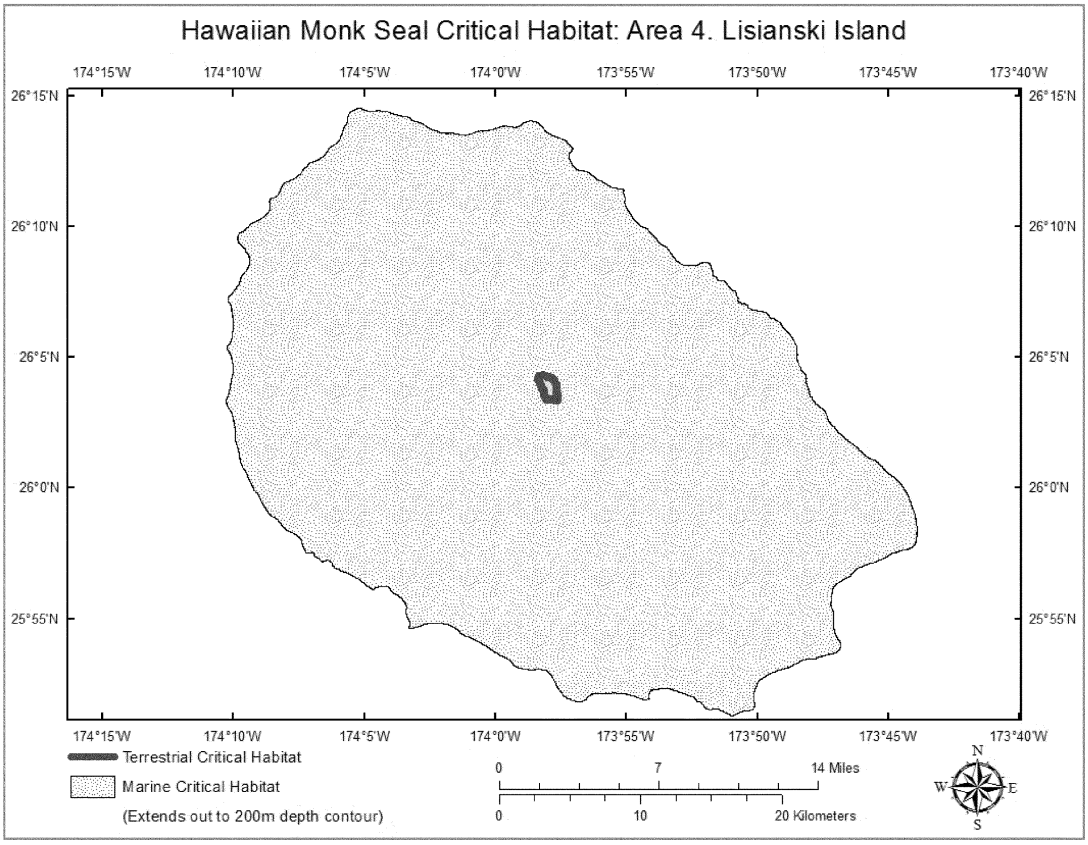
(d) *Maps of Hawaiian monk seal critical habitat.* The following are the overview maps of Hawaiian monk seal critical habitat:

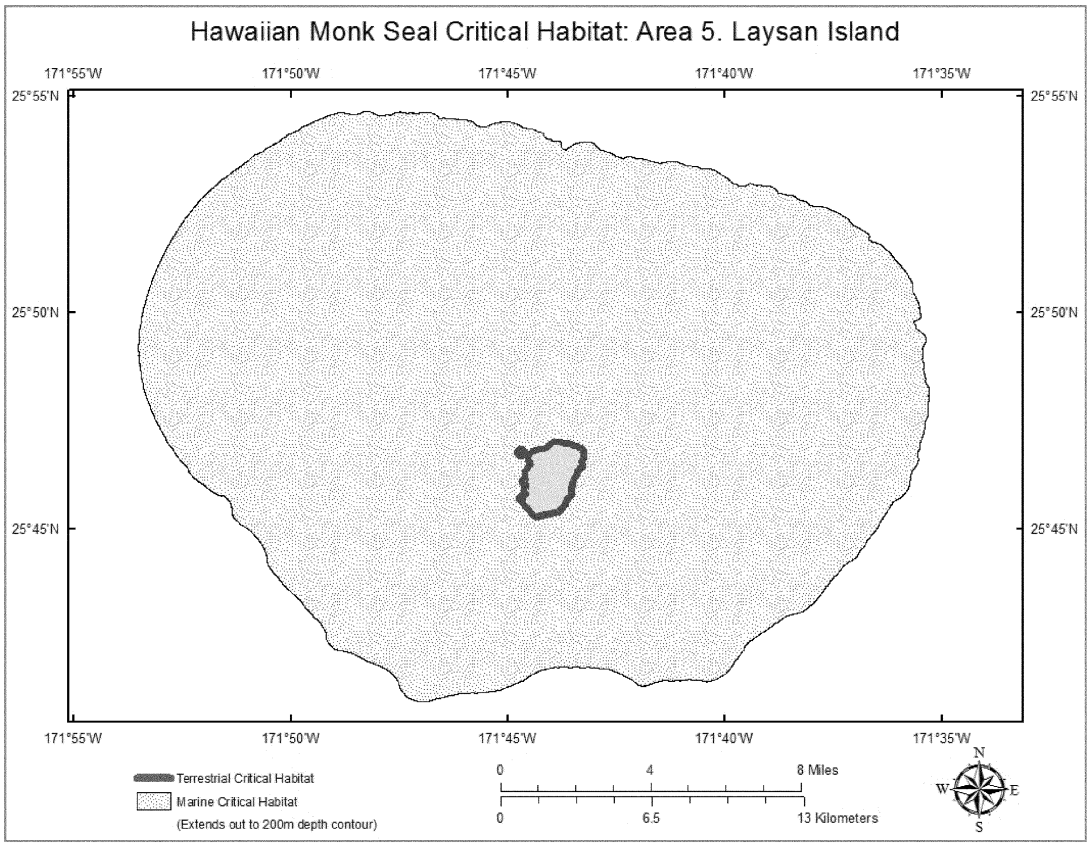
BILLING CODE 3510–22–P

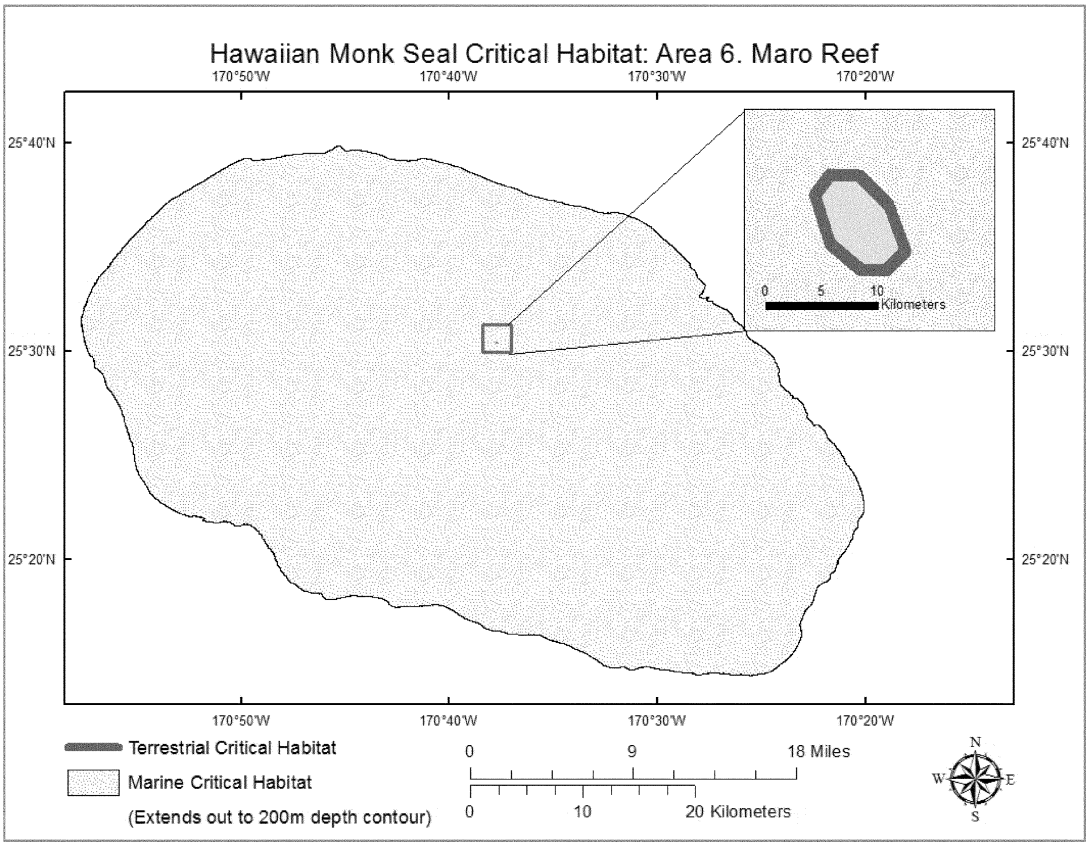

Hawaiian Monk Seal Critical Habitat: Area 1. Kure Atoll
178°30'W
178°25'W
178°20'W
178°15'W
178°10'W
28°30'N
28°25'N
28°20'N
Terrestrial Critical Habitat
Marine Critical Habitat
(Extends out to 200m depth contour)
0
4
8 Miles
0
6.5
13 Kilometers
N
W
E
S

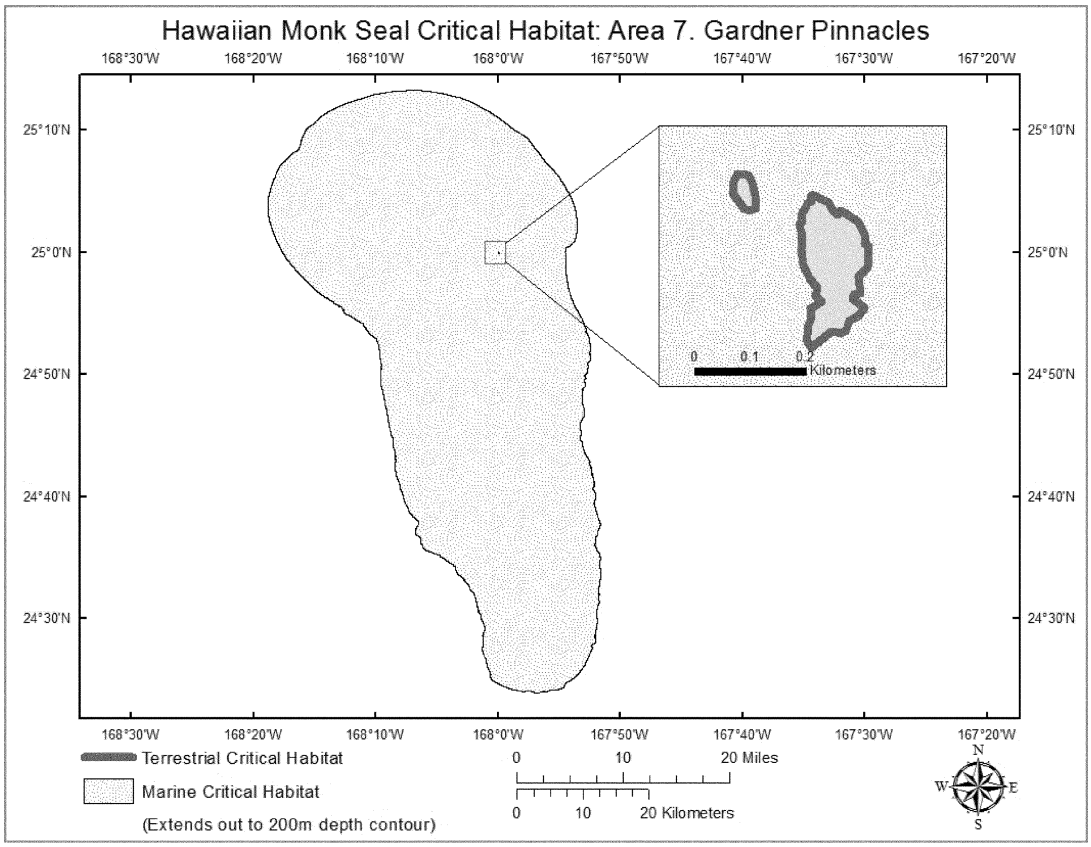

Hawaiian Monk Seal Critical Habitat: Area 2. Midway Islands
177°30'W
177°25'W
177°20'W
177°15'W
28°20'N
28°15'N
28°10'N
Terrestrial Critical Habitat
Marine Critical Habitat
(Extends out to 200m depth contour)
0
3.5
7 Miles
0
6
12 Kilometers
N
W
E
S

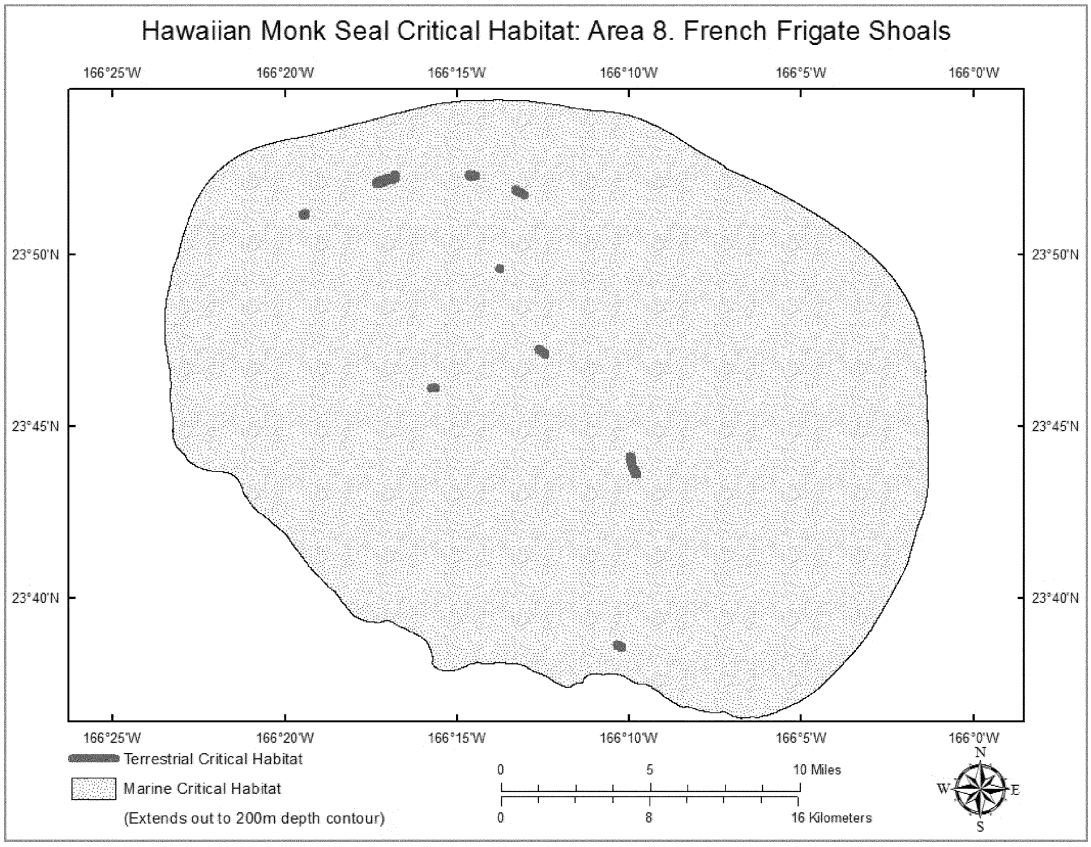

Hawaiian Monk Seal Critical Habitat: Area 3. Pearl and Hermes Reef
176°0'W
175°55'W
175°50'W
175°45'W
175°40'W
28°0'N
27°55'N
27°50'N
27°45'N
176°5'W
Terrestrial Critical Habitat
Marine Critical Habitat
(Extends out to 200m depth contour)
0
5
10 Miles
8
16 Kilometers
N
W
E
S

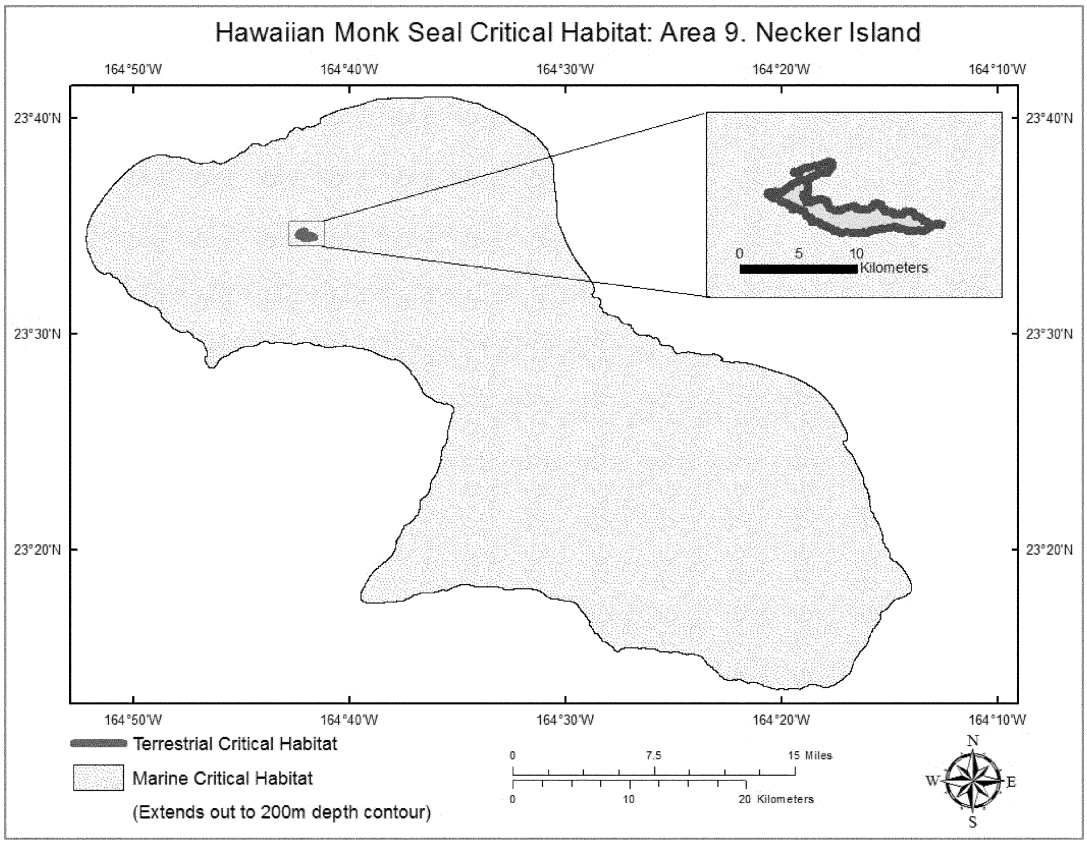

Hawaiian Monk Seal Critical Habitat: Area 4. Lisianski Island
174°15'W
174°10'W
174°5'W
174°0'W
173°55'W
173°50'W
173°45'W
173°40'W
26°15'N
26°10'N
26°5'N
26°0'N
25°55'N
Terrestrial Critical Habitat
Marine Critical Habitat
(Extends out to 200m depth contour)
0
7
14 Miles
10
20 Kilometers
N
W
E
S

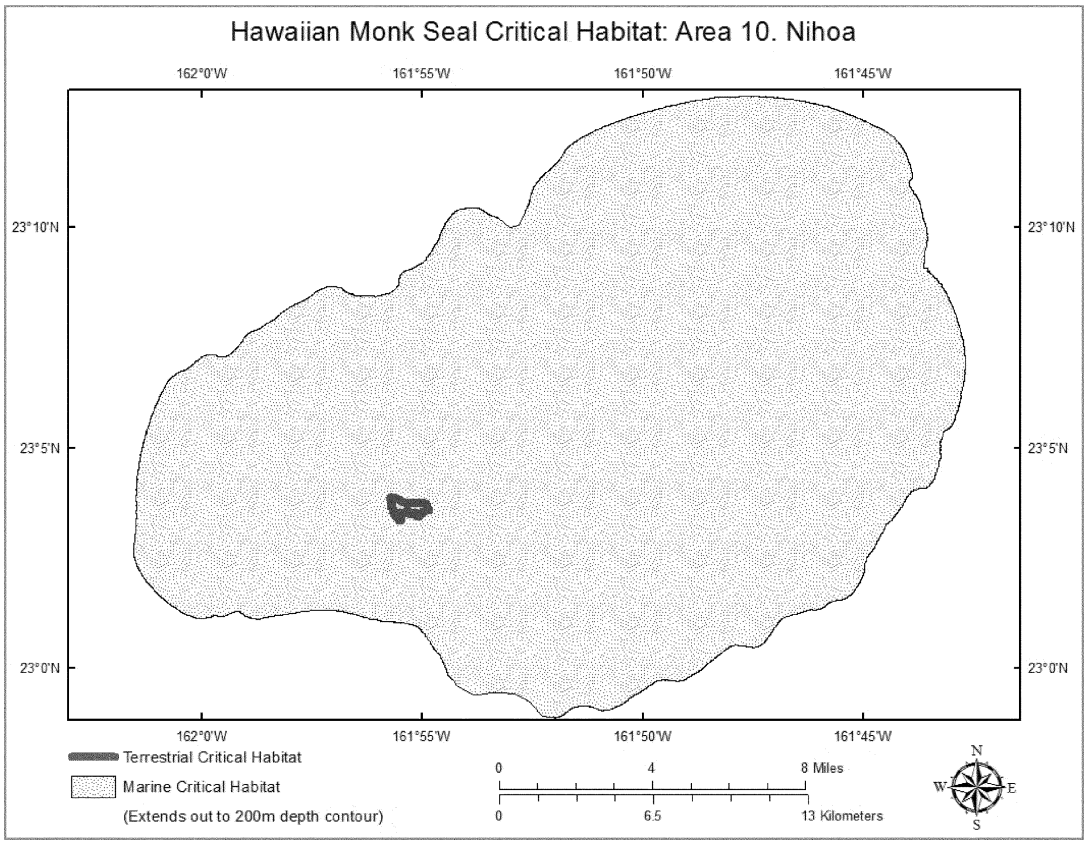

Hawaiian Monk Seal Critical Habitat: Area 5. Laysan Island
171°55'W
171°50'W
171°45'W
171°40'W
171°35'W
25°55'N
25°50'N
25°45'N
Terrestrial Critical Habitat
Marine Critical Habitat
(Extends out to 200m depth contour)
0
4
8 Miles
0
6.5
13 Kilometers
N
W
E
S

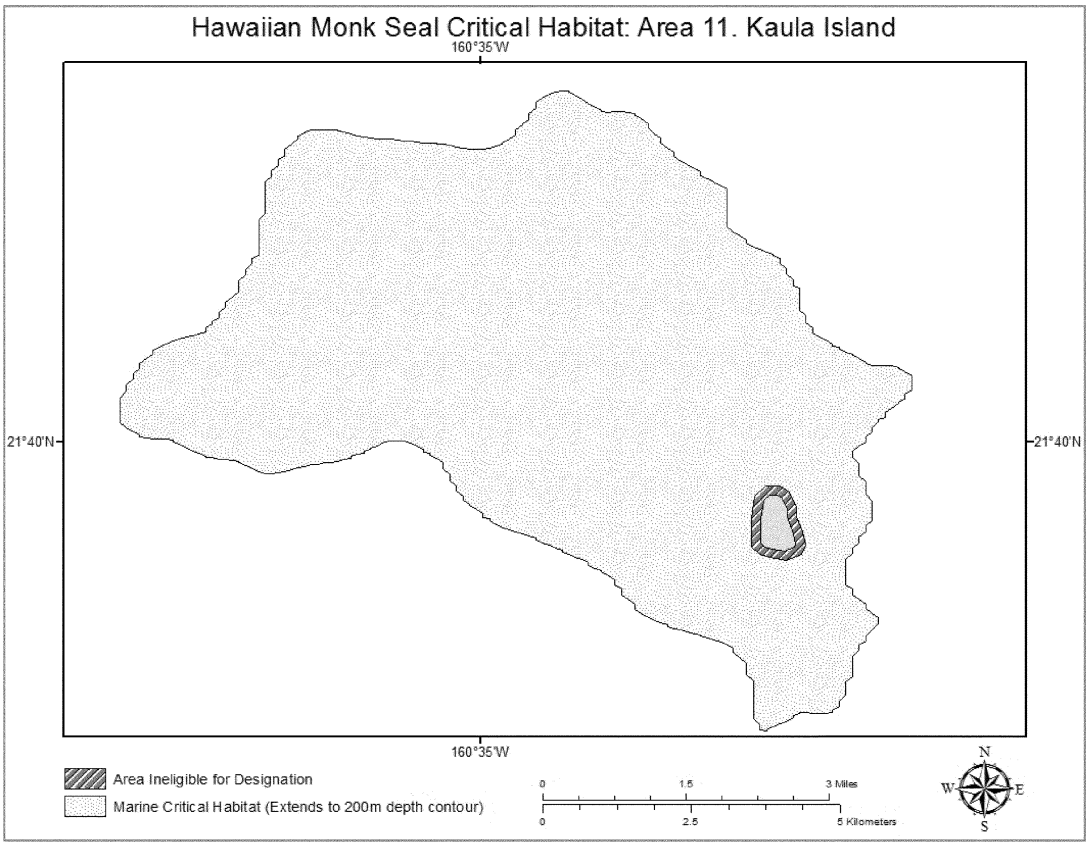

Hawaiian Monk Seal Critical Habitat: Area 6. Maro Reef
170°50'W
170°40'W
170°30'W
170°20'W
25°40'N
25°30'N
25°20'N
0
5
10
Kilometers
Terrestrial Critical Habitat
Marine Critical Habitat
(Extends out to 200m depth contour)
0
9
18 Miles
0
10
20 Kilometers
N
W
E
S

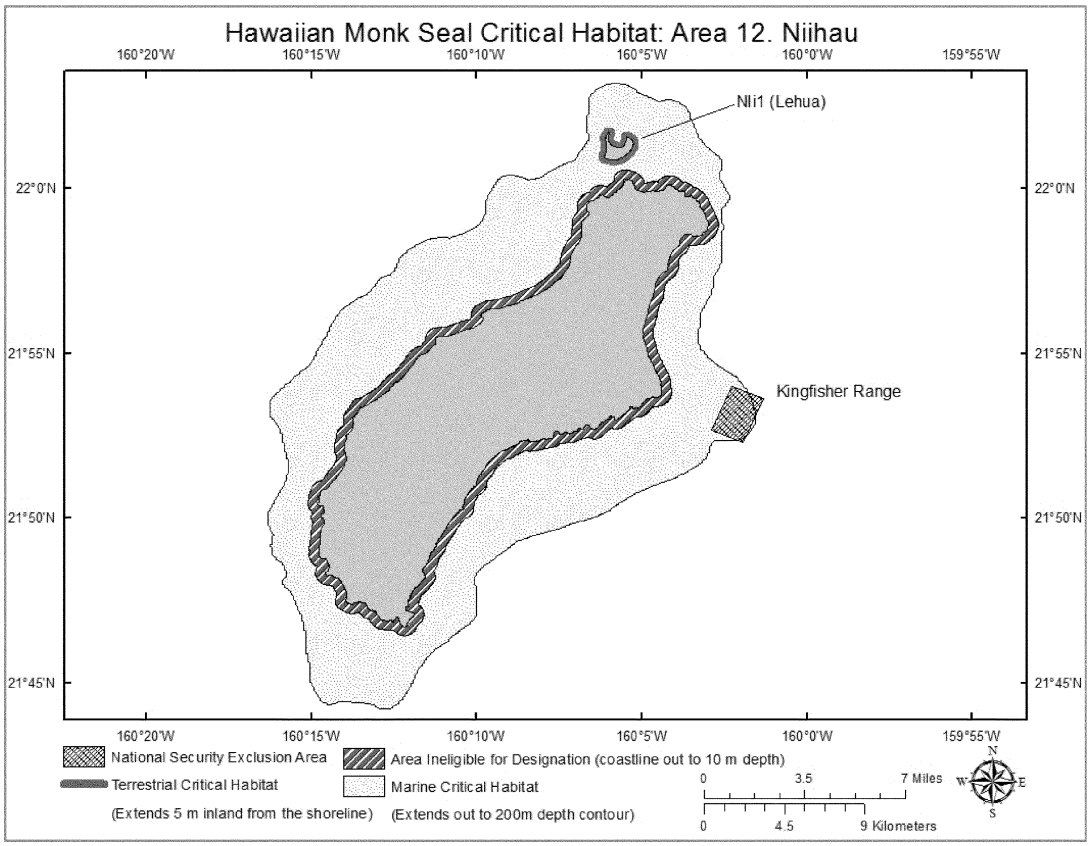

Hawaiian Monk Seal Critical Habitat: Area 7. Gardner Pinnacles
168°30'W
168°20'W
168°10'W
168°0'W
167°50'W
167°40'W
167°30'W
167°20'W
25°10'N
25°0'N
24°50'N
24°40'N
24°30'N
0 0.1 0.2
Kilometers
Terrestrial Critical Habitat
Marine Critical Habitat
(Extends out to 200m depth contour)
0 10 20 Miles
0 10 20 Kilometers
N
W
E
S

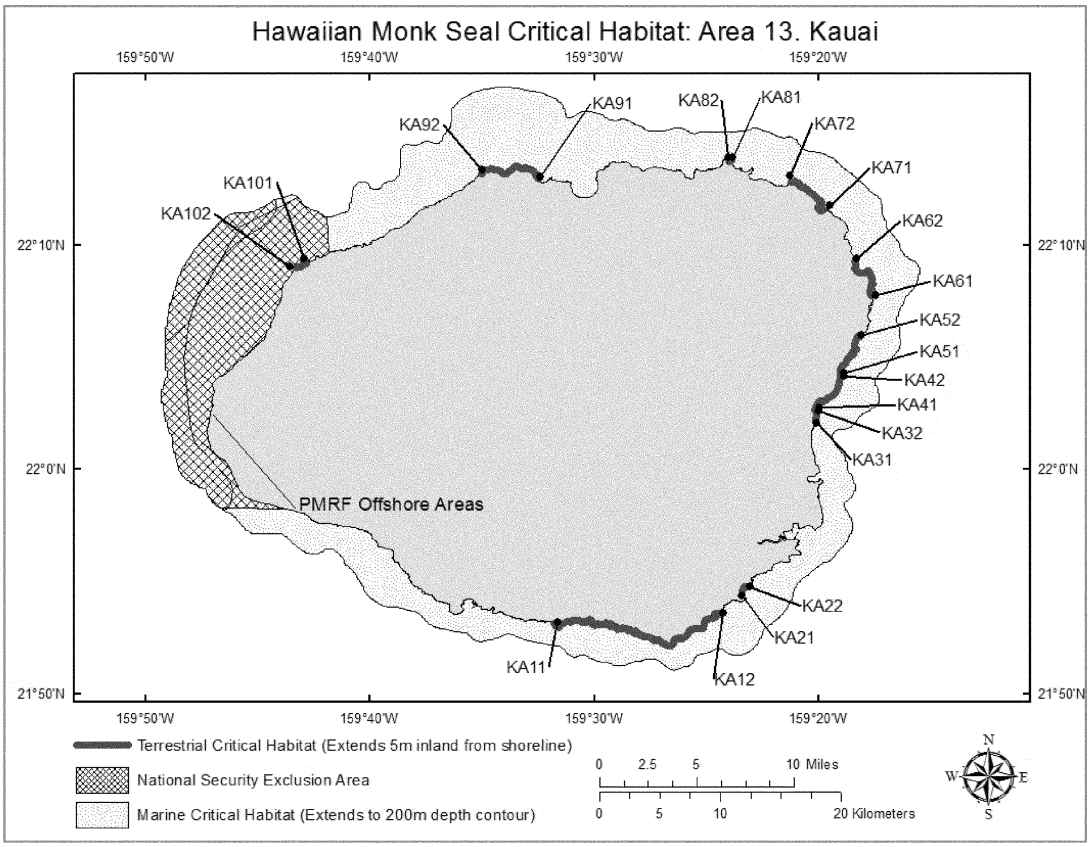

Hawaiian Monk Seal Critical Habitat: Area 8. French Frigate Shoals
166°25'W
166°20'W
166°15'W
166°10'W
166°5'W
166°0'W
23°50'N
23°45'N
23°40'N
Terrestrial Critical Habitat
Marine Critical Habitat
(Extends out to 200m depth contour)
0 5 10 Miles
0 8 16 Kilometers
N
W
E
S

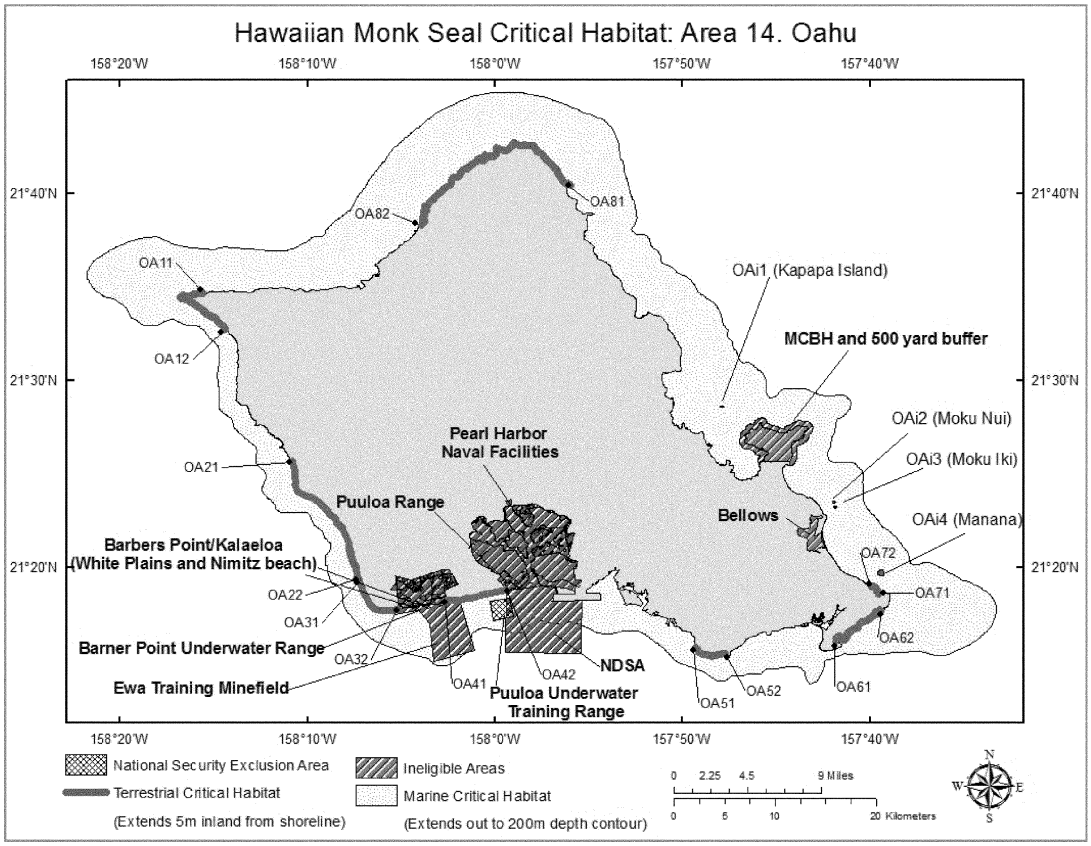

Hawaiian Monk Seal Critical Habitat: Area 9. Necker Island
164°50'W
164°40'W
164°30'W
164°20'W
164°10'W
23°40'N
23°30'N
23°20'N
0 5 10 Kilometers
Terrestrial Critical Habitat
Marine Critical Habitat
(Extends out to 200m depth contour)
0 7.5 15 Miles
0 10 20 Kilometers
N
W
E
S

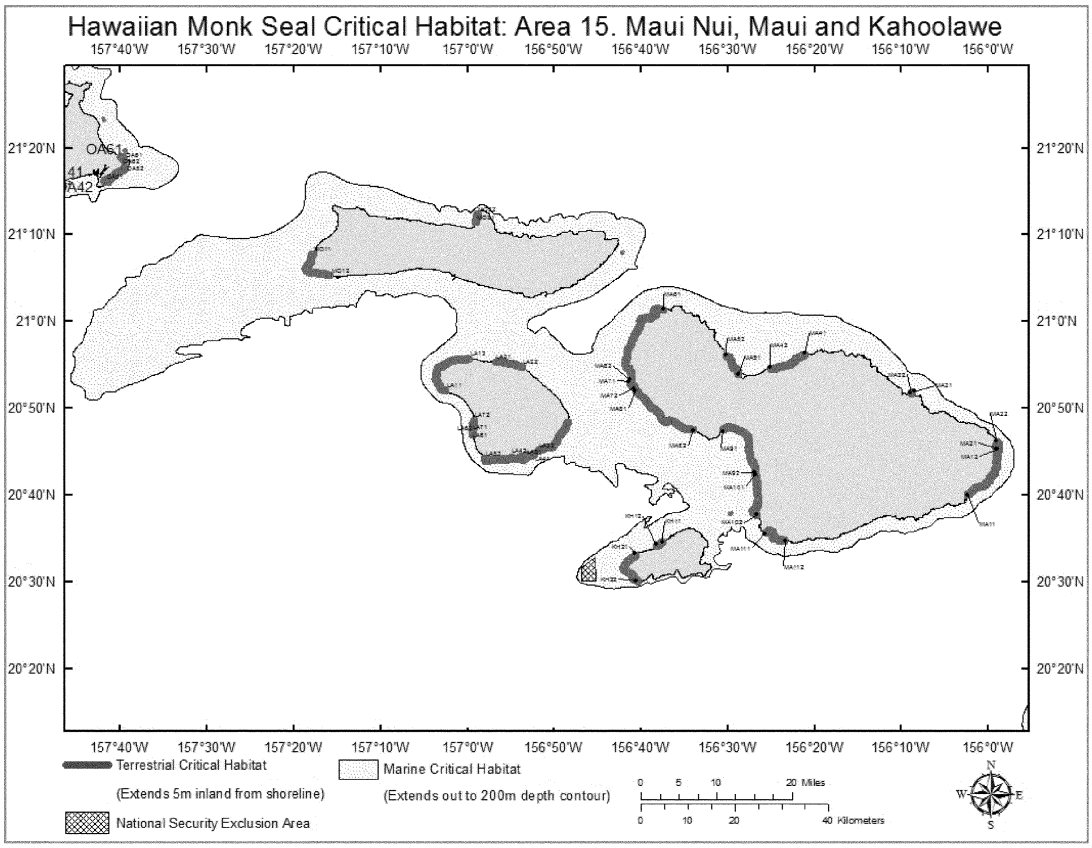

Hawaiian Monk Seal Critical Habitat: Area 10. Nihoa
162°0'W
161°55'W
161°50'W
161°45'W
23°10'N
23°5'N
23°0'N
Terrestrial Critical Habitat
Marine Critical Habitat
(Extends out to 200m depth contour)
0 4 8 Miles
0 6.5 13 Kilometers
N
W
E
S

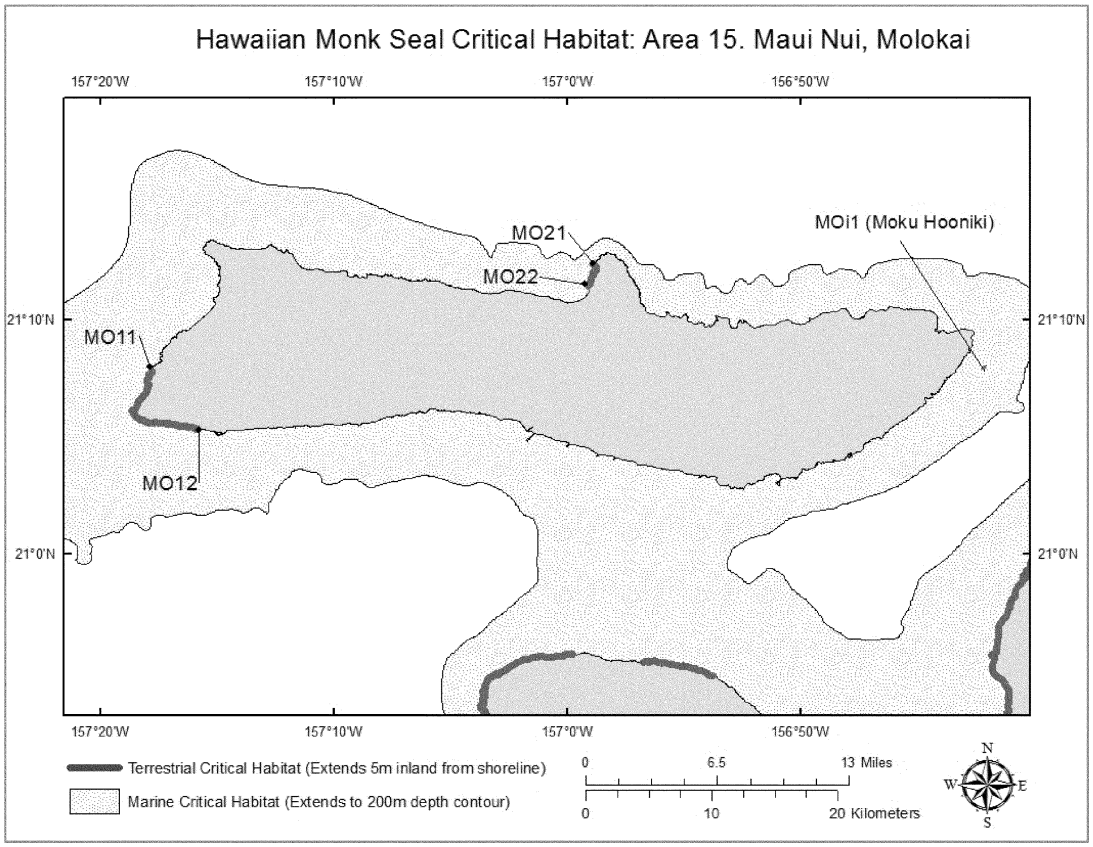

Hawaiian Monk Seal Critical Habitat: Area 11. Kaula Island
160°35'W
21°40'N
21°40'N
160°35'W
Area Ineligible for Designation
Marine Critical Habitat (Extends to 200m depth contour)
0
1.5
3 Miles
0
2.5
5 Kilometers
N
W
E
S

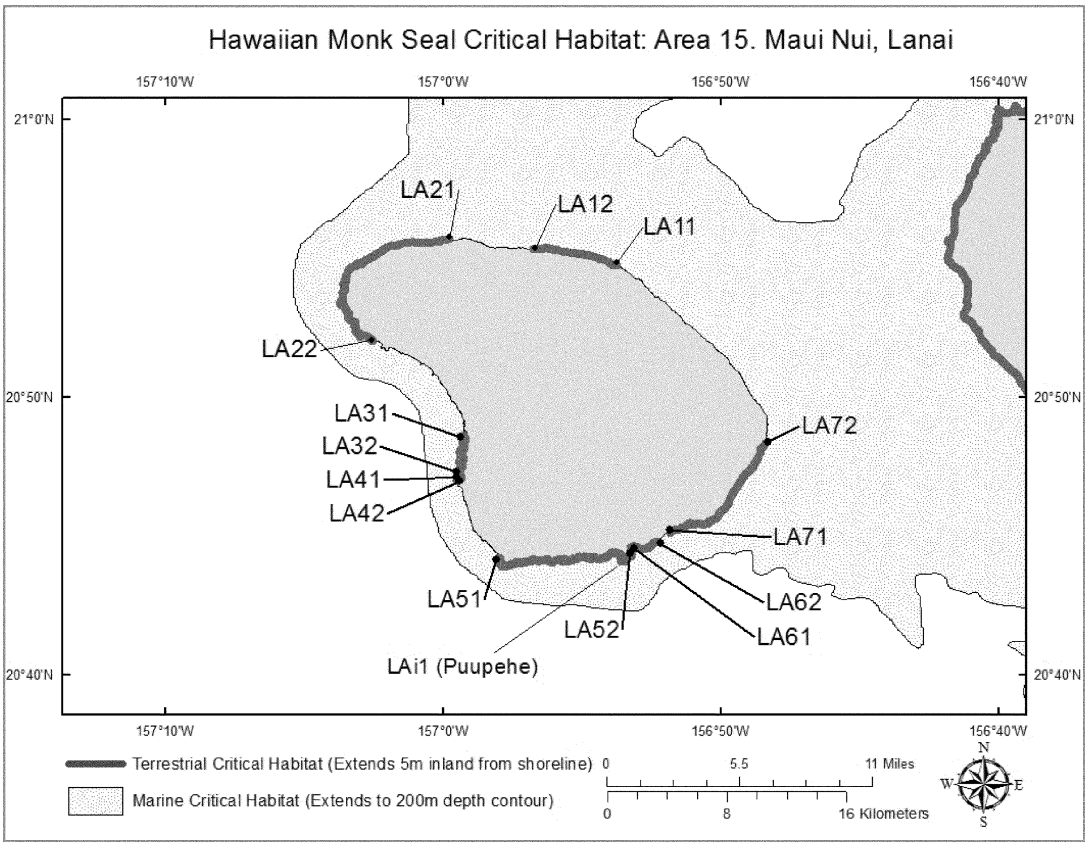

Hawaiian Monk Seal Critical Habitat: Area 12. Niihau
160°20'W
160°15'W
160°10'W
160°5'W
160°0'W
159°55'W
Nii1 (Lehua)
22°0'N
21°55'N
21°50'N
21°45'N
Kingfisher Range
National Security Exclusion Area
Terrestrial Critical Habitat
(Extends 5 m inland from the shoreline)
Area Ineligible for Designation (coastline out to 10 m depth)
Marine Critical Habitat
(Extends out to 200m depth contour)
0
3.5
7 Miles
0
4.5
9 Kilometers
N
W
E
S

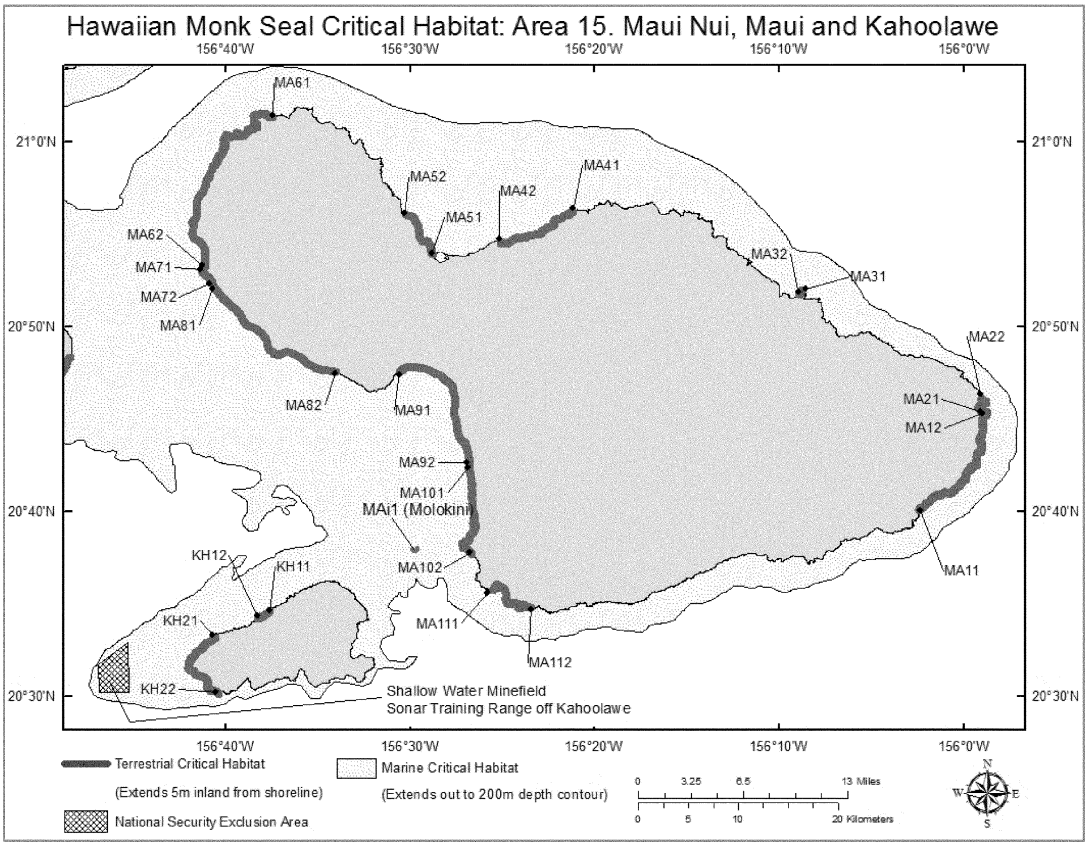

Hawaiian Monk Seal Critical Habitat: Area 13. Kauai
159°50'W
159°40'W
159°30'W
159°20'W
22°10'N
22°0'N
21°50'N
KA91
KA82
KA81
KA92
KA72
KA71
KA101
KA102
KA62
KA61
KA52
KA51
KA42
KA41
KA32
KA31
PMRF Offshore Areas
KA22
KA21
KA11
KA12
Terrestrial Critical Habitat (Extends 5m inland from shoreline)
National Security Exclusion Area
Marine Critical Habitat (Extends to 200m depth contour)
0 2.5 5 10 Miles
0 5 10 20 Kilometers
N
W
E
S

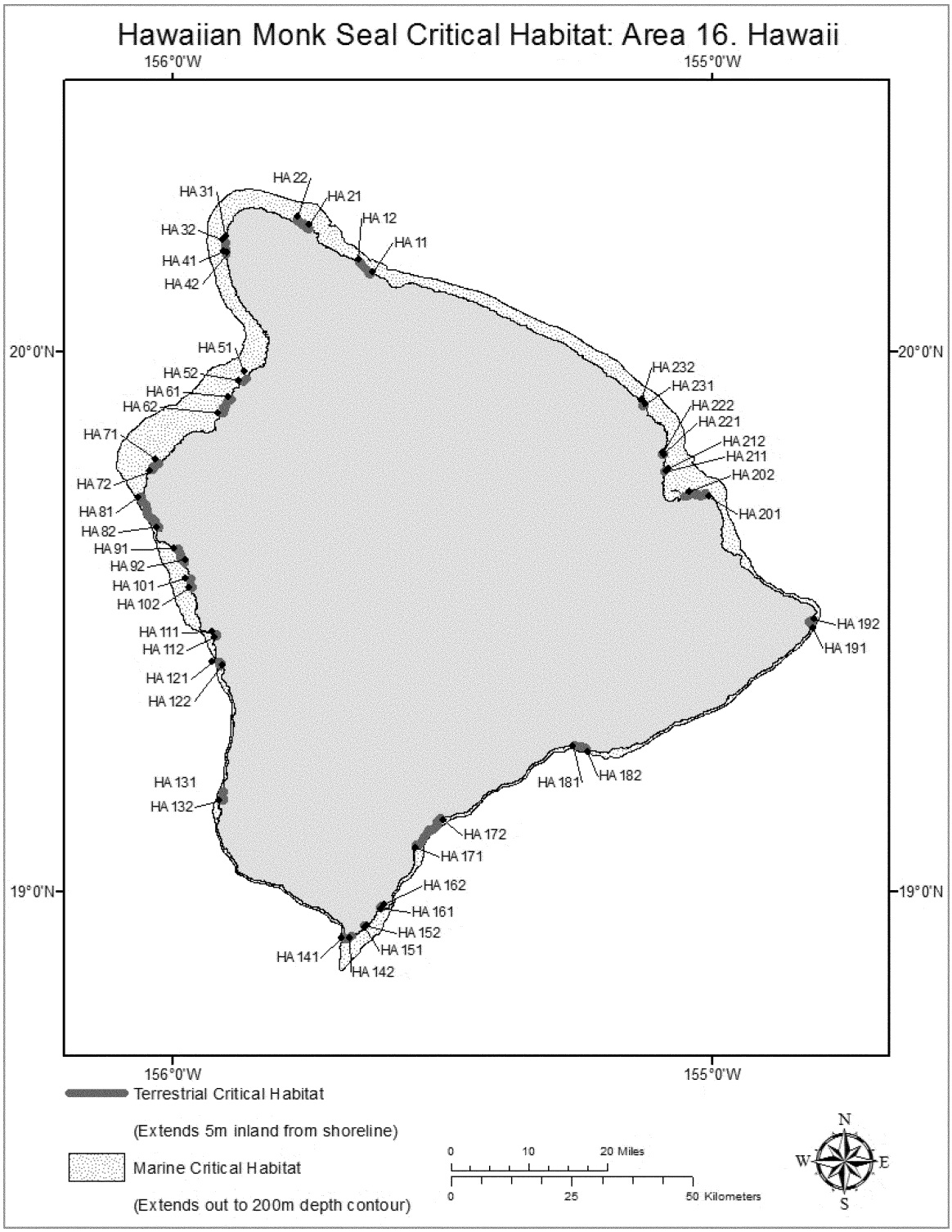

Hawaiian Monk Seal Critical Habitat: Area 14. Oahu
158°20'W
158°10'W
158°0'W
157°50'W
157°40'W
21°40'N
21°30'N
21°20'N
OA82
OA81
OA11
OAi1 (Kapapa Island)
MCBH and 500 yard buffer
OA12
OAi2 (Moku Nui)
Pearl Harbor
Naval Facilities
OAi3 (Moku Iki)
OA21
Puuloa Range
Bellows
OAi4 (Manana)
Barbers Point/Kalaeloa
(White Plains and Nimitz beach)
OA72
OA22
OA71
OA31
OA62
Barner Point Underwater Range
OA32
NDSA
OA42
Ewa Training Minefield
OA41
Puuloa Underwater
Training Range
OA51
OA52
OA61
National Security Exclusion Area
Ineligible Areas
Terrestrial Critical Habitat
(Extends 5m inland from shoreline)
Marine Critical Habitat
(Extends out to 200m depth contour)
0 2.25 4.5 9 Miles
0 5 10 20 Kilometers
N
W
E
S

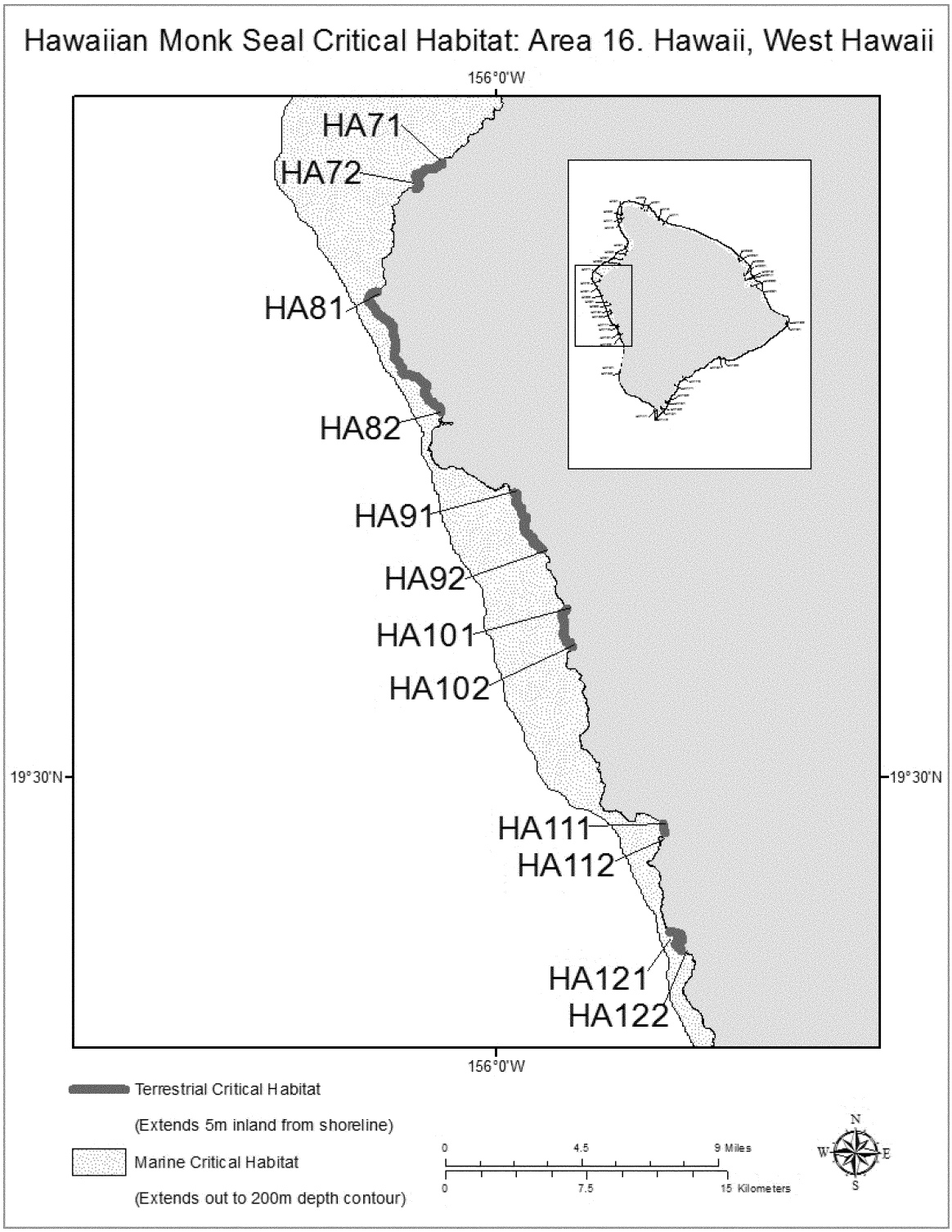

Hawaiian Monk Seal Critical Habitat: Area 15. Maui Nui, Maui and Kahoolawe
157°40'W
157°30'W
157°20'W
157°10'W
157°0'W
156°50'W
156°40'W
156°30'W
156°20'W
156°10'W
156°0'W
21°20'N
21°10'N
21°0'N
20°50'N
20°40'N
20°30'N
20°20'N
Terrestrial Critical Habitat
(Extends 5m inland from shoreline)
Marine Critical Habitat
(Extends out to 200m depth contour)
National Security Exclusion Area
0 5 10 20 Miles
0 10 20 40 Kilometers
N
W
E
S


Hawaiian Monk Seal Critical Habitat: Area 15. Maui Nui, Molokai
157°20'W
157°10'W
157°0'W
156°50'W
21°10'N
21°0'N
MO21
MO22
MOi1 (Moku Hooniki)
MO11
MO12
Terrestrial Critical Habitat (Extends 5m inland from shoreline)
Marine Critical Habitat (Extends to 200m depth contour)
0 6.5 13 Miles
0 10 20 Kilometers
N
W
E
S


Hawaiian Monk Seal Critical Habitat: Area 15. Maui Nui, Lanai
157°10'W
157°0'W
156°50'W
156°40'W
21°0'N
20°50'N
20°40'N
LA21
LA12
LA11
LA22
LA31
LA32
LA41
LA42
LA72
LA71
LA51
LA52
LA62
LA61
LAi1 (Puupehe)
Terrestrial Critical Habitat (Extends 5m inland from shoreline)
Marine Critical Habitat (Extends to 200m depth contour)
0
5.5
11 Miles
0
8
16 Kilometers
N
W
E
S


Hawaiian Monk Seal Critical Habitat: Area 15. Maui Nui, Maui and Kahoolawe
156°40'W
156°30'W
156°20'W
156°10'W
156°0'W
21°0'N
20°50'N
20°40'N
20°30'N
MA61
MA52
MA42
MA41
MA51
MA62
MA71
MA72
MA81
MA32
MA31
MA22
MA82
MA91
MA21
MA12
MA92
MA101
MAi1 (Molokini)
MA102
MA11
KH12
KH11
KH21
MA111
MA112
KH22
Shallow Water Minefield
Sonar Training Range off Kahoolawe
Terrestrial Critical Habitat
(Extends 5m inland from shoreline)
Marine Critical Habitat
(Extends out to 200m depth contour)
National Security Exclusion Area
0
3.25
6.5
13 Miles
0
5
10
20 Kilometers
N
W
E
S


Hawaiian Monk Seal Critical Habitat: Area 16. Hawaii
156°0'W
155°0'W
20°0'N
19°0'N
HA 22
HA 31
HA 21
HA 12
HA 32
HA 11
HA 41
HA 42
HA 51
HA 52
HA 61
HA 62
HA 71
HA 72
HA 81
HA 82
HA 91
HA 92
HA 101
HA 102
HA 111
HA 112
HA 121
HA 122
HA 131
HA 132
HA 232
HA 231
HA 222
HA 221
HA 212
HA 211
HA 202
HA 201
HA 192
HA 191
HA 181
HA 182
HA 172
HA 171
HA 162
HA 161
HA 152
HA 151
HA 141
HA 142
Terrestrial Critical Habitat
(Extends 5m inland from shoreline)
Marine Critical Habitat
(Extends out to 200m depth contour)
0
10
20 Miles
0
25
50 Kilometers
N
W
E
S



[FR Doc. 2015–20617 Filed 8–20–15; 8:45 am]

BILLING CODE 3510–22–C

FEDERAL REGISTER

Vol. 80 Friday,

No. 162 August 21, 2015

Part III

Department of Commerce

National Oceanic and Atmospheric Administration

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Geophysical and Geotechnical Survey in Cook Inlet, Alaska; Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE018

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Geophysical and Geotechnical Survey in Cook Inlet, Alaska

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: NMFS is issuing an Authorization in response to a request from ExxonMobil Alaska LNG LLC (EMALL) for an authorization to take marine mammals, by harassment, incidental to a geophysical and geotechnical survey in Cook Inlet, AK, for 84 days between August 14, 2015 and August 13, 2016.

DATES: Effective August 14, 2015, through August 13, 2016.

ADDRESSES: Electronic copies of the Incidental Harrassment Authorization (IHA; Authorization), application, and associated Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) may be obtained by writing to Jolie Harrison, Division Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Sara Young, Office of Protected Resources, NMFS, (301) 427–8484.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On February 4, 2015, NMFS received an application from EMALL for the taking of marine mammals incidental to a geotechnical and geophysical survey in Cook Inlet, Alaska. NMFS determined that the application was adequate and complete on June 8, 2015.

EMALL proposes to conduct a geophysical and geotechnical survey in Cook Inlet to investigate the technical suitability of a pipeline study corridor across Cook Inlet and potential marine terminal locations near Nikiski. The proposed activity would occur for 12 weeks during the 2015 open water season after August 14, 2015. The following specific aspects of the proposed activities are likely to result in the take of marine mammals: Use of a seismic airgun, sub-bottom profiler (chirp and boomer), and potentially a vibracore. Take, by Level B Harassment only, of individuals of four species of marine mammals is anticipated to result from the specified activities.

Description of the Specified Activity

Overview

The planned geophysical surveys involve remote sensors including single beam echo sounder, multibeam echo sounder, sub-bottom profiler (chirp and boomer), 0.983 L (60 in^3) airgun, side scan sonar, geophysical resistivity meters, and magnetometer to characterize the bottom surface and subsurface. The planned shallow geotechnical investigations include vibracoring, sediment grab sampling, and piezo-cone penetration testing (PCPT) to directly evaluate seabed features and soil conditions. Geotechnical borings are planned at potential shoreline crossings and in the terminal boring subarea within the Marine Terminal survey area, and will be used to collect information on the mechanical properties of in-situ soils to support feasibility studies for construction crossing techniques and decisions on siting and design of pilings, dolphins, and other marine structures. Geophysical resistivity imaging will be conducted at the potential shoreline crossings. Shear wave velocity profiles (downhole geophysics) will be conducted within some of the boreholes. Further details of the planned operations are provided below.

Dates and Duration

Geophysical and geotechnical (G&G) surveys that do not involve equipment that could acoustically harass listed marine mammals began in May 2015. These surveys include echo sounders and side scan sonar surveys operating at frequencies above the hearing range of local marine mammals and geotechnical borings, which are not expected to produce underwater noise exceeding ambient. The remaining surveys, including use of sub-bottom profilers and the small airgun, will begin soon after receipt of the IHA. These activities would be scheduled in such a manner as to minimize potential effects to marine mammals, subsistence activities, and other users of Cook Inlet waters. It is expected that approximately 12 weeks (84 work days) are required to complete the G&G Program. The work days would not all be consecutive due to weather, rest days, and any timing restrictions.

Specified Geographic Region

The Cook Inlet 2015 G&G Program will include geophysical surveys, shallow geotechnical investigations, and geotechnical borings. Two separate areas will be investigated and are shown in Figure 1 of the application: The pipeline survey area and the Marine Terminal survey area (which includes an LNG carrier approach zone). The pipeline survey area runs from the Kenai Peninsula, across the Inlet, up to Beluga, also considered the Upper Inlet. The Terminal area will include an area west and south of Nikiski, the northern edge of what is considered the Lower

Inlet. The G&G Program survey areas (also referred to as the action area or action areas) are larger than the proposed pipeline route and the Marine Terminal site to ensure detection of all potential hazards, or to identify areas free of hazards. This provides siting flexibility should the pipeline corridor or Marine Terminal sites need to be adjusted to avoid existing hazards.

• Pipeline Survey Area—The proposed pipeline survey area (Figure 1) crosses Cook Inlet from Boulder Point on the Kenai Peninsula across to Shorty Creek about halfway between the village of Tyonek and the Beluga River. This survey area is approximately 45 km (28 mi) in length along the corridor centerline and averages about 13 km (8 mi) wide. The total survey area is 541 km2 (209 mi2). The pipeline survey area includes a subarea where vibracores will be conducted in addition to the geophysical surveys and shallow geotechnical investigations.

• Marine Terminal Survey Area—The proposed Marine Terminal survey area (Figure 1), encompassing 371 km2 (143 mi2), is located near Nikiski where potential sites and vessel routes for the Marine Terminal are being investigated. The Marine Terminal survey area includes two subareas: A seismic survey subarea where the airgun will be operated in addition to the other geophysical equipment, and a terminal boring subarea where geotechnical boreholes will be drilled in addition to the geophysical survey and shallow geotechnical investigations. The seismic survey subarea encompasses 25 km2 (8.5 mi2) and the terminal boring subarea encompasses 12 km2 (4.6 mi2).

Detailed Description of Activities

The Notice of Proposed IHA (80 FR 37465, June 30, 2015) contains a full detailed description of the geotechnical and geophysical survey, including the sources proposed to be used and vessel details. That information has not changed and is therefore not repeated here.

Comments and Responses

A Notice of Proposed IHA was published in the **Federal Register** on June 30, 2015 (80 FR 37465) for public comment. During the 30-day public comment period, NMFS received four comment letters from the following: The Marine Mammal Commission (MMC); the Natural Resource Defense Counsel (NRDC); Friends of Animals (FOA); and one private citizen.

All of the public comment letters received on the Notice of Proposed IHA (80 FR 37465, June 30, 2015) are available on the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Following is a summary of the public comments and NMFS' responses.

Comment 1: One private citizen requested that we deny issuance of the IHA because marine mammals would be killed as a result of the survey.

Response: The survey is not expected to result in the death of any marine mammal species, and no such take is authorized. Extensive analysis of the proposed geotechnical and geophysical survey was conducted in accordance with the MMPA, Endangered Species Act (ESA), and National Environmental Policy Act (NEPA). Pursuant to those statutes, we analyzed the impacts of the survey activities to marine mammals (including those listed as threatened or endangered under the ESA), their habitat (including critical habitat designated under the ESA), and to the availability of marine mammals for taking for subsistence uses. The MMPA analysis revealed that the activities would have a negligible impact on affected marine mammal species or stocks and would not have an unmitigable adverse impact on the availability of marine mammals for taking for subsistence uses. The ESA analysis concluded that the activities likely would not jeopardize the continued existence of ESA-listed species or destroy or adversely modify designated critical habitat. The NEPA analysis concluded that there would not be a significant impact on the human environment.

Comment 2: The MMC and the NRDC recommend that NMFS defer issuance of any Authorization to EMALL or other applicants until NMFS concludes that those activities would affect no more than a small number of Cook Inlet beluga whales with a negligible impact on the population.

Response: In accordance with our implementing regulations at 50 CFR 216.104(c), we use the best available scientific information to determine whether the taking by the specified activity within the specified geographic region will have a negligible impact on the species or stock and will not have an unmitigable adverse impact on the availability of such species or stock for subsistence uses. Based on the best scientific information available, NMFS determined that the impacts of the geotechnical and geophysical survey program, which are primarily acoustic in nature, would meet these standards. Moreover, EMALL proposed and NMFS has required in the IHA a rigorous mitigation plan to reduce impacts to Cook Inlet beluga whales and other marine mammals to the lowest level practicable, including measures to shutdown active acoustic sources if any beluga whale is observed approaching or within the Level B harassment zone and restricting activities within a 10 mi (16 km) radius of the Susitna Delta from April 15 through October 15, which is an important area for beluga feeding and calving in the spring and summer months. This shutdown measure is more restrictive than the standard shutdown measures typically applied, and combined with the Susitna Delta exclusion (minimizing adverse effects to foraging), is expected to reduce both the scope and severity of potential harassment takes, minimizing impacts from the harassment that would adversely affect reproductive rates or survivorship.

Our analysis indicates that issuance of this IHA will not contribute to or worsen the observed decline of the Cook Inlet beluga whale population. Additionally, the ESA Biological Opinion determined that the issuance of an IHA is not likely to jeopardize the continued existence of the Cook Inlet beluga whales or adversely modify Cook Inlet beluga whale critical habitat. The Biological Opinion also outlined Terms and Conditions and Reasonable and Prudent Measures to reduce impacts, which have been incorporated into the IHA. Therefore, based on the analysis of potential effects, the parameters of the survey, and the rigorous mitigation and monitoring program, NMFS determined that the activity would have a negligible impact on the population.

Moreover, the survey would take by Level B harrassment only small numbers of marine mammals relative to their population sizes. As described in the proposed IHA **Federal Register** notice, NMFS used a method that incorporates density of marine mammals overlaid with the anticipated ensonified area and the number of days of the operation to calculate an estimated number of takes for belugas. The number of belugas likely to be taken represents 7.04% of the population, which NMFS considers small. In addition to this quantitative evaluation, NMFS has also considered qualitative factors that further support the ''small numbers'' determination, including: (1) The seasonal distribution and habitat use patterns of Cook Inlet beluga whales, which suggest that for much of the time only a small portion of the population would be accessible to impacts from EMALL's activity, as most animals are concentrated in upper Cook Inlet; and (2) the mitigation requirements, which provide spatio-temporal limitations that avoid impacts to large numbers of animals feeding and

calving in the Susitna Delta and limit exposures to sound levels associated with Level B harassment. Based on all of this information, NMFS determined that the number of beluga whales likely to be taken is small. See response to Comment 3 and our small numbers analysis later in this document for more information about the small numbers determination for beluga whales and the other marine mammal species.

Comment 3: The MMC recommends that before issuing any Authorizations, NMFS develop clear criteria for determining what constitutes small numbers and negligible impact for the purpose of authorizing incidental take of marine mammals.

Response: NMFS consistently assesses clearly articulated factors in making both the small numbers and negligible impact findings in our actions, and those findings are supported for this action as described in this notice. However, we are currently assessing our criteria for determining what constitutes ''small numbers'' and are working towards the development of an improved, and more quantitative, analytical framework for determining whether an activity will have a ''negligible impact'' for the purpose of authorizing takes of marine mammals. We fully intend to engage the MMC in these processes at the appropriate time.

Comment 4: The MMC and NRDC recommend that NMFS finalize and implement the beluga whale recovery plan, issue its programmatic EIS, and establish annual limits on the types of takes authorized for sound-producing activities in Cook Inlet before issuing additional Authorizations.

Response: NMFS recognizes the release of the draft recovery plan and, as an agency, will address and implement appropriate recommendations made in the recovery plan when the draft becomes a Final Recovery Plan, after NMFS has been able to incorporate public comment on the draft version.

Further, NMFS is making progress toward the development of the Cook Inlet EIS to analyze the environmental impacts of issuing Incidental Take Authorizations (ITAs) pursuant to the Marine Mammal Protection Act (MMPA) for the taking of marine mammals incidental to anthropogenic activities in the waters of Cook Inlet, AK, but in the meanwhile is also requesting that all Cook Inlet applicants requesting authorizations for the 2016 open water season send in their applications by October 1, 2015. This will enable NMFS to conduct a Programmatic EA for these activities and better analyze the cumulative effects from all of the authorizations proposed for each open water season until the EIS is complete.

Comment 5: The MMC, NRDC, and FOA commented on an error in beluga density information used to estimate the number of beluga exposures in the proposed authorization. The MMC and NRDC recommend that NMFS provide public notice of the revised number of beluga whale takes that NMFS proposes to authorize along with a revised analysis.

Response: NMFS acknowledges the error in beluga density information and has revised the calculations used for take estimation presented in the **Federal Register** notice for the proposed IHA. The correction results in a revised exposure estimate of 30 belugas. However, following discussions with the applicant, the MMC, and the Alaska Regional Office, NMFS has determined that exposures due to the chirp will not be included in the Authorization, as the chirp and the boomer will be operating concurrently and the 160-dB isopleth of the boomer is larger than that of the chirp. Therefore, NMFS is authorizing take by Level B harrassment of only 24 belugas. This new exposure estimate represents 7.06% of the population, whereas the original estimate of 14 represented 4.12% of the population. This difference does not substantively affect NMFS' analysis of effects, nor does it change the small numbers or negligible impact determinations, and therefore it does not merit a second public comment period.

Comment 6: The MMC and NRDC recommend that until behavior thresholds are updated, that NMFS require applicants to use the 120-dB rather than 160-dB threshold for sub-bottom profilers.

Response: The 120-dB threshold is typically associated with continuous sources. Continuous sounds are those whose sound pressure level remains above that of the ambient sound, with negligibly small fluctuations in level (NIOSH, 1998; ANSI, 2005). Intermittent sounds are defined as sounds with interrupted levels of low or no sound (NIOSH, 1998). Sub-bottom profiler signals are intermittent sounds. Intermittent sounds can further be defined as either impulsive or non-impulsive. Impulsive sounds have been defined as sounds which are typically transient, brief (<1 sec), broadband, and consist of a high peak pressure with rapid rise time and rapid decay (ANSI, 1986; NIOSH, 1998). Non-impulsive sounds typically have more gradual rise times and longer decays (ANSI, 1995; NIOSH, 1998). Sub-bottom profiler signals have durations that are typically very brief (<1 sec), with temporal characteristics that more closely resemble those of impulsive sounds than non-impulsive sounds. With regard to behavioral thresholds, we therefore consider the temporal and spectral characteristics of sub-bottom profiler signals to more closely resemble those of an impulse sound rather than a continuous sound. The 160-dB threshold is typically associated with impulsive sources.

The MMC suggests that, for certain sources considered here, the interval between pulses is so small it should be considered continuous. However, a sub-bottom profiler chirp's ''rapid staccato'' of pulse trains is emitted in a similar fashion as odontocete echolocation click trains. Research indicates that marine mammals, in general, have extremely fine auditory temporal resolution and can detect each signal separately (*e.g.,* Au *et al.*, 1988; Dolphin *et al.*, 1995; Supin and Popov, 1995; Mooney *et al.*, 2009), especially for species with echolocation capabilities. Therefore, it is highly unlikely that marine mammals would perceive sub-bottom profiler signals as being continuous.

In conclusion, sub-bottom profiler signals are intermittent rather than continuous signals, and the fine temporal resolution of the marine mammal auditory system allows them to perceive these sounds as such. Further, the physical characteristics of these signals indicate a greater similarity to the way that intermittent, impulsive sounds are received. Therefore, the 160-dB threshold (typically associated with impulsive sources) is more appropriate than the 120-dB threshold (typically associated with continuous sources) for estimating takes by behavioral harassment incidental to use of such sources.

We agree with the MMC'c recommendation to revise existing acoustic criteria and thresholds as necessary to specify threshold levels that would be more appropriate for a wider range of sound sources, and are currently in the process of producing such revisions. In particular, NMFS recognizes the importance of context (*e.g.,* behavioral state of the animals, distance) in behavioral responses. The current behavioral categorization (*i.e.,* impulse vs. continuous) does not account for context and is not appropriate for all sound sources. Thus, updated NOAA Acoustic Guidance (*www.nmfs.noaa.gov/pr/acoustics/guidelines.htm*), once completed, will more appropriately categorize behavioral harassment criteria by activity type. NOAA recognizes, as new science becomes available, that our current categorizations (*i.e.,* impulse vs.

continuous) may not fully encompass the complexity associated with behavioral responses (*i.e.,* context, etc.) and are working toward addressing these issues in future acoustic guidance. However, in the meanwhile, while our current behavioral acoustic thresholds may not fully account for some of the differences observed across taxa and contexts, they still serve as somewhat conservative generalized indicators of received levels at which we anticipate behavioral harassment, and are not undermined by newer information.

Comment 7: The MMC and NRDC recommend that prior to issuance of the Final Authorization, NMFS include taking by Level B harassment of humpback whales, gray whales, minke whales, Dall's porpoise, and Steller sea lion.

Response: The issuance of an Authorization to an applicant is a request-based process. On the one hand, if NMFS believes that marine mammals will be taken that are not identified by the applicant, we will work with the applicant to modify the request to ensure inclusion of affected species. On the other hand, applicants sometimes request take of a small number of species that NMFS believes are unlikely to be encountered but NMFS will authorize take of those species as long as the necessary findings can be made. NMFS acknowledges that it has authorized the take of the species identified by commenters that occur infrequently in Cook Inlet in other Authorizations. However, in those instances, the applicant requested take of those species and NMFS analyzed the requests submitted. EMALL believes, and NMFS concurs, that with the required monitoring, small zones of influence, and short operating period (as compared to previous activities authorized in Cook Inlet), the activities are unlikely to result in the take any of the species identified by the commenters. Moreover, if a species for which take is not authorized is encountered, the Authorization text states that the applicant must shut down active sound sources.

Comment 8: The MMC recommends that NMFS require EMALL to monitor for marine mammals for 30 minutes after authorized activities have ceased.

Response: NMFS agrees with the MMC and has added a post-activity monitoring period of 30 minutes as a requirement for this activity. A 30-minute monitoring period after the cessation of authorized sound source operations can provide useful observations to compare the behavior and abundance of animals during different scenarios of various noise levels. This change has been noted in the Authorization text.

Comment 9: The MMC and NRDC recommend that NMFS allow sufficient time between the close of the comment period and issuance of an Authorization for NMFS to analyze, consider, and respond fully to comments received and incorporate changes as appropriate.

Response: NMFS acknowledges that the time between the close of public comment and the target date for issuing the Authorization is short. However, NMFS fully considered and responded to all comments before issuing the Authorization, and incorporated changes as appropriate (*i.e.,* see response to Comment 8).

Comment 10: The NRDC and FOA comment that NEPA mandates that NMFS may not authorize activities while a programmatic EIS is underway. The NRDC references 40 CFR 1506.1.

Response: NMFS acknowledges that it is preparing an EIS for incidental take authorizations in Cook Inlet, AK (79 FR 61616; October 14, 2014). However, NMFS is undertaking this environmental analysis voluntarily as a decision support tool for processing MMPA ITA requests in Cook Inlet. The programmatic EIS is meant to address anticipated future levels of activity in Cook Inlet, which may include increases in activity, not a specific proposed program or project. NMFS will continue to prepare EAs or EISs, as appropriate, for specific individual applications for Incidental Take Authorizations (ITA) at this time. Consistent with its obligations under NEPA, NMFS prepared an EA (including an analysis of cumulative effects) prior to issuing the Authorization to EMALL and determined that issuance of the Authorization would not significantly impact the quality of the human environment.

Comment 11: The NRDC commented that NMFS should not issue an Authorization until it has completed its revision of acoustic thresholds for take by Level B harrassment.

Response: NMFS notes that NRDC's comment that NMFS uses an outdated and incorrect threshold for behavioral takes does not include any specific recommendations. NMFS uses 160 dB (rms) as the exposure level for estimating take by Level B harassment for most species in most cases. This threshold was established for underwater impulse sound sources based on measured avoidance responses observed in whales in the wild. Specifically, the 160 dB threshold was derived from data for mother-calf pairs of migrating gray whales (Malme *et al.*, 1983, 1984) and bowhead whales (Richardson *et al.*, 1985, 1986) responding to seismic airguns (*e.g.,* impulsive sound source). There is more recent information bearing on behavioral reactions to seismic airguns, but while those data illustrate how complex and context-dependent the relationship is between the two, they do not clearly suggest that there is a more appropriate level than 160dB to serve as general behavioral harassment threshold for multiple taxa. See 75 FR 49710, 49716 (August 13, 2010) (IHA for Shell seismic survey in Alaska). Further, it is not a matter of merely replacing the existing threshold with a new one. NOAA is working to develop more sophisticated draft guidance for determining impacts from acoustic sources, including information for determining Level B harassment thresholds. Due to the complexity of the task, any guidance will require a rigorous review that includes internal agency review, public notice and comment, and additional external peer review before any final product is published. In the meantime, and taking into consideration the facts and available science, NMFS determined it is reasonable to use the 160 dB threshold for estimating takes of marine mammals in Cook Inlet by Level B harassment. However, we discuss the science on this issue qualitatively in our analysis of potential effects to marine mammals.

Comment 12: The NRDC comments that NMFS should require the use of alternative technologies, including quieting technologies, as well as adopting additional time-area closures.

Response: NMFS responds to this comment as part of the response to Comment 14 below.

Comment 13: The NRDC comments that the suggestion that Cook Inlet belugas are habituated to certain levels of anthropogenic activity is outdated, given a study by Kendall *et al.* (2014) on impacts to belugas from construction noise.

Response: NMFS acknowledges that there are scientific records of belugas responding to anthropogenic noise, as evidenced in Kendall *et al.* (2014). Beluga whale response to vessel noise varies greatly from tolerance to extreme sensitivity depending on the activity of the whale and previous experience with vessels (Richardson *et al.*, 1995). Reactions to vessels depends on whale activities and experience, habitat, boat type, and boat behavior (Richardson *et al.*, 1995), and may include behavioral responses, such as altered headings or avoidance (Blane and Jaakson, 1994; Erbe and Farmer, 2000); fast swimming; changes in vocalizations (Lesage *et al.*,

1999; Scheifele *et al.*, 2005); and changes in dive, surfacing, and respiration patterns.

A study by Lessage *et al.* (1999) of belugas in the St. Lawrence River states with respect to modification of vocal behavior that ''Owing to the gregarious nature of belugas, this would not pose a serious problem for intraherd communication, given the relatively short distances between herd members; a source of noise would have to be very close to them to potentially limit any communication within a herd. However, communication is probably not limited to herd members, since inter-herd communication may be important during the breeding season, when locating food sources, when navigating in ice, or when reacting to large-scale disturbance. On these larger scales, high noise levels could impair communication.'' NMFS acknowledges the potential for masking from the sound sources proposed by EMALL and discusses the potential effects of this. The concerns raised by NRDC in the paper by Bejder *et al.* (2009), that animals that do not display overt behavioral reactions could be incurring harm, is an important component of understanding the effects of tolerance on mammals in areas of increasing anthropogenic activity but no mechanism to estimate the physiological effects from tolerance are currently viable for this analysis. As noted above, though, even though shutdown measures are in place that will minimize behavioral harassment of belugas, NMFS does not reduce the amount of take expected/authorized due to possible habitation of belugas in Cook Inlet to anthropogenic noise, and the negligible impact determination below does not rely on an assumption of habitation to make the necessary findings.

Comment 14: The NRDC comments that NMFS is failing to meet the requirement of setting forth ''permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat'' and urges NMFS to adopt meaningful mitigation and monitoring measures including requiring applicants to contribute to a comprehensive monitoring plan to better understand distribution as well as individual and cumulative effects of human activities on Cook Inlet belugas, which was incorporated by reference to NRDC's public comment on the Proposed Rule for Apache Alaska Corporation. In the Apache comment letter, the NRDC provides a list of approximately eight measures that NMFS ''failed to consider or adequately consider.''

Response: NMFS provided a detailed discussion of proposed mitigation measures and the MMPA's ''least practicable impact'' standard in the notice of the proposed IHA (80 FR 37465, June 30, 2015), which are repeated in the ''Mitigation'' section of this notice. The measures that NRDC alleges NMFS failed to consider or adequately consider are identified and discussed below:

(1) Field testing and use of alternative technologies, such as vibroseis and gravity gradiometry, to reduce or eliminate the need for airguns and delaying seismic acquisition in higher density areas until the alternative technology of marine vibroseis becomes available: EMALL requested takes of marine mammals incidental to the geotechnical and geophysical survey operations described in the IHA application, which identified use of only a 60 in^3 airgun array with a distance to the 160-dB isopleth of 300m. It would be inappropriate for NMFS to fundamentally change the specified activity for which EMALL submitted an IHA application by requiring that they acquire data using an entirely different system of sound sources, especially if the alternate technology cannot meet the objectives of the proposed activity.

EMALL knows of no current technology scaled for industrial use that is reliable enough to meet the environmental challenges of operating in Cook Inlet. An airgun is only one of several sources proposed by EMALL and alternative quieting technologies for the boomer, chirp, and vibracore are undeveloped at this time.

(2) Required use of the lowest practicable source level in conducting airgun activity: EMALL is requesting to use a 60 in^3 airgun, a very small source, for a duration of 7 days. This size of airgun, and the length and area of the survey, is necessary to meet EMALL's program objectives and minimize geotechnical, geohazard, and constructability risks.

(3) Seasonal exclusions around river mouths, including early spring (pre-April 14) exclusions around the Beluga River and Susitna Delta, and avoidance of other areas that have a higher probability of beluga occurrence: NMFS has required a 10 mile (16 km) exclusion zone around the Susitna Delta (which includes the Beluga River) in this IHA. Survey operations involving the use of airgun, boomer, chirp, and vibracore will be prohibited in this area between April 15 and October 15. In both the MMPA and ESA analysis, NMFS determined that this date range is sufficient to protect Cook Inlet beluga whales and the critical habitat in the Susitna Delta. While data indicate that belugas may use this part of the inlet year round, peak use occurs from early May to late September. NMFS added a 2-week buffer on both ends of this peak usage period to add extra protection to feeding and calving belugas.

(4) Limitation of the mitigation airgun to the longest shot interval necessary to carry out its intended purpose: EMALL is not proposing to use a mitigation airgun, therefore this measure does not apply.

(5) Immediate suspension of airgun activity, pending investigation, if any beluga strandings occur within or within an appropriate distance of the survey area: The IHA requires EMALL to immediately cease activities and report unauthorized takes of marine mammals, such as live stranding, injury, serious injury, or mortality. NMFS will review the circumstances of EMALL's unauthorized take and determine if additional mitigation measures are needed before activities can resume to minimize the likelihood of further unauthorized take and to ensure MMPA compliance. EMALL may not resume activities until notified by NMFS. Separately, the IHA includes measures if injured or dead marine mammals are sighted and the cause cannot be easily determined. In those cases, NMFS will review the circumstances of the stranding event while EMALL continues with operations.

(6) Establishment of a larger exclusion zone for beluga whales that is not predicated on the detection of whale aggregations or cow-calf pairs: Both the proposed IHA and the issued IHA contain a requirement for EMALL to delay the start of active acoustic source use or shutdown the active acoustic sources if a beluga whale is visually sighted approaching or within the 160-dB disturbance zone until the animal(s) are no longer present within the 160-dB zone. The measure applies to the sighting of any beluga whale, not just sighting of groups or cow-calf pairs.

Comment 15: FOA comments on several issues related to cumulative impacts analysis including: (1) NMFS contradicts the Draft Recovery Plan by issuing Authorizations, given that two concerns of note in the Plan include noise and cumulative/synergistic effects (2) each phase of the Alaska LNG project will add to increasing cumulative effects to Cook Inlet belugas (3) over the past three years, NMFS has authorized at least 288 takes by Level B harassment of Cook Inlet beluga whales and that takes for AK LNG must be addressed in the

context of cumulative impacts from other authorized takes.

Response: Neither the MMPA nor NMFS' implementing regulations specify how to consider other activities and their impacts on the same populations when conducting a negligible impact analysis. However, consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into the negligible impact analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the density/distribution and status of the species, population size and growth rate, and ambient noise).

Although caution is warranted for noise-producing activities, especially in light of all of the other activities in Cook Inlet, NMFS does not agree that issuance of any Authorizations for take of Cook Inlet beluga whales is contradictory to recommendations in the Draft Recovery Plan for this species. NMFS is taking a cautious approach, both in the context of this particular project and Cook Inlet more broadly, to ensure that all impacts on beluga whales are adequately analyzed and minimized. For example, the shutdown of active sound sources at the 160-dB disturbance zone for beluga whales in Cook Inlet is a precautionary measure not used in other areas to ensure the minimization of behavioral harassment of belugas. Additionally, a precautionary approach was taken in estimating the number of exposures from the proposed EMALL survey, which is likely an overestimate of individuals taken for reason explained below in the 'Take Estimation'' section related to number of individuals taken versus instances of exposure.

More broadly, NMFS has announced our intent to prepare an EIS to better analyze cumulative impacts from potential increasing anthropogenic activities to Cook Inlet beluga whales. In addition, cumulative effects were addressed in the EA and Biological Opinion prepared for this action. The cumulative effects section of the EA has been expanded from the draft EA to discuss potential effects in greater detail. These documents, as well as the Alaska Marine Stock Assessments and the most recent abundance estimate for Cook Inlet beluga whales (Shelden *et al*, 2015), are part of NMFS' Administrative Record for this action, and provided the decision maker with information regarding other activities in the action area that affect marine mammals, an analysis of cumulative impacts, and other information relevant to the determination made under the MMPA.

NMFS will continue to analyze monitoring reports from authorized activities, applicable new science, and the increase of Cook Inlet activities in the context of the Cook Inlet Beluga Whale Recovery Plan, and will also continue to carefully evaluate proposed activities and recommend mitigation measures to ensure that the issuance of MMPA authorizations does not negatively impact the recovery of Cook Inlet belugas.

Comment 16: FOA comments that the Environmental Assessment (EA) was difficult to find and recommends that NMFS re-open the public comment period for the EA as well as the Draft Recovery Plan for Cook Inlet belugas.

Response: NMFS posted a draft of the EA on its Web site for public review: *http://www.nmfs.noaa.gov/pr/permits/incidental/energy_other.htm.* On July 6th, the MMC notified NMFS that the documents were placed under ''Other'' and not ''Natural Gas'' on the Web site. Once notified, NMFS corrected the error. During and after that time NMFS received no other communication from any persons or organizations requesting to be directed to those documents or asking for clarification as to their location. Therefore, NMFS does not believe the EA should be reopened for public comment. The Draft Recovery Plan for Cook Inlet beluga whales is a separate action and the reopening of its comment period is not relevant to this Authorization.

Comment 17: FOA comments that the Marine Terminal area lies within beluga Critical Habitat. FOA also comments that effects on habitat could include disturbance to prey from noise, and disturbances to the environment from the platform's legs and project discharges from sampling activities.

Response: The **Federal Register** notice of the proposed Authorization analyzed potential effects to prey species and marine mammal habitat. The possibility of adverse modification to Critical Habitat through reduction in prey species is addressed in the Biological Opinion, which resulted in a finding of no adverse modification to critical habitat.

Comment 20: FOA comments that issuance of an IHA to EMALL would violate the ESA because granting the IHA would ''appreciably reduce the likelihood of survival and recovery of species in the wild.''

Response: NMFS disagrees with FOA's comment. NMFS Office of Protected Resources (Permits and Conservation Division) initiated and engaged in formal consultation with NMFS Alaska Regional Office (Protected Resources Division) under section 7 of the ESA on the issuance of the IHA to EMALL. NMFS's Biological Opinion concluded that the issuance of the IHA is not likely to jeopardize the continued existence of listed species (*e.g.,* would not appreciably reduce the ability of any listed species under NMFS' jurisdiction to survive and recover in the wild) or result in the destruction or adverse modification of critical habitat.

Comment 21: FOA comments that NMFS must include a discussion of ethics and the rights of wildlife to manage wildlife-human interactions and suggests that this approach is consistent with NEPA and the ability to provide a ''full and fair discussion'' of the issues and inform decision makes and the public of the reasonable alternatives that would avoid or minimize adverse impacts or enhance the quality of the human environment. 40 CFR 1502.1.

Response: Consistent with the requirements of NEPA and CEQ's implementing regulations, NMFS prepared an Environmental Assessment prior to issuing an IHA to EMALL that includes a comprehensive assessment of the effects of this action and alternative actions on the human environment, including the impacts of the action and alternative actions on marine mammal populations. While NMFS shares FAO's concerns regarding the ethical treatment of animals, it is not possible to directly address ethical treatment in the context of incidental and unintended effects (*i.e.,* those authorized by this action), as any pain resulting from these impacts is far removed from any operator decisions and is neither observable, measurable or controllable. Instead, IHAs aim to minimize actual adverse effects to marine mammal individuals and populations.

Description of Marine Mammals in the Area of the Specified Activity

Marine mammals that regularly inhabit upper Cook Inlet and Nikiski activity areas are the beluga whale (*Delphinapterus leucas*), harbor porpoise (*Phocoena phocoena*), and harbor seal (*Phoca vitulina*) (Table 6). However, these species are found there in relatively low numbers, and generally only during the summer fish runs (Nemeth *et al.* 2007, Boveng *et al.* 2012). Killer whales (*Orcinus orca*) are occasionally observed in upper Cook Inlet where they have been observed attempting to prey on beluga whales (Shelden *et al.* 2003). Based on a number of factors, Shelden *et al.* (2003) concluded that the killer whales found in upper Cook Inlet to date are the transient type, while resident types

occasionally enter lower Cook Inlet. Marine mammals occasionally found in lower Cook Inlet include humpback whales (*Megaptera novaeangliae*), gray whales (*Eschrichtius robustus*), minke whales (*Balaenoptera acutorostrata*), Dall's porpoise (*Phocoena dalli*), and Steller sea lion (*Eumetopias jubatus).* Background information of species evaluated in this Authorization is detailed in Table 1 below.

TABLE 1—MARINE MAMMALS INHABITING THE COOK INLET ACTION AREA

Species	Stock	ESA/MMPA status [1]; strategic (Y/N)	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	Relative occurrence in Cook Inlet; season of occurrence
Killer whale	Alaska Resident	-;N	2,347 (N/A; 2,084; 2009)	Occasionally sighted in Lower Cook Inlet.
	Alaska Transient	-:N	345 (N/A; 303; 2003)	
Beluga whale	Cook Inlet	E/D;Y	312 (0.10; 280; 2012)	Use upper Inlet in summer and lower in winter: annual.
Harbor porpoise	Gulf of Alaska	-;Y	31,046 (0.214; 25,987; 1998)	Widespread in the Inlet: annual (less in winter).
Harbor seal	Cook Inlet/Shelikof	-;N	22,900 (0.053; 21,896; 2006)	Frequently found in upper and lower inlet; annual (more in northern Inlet in summer).

Beluga Whale (Delphinapterus leucas)

The Cook Inlet beluga whale Distinct Population Segment (DPS) is a small geographically isolated population that is separated from other beluga populations by the Alaska Peninsula. The population is genetically (mtDNA) distinct from other Alaska populations, suggesting that the Peninsula is an effective barrier to genetic exchange (O'Corry-Crowe *et al.* 1997) and that these whales may have been separated from other stocks at least since the last ice age. Laidre *et al.* (2000) examined data from over 20 marine mammal surveys conducted in the northern Gulf of Alaska and found that sightings of belugas outside Cook Inlet were exceedingly rare, and these were composed of a few stragglers from the Cook Inlet DPS observed at Kodiak Island, Prince William Sound, and Yakutat Bay. Several marine mammal surveys specific to Cook Inlet (Laidre *et al.* 2000, Speckman and Piatt 2000), including those that concentrated on beluga whales (Rugh *et al.* 2000, 2005a), clearly indicate that this stock largely confines itself to Cook Inlet. There is no indication that these whales make forays into the Bering Sea where they might intermix with other Alaskan stocks.

The Cook Inlet beluga DPS was originally estimated at 1,300 whales in 1979 (Calkins 1989) and has been the focus of management concerns since experiencing a dramatic decline in the 1990s. Between 1994 and 1998 the stock declined 47%, which has been attributed to overharvesting by subsistence hunting. During that period, subsistence hunting was estimated to have annually removed 10–15% of the population. Only five belugas have been harvested since 1999, yet the population has continued to decline (Allen and Angliss 2014), with the most recent estimate at only 312 animals (Allen and Angliss 2014). The NMFS listed the population as ''depleted'' in 2000 as a consequence of the decline, and as ''endangered'' under the ESA in 2008 when the population failed to recover following a moratorium on subsistence harvest. In April 2011, the NMFS designated critical habitat for the Cook Inlet beluga whale under the ESA (Figure 2 in the application).

Prior to the decline, this DPS was believed to range throughout Cook Inlet and occasionally into Prince William Sound and Yakutat (Nemeth *et al.* 2007). However, the range has contracted coincident with the population reduction (Speckman and Piatt 2000). During the summer and fall, beluga whales are concentrated near the Susitna River mouth, Knik Arm, Turnagain Arm, and Chickaloon Bay (Nemeth *et al.* 2007) where they feed on migrating eulachon (*Thaleichthys pacificus*) and salmon (Onchorhynchus spp.) (Moore *et al.* 2000). The limits of Critical Habitat Area 1 reflect the summer distribution (Figure 3 in the application). During the winter, beluga whales concentrate in deeper waters in the mid-inlet to Kalgin Island, and in the shallow waters along the west shore of Cook Inlet to Kamishak Bay. The limits of Critical Habitat Area 2 reflect the winter distribution. Some whales may also winter in and near Kachemak Bay.

Goetz *et al.* (2012) modeled beluga use in Cook Inlet based on the NMFS aerial surveys conducted between 1994 and 2008. The combined model results shown in Figure 3 in the application indicate a very clumped distribution of summering beluga whales, and that lower densities of belugas are expected to occur in most of the pipeline survey area (but not necessarily specific G&G survey locations; see Section 6.3 in the application) and the vicinity of the proposed Marine Terminal. However, Cook Inlet beluga whales begin moving into Knik Arm around August 15 where they spend about a month feeding on Eagle River salmon. The area between Nikiski, Kenai, and Kalgin Island provides important wintering habitat for Cook Inlet beluga whales. Use of this area would be expected between fall and spring, with animals largely absent during the summer months when G&G surveys would occur (Goetz *et al.* 2012).

Killer Whale (Orcinus orca)

Two different stocks of killer whales inhabit the Cook Inlet region of Alaska: The Alaska Resident Stock and the Gulf of Alaska, Aleutian Islands, Bering Sea Transient Stock (Allen and Angliss 2014). The Alaska Resident killer whale stock is estimated at 2,347 animals and occurs from Southeast Alaska to the Bering Sea (Allen and Angliss 2014). Resident killer whales feed exclusively on fish and are genetically distinct from transient whales (Saulitis *et al.* 2000).

The transient killer whales feed primarily on marine mammals (Saulitis *et al.* 2000). The transient population inhabiting the Gulf of Alaska shares mitochondrial DNA haplotypes with whales found along the Aleutian Islands and the Bering Sea, suggesting a common stock, although there appears to be some subpopulation genetic structuring occurring to suggest the gene flow between groups is limited (see Allen and Angliss 2014). For the three regions combined, the transient population has been estimated at 587 animals (Allen and Angliss 2014).

Killer whales are occasionally observed in lower Cook Inlet, especially near Homer and Port Graham (Shelden

et al. 2003, Rugh *et al.* 2005a). The few whales that have been photographically identified in lower Cook Inlet belong to resident groups more commonly found in nearby Kenai Fjords and Prince William Sound (Shelden *et al.* 2003). Prior to the 1980s, killer whale sightings in upper Cook Inlet were very rare. During aerial surveys conducted between 1993 and 2004, killer whales were observed on only three flights, all in the Kachemak and English Bay area (Rugh *et al.* 2005a). However, anecdotal reports of killer whales feeding on belugas in upper Cook Inlet began increasing in the 1990s, possibly in response to declines in sea lion and harbor seal prey elsewhere (Shelden *et al.* 2003). These sporadic ventures of transient killer whales into beluga summering grounds have been implicated as a possible contributor to the decline of Cook Inlet belugas in the 1990s, although the number of confirmed mortalities from killer whales is small (Shelden *et al.* 2003). If killer whales were to venture into upper Cook Inlet in 2015, they might be encountered during the G&G Program.

Harbor Porpoise (Phocoena phocoena)

Harbor porpoise are small (approximately 1.2 m [4 ft] in length), relatively inconspicuous toothed whales. The Gulf of Alaska Stock is distributed from Cape Suckling to Unimak Pass and was most recently estimated at 31,046 animals (Allen and Angliss 2014). They are found primarily in coastal waters less than 100 m (328 ft) deep (Hobbs and Waite 2010) where they feed on Pacific herring (*Clupea pallasii*), other schooling fishes, and cephalopods.

Although they have been frequently observed during aerial surveys in Cook Inlet, most sightings of harbor porpoise are of single animals, and are concentrated at Chinitna and Tuxedni bays on the west side of lower Cook Inlet (Rugh *et al.* 2005a). Dahlheim *et al.* (2000) estimated the 1991 Cook Inlet-wide population at only 136 animals. Also, during marine mammal monitoring efforts conducted in upper Cook Inlet by Apache from 2012 to 2014, harbor porpoise represented less than 2% of all marine mammal sightings. However, they are one of the three marine mammals (besides belugas and harbor seals) regularly seen in upper Cook Inlet (Nemeth *et al.* 2007), especially during spring eulachon and summer salmon runs. Because harbor porpoise have been observed throughout Cook Inlet during the summer months, including mid-inlet waters, they represent species that might be encountered during G&G Program surveys in upper Cook Inlet.

Harbor Seal (Phoca vitulina)

At over 150,000 animals state-wide (Allen and Angliss 2014), harbor seals are one of the more common marine mammal species in Alaskan waters. They are most commonly seen hauled out at tidal flats and rocky areas. Harbor seals feed largely on schooling fish such as Alaska Pollock, Pacific cod, salmon, Pacific herring, eulachon, and squid. Although harbor seals may make seasonal movements in response to prey, they are resident to Alaska and do not migrate.

The Cook Inlet/Shelikof Stock, ranging from approximately Anchorage down along the south side of the Alaska Peninsula to Unimak Pass, has been recently estimated at a stable 22,900 (Allen and Angliss 2014). Large numbers concentrate at the river mouths and embayments of lower Cook Inlet, including the Fox River mouth in Kachemak Bay (Rugh *et al.* 2005a). Montgomery *et al.* (2007) recorded over 200 haulout sites in lower Cook Inlet alone. However, only a few dozen to a couple hundred seals seasonally occur in upper Cook Inlet (Rugh *et al.* 2005a), mostly at the mouth of the Susitna River where their numbers vary with the spring eulachon and summer salmon runs (Nemeth *et al.* 2007, Boveng *et al.* 2012). Review of NMFS aerial survey data collected from 1993–2012 (Shelden *et al.* 2013) finds that the annual high counts of seals hauled out in Cook Inlet ranged from about 100–380, with most of these animals hauling out at the mouths of the Theodore and Lewis Rivers. There are certainly thousands of harbor seals occurring in lower Cook Inlet, but no references have been found showing more than about 400 harbor seals occurring seasonally in upper Cook Inlet. In 2012, up to 100 harbor seals were observed hauled out at the mouths of the Theodore and Lewis rivers (located about 16 km [10 mi] northeast of the pipeline survey area) during monitoring activity associated with Apache's 2012 Cook Inlet seismic program, and harbor seals constituted 60 percent of all marine mammal sightings by Apache observers during 2012 to 2014 survey and monitoring efforts (L. Parker, Apache, pers. comm.). Montgomery *et al.* (2007) also found that seals elsewhere in Cook Inlet move in response to local steelhead (*Onchorhynchus mykiss*) and salmon runs. Harbor seals may be encountered during G&G surveys in Cook Inlet.

Humpback Whale (Megaptera novaeangliae)

Although there is considerable distributional overlap in the humpback whale stocks that use Alaska, the whales seasonally found in lower Cook Inlet are probably of the Central North Pacific stock. Listed as endangered under the ESA, this stock has recently been estimated at 7,469, with the portion of the stock that feeds in the Gulf of Alaska estimated at 2,845 animals (Allen and Angliss 2014). The Central North Pacific stock winters in Hawaii and summers from British Columbia to the Aleutian Islands (Calambokidis *et al.* 1997), including Cook Inlet.

Humpback use of Cook Inlet is largely confined to lower Cook Inlet. They have been regularly seen near Kachemak Bay during the summer months (Rugh *et al.* 2005a), and there is a whale-watching venture in Homer capitalizing on this seasonal event. There are anecdotal observations of humpback whales as far north as Anchor Point, with recent summer observations extending to Cape Starichkof (Owl Ridge 2014). Because of the southern distribution of humpbacks in Cook Inlet, it is unlikely that they will be encountered during this activity in close enough proximity to cause Level B harassment. Therefore, no take is authorized for humpback whales.

Gray Whale (Eschrichtius robustus)

Each spring, the Eastern North Pacific stock of gray whale migrates 8,000 kilometers (5,000 miles) northward from breeding lagoons in Baja California to feeding grounds in the Bering and Chukchi seas, reversing their travel again in the fall (Rice and Wolman 1971). Their migration route is for the most part coastal until they reach the feeding grounds. A small portion of whales do not annually complete the full circuit, as small numbers can be found in the summer feeding along the Oregon, Washington, British Columbia, and Alaskan coasts (Rice *et al.* 1984, Moore *et al.* 2007).

Human exploitation reduced this stock to an estimated ''few thousand'' animals (Jones and Schwartz 2002). However, by the late 1980s, the stock was appearing to reach carrying capacity and estimated to be at 26,600 animals (Jones and Schwartz 2002). By 2002, that stock had been reduced to about 16,000 animals, especially following unusually high mortality events in 1999 and 2000 (Allen and Angliss 2014). The stock has continued to grow since then and is currently estimated at 19,126 animals with a minimum estimate of 18,017 (Carretta *et al.* 2013). Most gray whales migrate past

the mouth of Cook Inlet to and from northern feeding grounds. However, small numbers of summering gray whales have been noted by fisherman near Kachemak Bay and north of Anchor Point. Further, summering gray whales were seen offshore of Cape Starichkof by marine mammal observers monitoring Buccaneer's Cosmopolitan drilling program in 2013 (Owl Ridge 2014). Regardless, gray whales are not expected to be encountered in upper Cook Inlet, where the activity is concentrated, north of Kachemak Bay. Therefore, it is unlikely that they will be encountered during this activity in close enough proximity to cause Level B harassment and are not considered further in this final Authorization notice.

Minke Whale (Balaenoptera acutorostrata)

Minke whales are the smallest of the rorqual group of baleen whales reaching lengths of up to 35 feet. They are also the most common of the baleen whales, although there are no population estimates for the North Pacific, although estimates have been made for some portions of Alaska. Zerbini *et al.* (2006) estimated the coastal population between Kenai Fjords and the Aleutian Islands at 1,233 animals.

During Cook Inlet-wide aerial surveys conducted from 1993 to 2004, minke whales were encountered only twice (1998, 1999), both times off Anchor Point 16 miles northwest of Homer. Recently, several minke whales were recorded off Cape Starichkof in early summer 2013 during exploratory drilling conducted there (Owl Ridge 2014). There are no records north of Cape Starichkof, and this species is unlikely to be seen in upper Cook Inlet. There is little chance of encountering a minke whale during these activities. Therefore, no take of minke whales is authorized.

Dall's Porpoise (Phocoenoides dalli)

Dall's porpoise are widely distributed throughout the North Pacific Ocean including Alaska, although they are not found in upper Cook Inlet and the shallower waters of the Bering, Chukchi, and Beaufort Seas (Allen and Angliss 2014). Compared to harbor porpoise, Dall's porpoise prefer the deep offshore and shelf slope waters. The Alaskan population has been estimated at 83,400 animals (Allen and Angliss 2014), making it one of the more common cetaceans in the state. Dall's porpoise have been observed in lower Cook Inlet, including Kachemak Bay and near Anchor Point (Owl Ridge 2014), but sightings there are rare. The concentration of sightings of Dall's porpoise in a southerly part of the Inlet suggest it is unlikely they will be encountered during EMALL's activities. Therefore, no take of Dall's porpoise is authorized.

Steller Sea Lion (Eumetopias jubatus)

The Western Stock of the Steller sea lion is defined as all populations west of longitude 144° W. to the western end of the Aleutian Islands. The most recent estimate for this stock is 45,649 animals (Allen and Angliss 2014), considerably less than that estimated 140,000 animals in the 1950s (Merrick *et al.* 1987). Because of this dramatic decline, the stock was listed under the ESA as a threatened DPS in 1990, and relisted as endangered in 1997. Critical habitat was designated in 1993, and is defined as a 20-nautical-mile radius around all major rookeries and haulout sites. The 20-nautical-mile buffer was established based on telemetry data that indicated these sea lions concentrated their summer foraging effort within this distance of rookeries and haul outs.

Steller sea lions inhabit lower Cook Inlet, especially in the vicinity of Shaw Island and Elizabeth Island (Nagahut Rocks) haulout sites (Rugh *et al.* 2005a), but are rarely seen in upper Cook Inlet (Nemeth *et al.* 2007). Of the 42 Steller sea lion groups recorded during Cook Inlet aerial surveys between 1993 and 2004, none were recorded north of Anchor Point and only one in the vicinity of Kachemak Bay (Rugh *et al.* 2005a). Marine mammal observers associated with Buccaneer's drilling project off Cape Starichkof did observe seven Steller sea lions during the summer of 2013 (Owl Ridge 2014).

The upper reaches of Cook Inlet may not provide adequate foraging conditions for sea lions for establishing a major haul out presence. Steller sea lions feed largely on walleye pollock, salmon and arrowtooth flounder during the summer, and walleye pollock and Pacific cod during the winter (Sinclair and Zeppelin 2002), none of which, except for salmon, are found in abundance in upper Cook Inlet (Nemeth *et al.* 2007). Steller sea lions are unlikely to be encountered during operations in upper Cook Inlet, as they are primarily encountered along the Kenai Peninsula, especially closer to Anchor Point. Therefore, no take of Steller sea lion is authorized.

Potential Effects of the Specified Activity on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components (seismic airgun operations, sub-bottom profiler chirper and boomer, vibracore) of the specified activity may impact marine mammals. The ''Estimated Take by Incidental Harassment'' section later in this document will include a quantitative analysis of the number of individuals that NMFS expects to be taken by this activity. The ''Negligible Impact Analysis'' section will include the analysis of how this specific proposed activity would impact marine mammals and will consider the content of this section, the ''Estimated Take by Incidental Harassment'' section, the ''Mitigation'' section, and the ''Anticipated Effects on Marine Mammal Habitat'' section to draw conclusions regarding the likely impacts of this activity on the reproductive success or survivorship of individuals and from that on the affected marine mammal populations or stocks.

NMFS intends to provide a background of potential effects of EMALL's activities in this section. Operating active acoustic sources have the potential for adverse effects on marine mammals. The majority of anticipated impacts would be from the use of active acoustic sources.

Acoustic Impacts

When considering the influence of various kinds of sound on the marine environment, it is necessary to understand that different kinds of marine life are sensitive to different frequencies of sound. Current data indicate that not all marine mammal species have equal hearing capabilities (Richardson *et al.,* 1995; Southall *et al.,* 1997; Wartzok and Ketten, 1999; Au and Hastings, 2008).

Southall *et al.* (2007) designated ''functional hearing groups'' for marine mammals based on available behavioral data; audiograms derived from auditory evoked potentials; anatomical modeling; and other data. Southall *et al.* (2007) also estimated the lower and upper frequencies of functional hearing for each group. However, animals are less sensitive to sounds at the outer edges of their functional hearing range and are more sensitive to a range of frequencies within the middle of their functional hearing range.

The functional groups and the associated frequencies are:

- Low frequency cetaceans (13 species of mysticetes): Functional hearing estimates occur between approximately 7 Hertz (Hz) and 25 kHz (extended from 22 kHz based on data indicating that some mysticetes can hear above 22 kHz; Au *et al.*, 2006; Lucifredi and Stein, 2007; Ketten and Mountain, 2009; Tubelli *et al.*, 2012);

• Mid-frequency cetaceans (32 species of dolphins, six species of larger toothed whales, and 19 species of beaked and bottlenose whales): Functional hearing estimates occur between approximately 150 Hz and 160 kHz;

• High-frequency cetaceans (eight species of true porpoises, six species of river dolphins, *Kogia,* the franciscana, and four species of *cephalorhynchids*): Functional hearing estimates occur between approximately 200 Hz and 180 kHz; and

• Pinnipeds in water: Phocid (true seals) functional hearing estimates occur between approximately 75 Hz and 100 kHz (Hemila *et al.,* 2006; Mulsow *et al.*, 2011; Reichmuth *et al.*, 2013) and otariid (seals and sea lions) functional hearing estimates occur between approximately 100 Hz to 40 kHz.

As mentioned previously in this document, Cook Inlet beluga whales, harbor porpoise, killer whales, and harbor seals (3 odontocetes and 1 phocid) would likely occur in the action area. Table 2 presents the classification of these species into their respective functional hearing group. NMFS consider a species' functional hearing group when analyzing the effects of exposure to sound on marine mammals.

TABLE 2—CLASSIFICATION OF MARINE MAMMALS THAT COULD POTENTIALLY OCCUR IN THE PROPOSED ACTIVITY AREA IN COOK INLET, 2015 BY FUNCTIONAL HEARING GROUP

[Southall *et al.*, 2007]

Mid-Frequency Hearing Range.	Beluga whale, killer whale.
High Frequency Hearing Range.	Harbor porpoise.
Pinnipeds in Water Hearing Range.	Harbor seal.

1. Potential Effects of Airgun Sounds on Marine Mammals

The effects of sounds from airgun operations might include one or more of the following: Tolerance, masking of natural sounds, behavioral disturbance, temporary or permanent impairment, or non-auditory physical or physiological effects (Richardson *et al.*, 1995; Gordon *et al.*, 2003; Nowacek *et al.*, 2007; Southall *et al.*, 2007). The effects of noise on marine mammals are highly variable, often depending on species and contextual factors (based on Richardson *et al.*, 1995).

Tolerance

Studies on marine mammals' tolerance to sound in the natural environment are relatively rare. Richardson *et al.* (1995) defined tolerance as the occurrence of marine mammals in areas where they are exposed to human activities or manmade noise. In many cases, tolerance develops by the animal habituating to the stimulus (*i.e.,* the gradual waning of responses to a repeated or ongoing stimulus) (Richardson, *et al.*, 1995), but because of ecological or physiological requirements, many marine animals may need to remain in areas where they are exposed to chronic stimuli (Richardson, *et al.*, 1995).

Numerous studies have shown that pulsed sounds from airguns are often readily detectable in the water at distances of many kilometers. Several studies have also shown that marine mammals at distances of more than a few kilometers from operating seismic vessels often show no apparent response. That is often true even in cases when the pulsed sounds must be readily audible to the animals based on measured received levels and the hearing sensitivity of the marine mammal group. Although various baleen whales and toothed whales, and (less frequently) pinnipeds have been shown to react behaviorally to airgun pulses under some conditions, at other times marine mammals of all three types have shown no overt reactions (Stone, 2003; Stone and Tasker, 2006; Moulton *et al.* 2005, 2006) and (MacLean and Koski, 2005; Bain and Williams, 2006).

Weir (2008) observed marine mammal responses to seismic pulses from a 24 airgun array firing a total volume of either 5,085 in^3 or 3,147 in^3 in Angolan waters between August 2004 and May 2005. Weir (2008) recorded a total of 207 sightings of humpback whales (n = 66), sperm whales (n = 124), and Atlantic spotted dolphins (n = 17) and reported that there were no significant differences in encounter rates (sightings per hour) for humpback and sperm whales according to the airgun array's operational status (*i.e.,* active versus silent).

Bain and Williams (2006) examined the effects of a large airgun array (maximum total discharge volume of 1,100 in^3) on six species in shallow waters off British Columbia and Washington: Harbor seal, California sea lion, Steller sea lion, gray whale, Dall's porpoise, and harbor porpoise. Harbor porpoises showed reactions at received levels less than 155 dB re: 1 μPa at a distance of greater than 70 km (43 mi) from the seismic source (Bain and Williams, 2006). However, the tendency for greater responsiveness by harbor porpoise is consistent with their relative responsiveness to boat traffic and some other acoustic sources (Richardson, *et al.*, 1995; Southall, *et al.*, 2007). In contrast, the authors reported that gray whales seemed to tolerate exposures to sound up to approximately 170 dB re: 1 μPa (Bain and Williams, 2006) and Dall's porpoises occupied and tolerated areas receiving exposures of 170–180 dB re: 1 μPa (Bain and Williams, 2006; Parsons, *et al.*, 2009). The authors observed several gray whales that moved away from the airguns toward deeper water where sound levels were higher due to propagation effects resulting in higher noise exposures (Bain and Williams, 2006). However, it is unclear whether their movements reflected a response to the sounds (Bain and Williams, 2006). Thus, the authors surmised that the lack of gray whale responses to higher received sound levels were ambiguous at best because one expects the species to be the most sensitive to the low-frequency sound emanating from the airguns (Bain and Williams, 2006).

Pirotta *et al.*, (2014) observed short-term responses of harbor porpoises to a two-dimensional (2–D) seismic survey in an enclosed bay in northeast Scotland which did not result in broad-scale displacement. The harbor porpoises that remained in the enclosed bay area reduced their buzzing activity by 15 percent during the seismic survey (Pirotta, *et al.*, 2014). Thus, the authors suggest that animals exposed to anthropogenic disturbance may make trade-offs between perceived risks and the cost of leaving disturbed areas (Pirotta, *et al.*, 2014).

Masking

Marine mammals use acoustic signals for a variety of purposes, which differ among species, but include communication between individuals, navigation, foraging, reproduction, avoiding predators, and learning about their environment (Erbe and Farmer, 2000; Tyack, 2000).

The term masking refers to the inability of an animal to recognize the occurrence of an acoustic stimulus because of interference of another acoustic stimulus (Clark *et al.*, 2009). Thus, masking is the obscuring of sounds of interest by other sounds, often at similar frequencies. It is a phenomenon that affects animals that are trying to receive acoustic information about their environment, including sounds from other members of their species, predators, prey, and sounds that allow them to orient in their environment. Masking these acoustic signals can disturb the behavior of individual animals, groups of animals,

or entire populations in certain circumstances.

Introduced underwater sound may, through masking, reduce the effective communication distance of a marine mammal species if the frequency of the source is close to that used as a signal by the marine mammal, and if the anthropogenic sound is present for a significant fraction of the time (Richardson *et al.*, 1995).

Marine mammals are thought to be able to compensate for masking by adjusting their acoustic behavior through shifting call frequencies, increasing call volume, and increasing vocalization rates. For example in one study, blue whales increased call rates when exposed to noise from seismic surveys in the St. Lawrence Estuary (Di Iorio and Clark, 2010). Other studies reported that some North Atlantic right whales exposed to high shipping noise increased call frequency (Parks *et al.*, 2007) and some humpback whales responded to low-frequency active sonar playbacks by increasing song length (Miller *et al.*, 2000). Additionally, beluga whales change their vocalizations in the presence of high background noise possibly to avoid masking calls (Au *et al.*, 1985; Lesage *et al.*, 1999; Scheifele *et al.*, 2005).

Studies have shown that some baleen and toothed whales continue calling in the presence of seismic pulses, and some researchers have heard these calls between the seismic pulses (*e.g.*, McDonald *et al.*, 1995; Greene *et al.*, 1999; Nieukirk *et al.*, 2004; Smultea *et al.*, 2004; Holst *et al.*, 2005a, 2005b, 2006; and Dunn and Hernandez, 2009).

In contrast, Clark and Gagnon (2006) reported that fin whales in the northeast Pacific Ocean went silent for an extended period starting soon after the onset of a seismic survey in the area. Similarly, NMFS is aware of one report that observed sperm whales ceased calls when exposed to pulses from a very distant seismic ship (Bowles *et al.*, 1994). However, more recent studies have found that sperm whales continued calling in the presence of seismic pulses (Madsen *et al.*, 2002; Tyack *et al.*, 2003; Smultea *et al.*, 2004; Holst *et al.*, 2006; and Jochens *et al.*, 2008).

Risch *et al.,* (2012) documented reductions in humpback whale vocalizations in the Stellwagen Bank National Marine Sanctuary concurrent with transmissions of the Ocean Acoustic Waveguide Remote Sensing (OAWRS) low-frequency fish sensor system at distances of 200 km (124 mi) from the source. The recorded OAWRS produced series of frequency modulated pulses and the signal received levels ranged from 88 to 110 dB re: 1 μPa (Risch, *et al.*, 2012). The authors hypothesized that individuals did not leave the area but instead ceased singing and noted that the duration and frequency range of the OAWRS signals (a novel sound to the whales) were similar to those of natural humpback whale song components used during mating (Risch *et al.*, 2012). Thus, the novelty of the sound to humpback whales in the study area provided a compelling contextual probability for the observed effects (Risch *et al.*, 2012). However, the authors did not state or imply that these changes had long-term effects on individual animals or populations (Risch *et al.*, 2012).

Several studies have also reported hearing dolphins and porpoises calling while airguns were operating (*e.g.*, Gordon *et al.*, 2004; Smultea *et al.*, 2004; Holst *et al.*, 2005a, b; and Potter *et al.*, 2007). The sounds important to small odontocetes are predominantly at much higher frequencies than the dominant components of airgun sounds, thus limiting the potential for masking in those species.

Although some degree of masking is inevitable when high levels of manmade broadband sounds are present in the sea, marine mammals have evolved systems and behavior that function to reduce the impacts of masking. Odontocete conspecifics may readily detect structured signals, such as the echolocation click sequences of small toothed whales even in the presence of strong background noise because their frequency content and temporal features usually differ strongly from those of the background noise (Au and Moore, 1988, 1990). The components of background noise that are similar in frequency to the sound signal in question primarily determine the degree of masking of that signal.

Redundancy and context can also facilitate detection of weak signals. These phenomena may help marine mammals detect weak sounds in the presence of natural or manmade noise. Most masking studies in marine mammals present the test signal and the masking noise from the same direction. The sound localization abilities of marine mammals suggest that, if signal and noise come from different directions, masking would not be as severe as the usual types of masking studies might suggest (Richardson *et al.*, 1995). The dominant background noise may be highly directional if it comes from a particular anthropogenic source such as a ship or industrial site. Directional hearing may significantly reduce the masking effects of these sounds by improving the effective signal-to-noise ratio. In the cases of higher frequency hearing by the bottlenose dolphin, beluga whale, and killer whale, empirical evidence confirms that masking depends strongly on the relative directions of arrival of sound signals and the masking noise (Penner *et al.*, 1986; Dubrovskiy, 1990; Bain *et al.*, 1993; Bain and Dahlheim, 1994). Toothed whales and probably other marine mammals as well, have additional capabilities besides directional hearing that can facilitate detection of sounds in the presence of background noise. There is evidence that some toothed whales can shift the dominant frequencies of their echolocation signals from a frequency range with a lot of ambient noise toward frequencies with less noise (Au *et al.*, 1974, 1985; Moore and Pawloski, 1990; Thomas and Turl, 1990; Romanenko and Kitain, 1992; Lesage *et al.*, 1999). A few marine mammal species increase the source levels or alter the frequency of their calls in the presence of elevated sound levels (Dahlheim, 1987; Au, 1993; Lesage *et al.*, 1993, 1999; Terhune, 1999; Foote *et al.*, 2004; Parks *et al.*, 2007, 2009; Di Iorio and Clark, 2010; Holt *et al.*, 2009).

These data demonstrating adaptations for reduced masking pertain mainly to the very high frequency echolocation signals of toothed whales. There is less information about the existence of corresponding mechanisms at moderate or low frequencies or in other types of marine mammals. For example, Zaitseva *et al.* (1980) found that, for the bottlenose dolphin, the angular separation between a sound source and a masking noise source had little effect on the degree of masking when the sound frequency was 18 kHz, in contrast to the pronounced effect at higher frequencies. Studies have noted directional hearing at frequencies as low as 0.5–2 kHz in several marine mammals, including killer whales (Richardson *et al.*, 1995a). This ability may be useful in reducing masking at these frequencies. In summary, high levels of sound generated by anthropogenic activities may act to mask the detection of weaker biologically important sounds by some marine mammals. This masking may be more prominent for lower frequencies. For higher frequencies, such as that used in echolocation by toothed whales, several mechanisms are available that may allow them to reduce the effects of such masking.

Behavioral Disturbance

Marine mammals may behaviorally react to sound when exposed to anthropogenic noise. Reactions to

sound, if any, depend on species, state of maturity, experience, current activity, reproductive state, time of day, and many other factors (Richardson *et al.*, 1995; D'Spain & Wartzok, 2004; Southall *et al.*, 2007; Weilgart, 2007).

Types of behavioral reactions can include the following: changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where noise sources are located; and/or flight responses (*e.g.*, pinnipeds flushing into water from haulouts or rookeries).

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, one could expect the consequences of behavioral modification to be biologically significant if the change affects growth, survival, and/or reproduction (*e.g.*, Lusseau and Bejder, 2007; Weilgart, 2007). Examples of behavioral modifications that could impact growth, survival, or reproduction include:

- Drastic changes in diving/surfacing patterns (such as those associated with beaked whale stranding related to exposure to military mid-frequency tactical sonar);
- Permanent habitat abandonment due to loss of desirable acoustic environment; and
- Disruption of feeding or social interaction resulting in significant energetic costs, inhibited breeding, or cow-calf separation.

The onset of behavioral disturbance from anthropogenic noise depends on both external factors (characteristics of noise sources and their paths) and the receiving animals (hearing, motivation, experience, demography) and is also difficult to predict (Richardson *et al.*, 1995; Southall *et al.,* 2007). Many studies have also shown that marine mammals at distances more than a few kilometers away often show no apparent response when exposed to seismic activities (*e.g.,* Madsen & Mohl, 2000 for sperm whales; Malme *et al.*, 1983, 1984 for gray whales; and Richardson *et al.*, 1986 for bowhead whales). Other studies have shown that marine mammals continue important behaviors in the presence of seismic pulses (*e.g.*, Dunn & Hernandez, 2009 for blue whales; Greene Jr. *et al.*, 1999 for bowhead whales; Holst and Beland, 2010; Holst and Smultea, 2008; Holst *et al.*, 2005; Nieukirk *et al.*, 2004; Richardson, *et al.*, 1986; Smultea *et al.*, 2004).

Baleen Whales: Studies have shown that underwater sounds from seismic activities are often readily detectable by baleen whales in the water at distances of many kilometers (Castellote *et al.*, 2012 for fin whales).

Observers have seen various species of *Balaenoptera* (blue, sei, fin, and minke whales) in areas ensonified by airgun pulses (Stone, 2003; MacLean and Haley, 2004; Stone and Tasker, 2006), and have localized calls from blue and fin whales in areas with airgun operations (*e.g.*, McDonald *et al.*, 1995; Dunn and Hernandez, 2009; Castellote *et al.*, 2010). Sightings by observers on seismic vessels off the United Kingdom from 1997 to 2000 suggest that, during times of good visibility, sighting rates for mysticetes (mainly fin and sei whales) were similar when large arrays of airguns were shooting versus silent (Stone, 2003; Stone and Tasker, 2006). However, these whales tended to exhibit localized avoidance, remaining significantly further (on average) from the airgun array during seismic operations compared with non-seismic periods (Stone and Tasker, 2006).

Ship-based monitoring studies of baleen whales (including blue, fin, sei, minke, and humpback whales) in the northwest Atlantic found that overall, this group had lower sighting rates during seismic versus non-seismic periods (Moulton and Holst, 2010). The authors observed that baleen whales as a group were significantly farther from the vessel during seismic compared with non-seismic periods. Moreover, the authors observed that the whales swam away more often from the operating seismic vessel (Moulton and Holst, 2010). Initial sightings of blue and minke whales were significantly farther from the vessel during seismic operations compared to non-seismic periods and the authors observed the same trend for fin whales (Moulton and Holst, 2010). Also, the authors observed that minke whales most often swam away from the vessel when seismic operations were underway (Moulton and Holst, 2010).

Toothed Whales: Few systematic data are available describing reactions of toothed whales to noise pulses. However, systematic work on sperm whales is underway (*e.g.*, Gordon *et al.*, 2006; Madsen *et al.*, 2006; Winsor and Mate, 2006; Jochens *et al.*, 2008; Miller *et al.*, 2009) and there is an increasing amount of information about responses of various odontocetes, including killer whales and belugas, to seismic surveys based on monitoring studies (*e.g.*, Stone, 2003; Smultea *et al.*, 2004; Moulton and Miller, 2005; Bain and Williams, 2006; Holst *et al.*, 2006; Stone and Tasker, 2006; Potter *et al.*, 2007; Hauser *et al.*, 2008; Holst and Smultea, 2008; Weir, 2008; Barkaszi *et al.*, 2009; Richardson *et al.*, 2009; Moulton and Holst, 2010). Reactions of toothed whales to large arrays of airguns are variable and, at least for delphinids, seem to be confined to a smaller radius than has been observed for mysticetes.

Observers stationed on seismic vessels operating off the United Kingdom from 1997–2000 have provided data on the occurrence and behavior of various toothed whales exposed to seismic pulses (Stone, 2003; Gordon *et al.*, 2004). The studies note that killer whales were significantly farther from large airgun arrays during periods of active airgun operations compared with periods of silence. The displacement of the median distance from the array was approximately 0.5 km (0.3 mi) or more. Killer whales also appear to be more tolerant of seismic shooting in deeper water (Stone, 2003; Gordon *et al.*, 2004).

The beluga may be a species that (at least in certain geographic areas) shows long-distance avoidance of seismic vessels. Aerial surveys during seismic operations in the southeastern Beaufort Sea recorded much lower sighting rates of beluga whales within 10–20 km (6.2–12.4 mi) of an active seismic vessel. These results were consistent with the low number of beluga sightings reported by observers aboard the seismic vessel, suggesting that some belugas might have been avoiding the seismic operations at distances of 10–20 km (6.2–12.4 mi) (Miller *et al.*, 2005).

Delphinids

Seismic operators and protected species observers (observers) on seismic vessels regularly see dolphins and other small toothed whales near operating airgun arrays, but in general there is a tendency for most delphinids to show some avoidance of operating seismic vessels (*e.g.*, Goold, 1996a,b,c; Calambokidis and Osmek, 1998; Stone, 2003; Moulton and Miller, 2005; Holst *et al.*, 2006; Stone and Tasker, 2006; Weir, 2008; Richardson *et al.*, 2009; Barkaszi *et al.*, 2009; Moulton and Holst, 2010). Some dolphins seem to be attracted to the seismic vessel and floats, and some ride the bow wave of the seismic vessel even when large arrays of airguns are firing (*e.g.*, Moulton and Miller, 2005). Nonetheless, there have been indications that small toothed whales sometimes move away or maintain a somewhat greater distance from the vessel when a large array of

airguns is operating than when it is silent (*e.g.*, Goold, 1996a,b,c; Stone and Tasker, 2006; Weir, 2008; Moulton and Holst, 2010). In most cases, the avoidance radii for delphinids appear to be small, on the order of one km or less, and some individuals show no apparent avoidance.

Captive bottlenose dolphins exhibited changes in behavior when exposed to strong pulsed sounds similar in duration to those typically used in seismic surveys (Finneran *et al.*, 2000, 2002, 2005). However, the animals tolerated high received levels of sound (pk–pk level >200 dB re 1 μPa) before exhibiting aversive behaviors.

Porpoises

Results for porpoises depend upon the species. The limited available data suggest that harbor porpoises show stronger avoidance of seismic operations than do Dall's porpoises (Stone, 2003; MacLean and Koski, 2005; Bain and Williams, 2006; Stone and Tasker, 2006). Dall's porpoises seem relatively tolerant of airgun operations (MacLean and Koski, 2005; Bain and Williams, 2006), although they too have been observed to avoid large arrays of operating airguns (Calambokidis and Osmek, 1998; Bain and Williams, 2006). This apparent difference in responsiveness of these two porpoise species is consistent with their relative responsiveness to boat traffic and some other acoustic sources (Richardson *et al.*, 1995; Southall *et al.*, 2007).

Pinnipeds

Pinnipeds are not likely to show a strong avoidance reaction to the airgun sources proposed for use. Visual monitoring from seismic vessels has shown only slight (if any) avoidance of airguns by pinnipeds and only slight (if any) changes in behavior. Monitoring work in the Alaskan Beaufort Sea during 1996–2001 provided considerable information regarding the behavior of Arctic ice seals exposed to seismic pulses (Harris *et al.*, 2001; Moulton and Lawson, 2002). These seismic projects usually involved arrays of 6 to 16 airguns with total volumes of 560 to 1,500 in^3. The combined results suggest that some seals avoid the immediate area around seismic vessels. In most survey years, ringed seal (*Phoca hispida*) sightings tended to be farther away from the seismic vessel when the airguns were operating than when they were not (Moulton and Lawson, 2002). However, these avoidance movements were relatively small, on the order of 100 m (328 ft) to a few hundreds of meters, and many seals remained within 100–200 m (328–656 ft) of the trackline as the operating airgun array passed by the animals. Seal sighting rates at the water surface were lower during airgun array operations than during no-airgun periods in each survey year except 1997. Similarly, seals are often very tolerant of pulsed sounds from seal-scaring devices (Mate and Harvey, 1987; Jefferson and Curry, 1994; Richardson *et al.*, 1995). However, initial telemetry work suggests that avoidance and other behavioral reactions by two other species of seals to small airgun sources may at times be stronger than evident to date from visual studies of pinniped reactions to airguns (Thompson *et al.*, 1998).

Hearing Impairment

Exposure to high intensity sound for a sufficient duration may result in auditory effects such as a noise-induced threshold shift—an increase in the auditory threshold after exposure to noise (Finneran *et al.*, 2005). Factors that influence the amount of threshold shift include the amplitude, duration, frequency content, temporal pattern, and energy distribution of noise exposure. The magnitude of hearing threshold shift normally decreases over time following cessation of the noise exposure. The amount of threshold shift just after exposure is the initial threshold shift. If the threshold shift eventually returns to zero (*i.e.*, the threshold returns to the pre-exposure value), it is a temporary threshold shift (Southall *et al.*, 2007).

Threshold Shift (noise-induced loss of hearing)—When animals exhibit reduced hearing sensitivity (*i.e.*, sounds must be louder for an animal to detect them) following exposure to an intense sound or sound for long duration, it is referred to as a noise-induced threshold shift (TS). An animal can experience temporary threshold shift (TTS) or permanent threshold shift (PTS). TTS can last from minutes or hours to days (*i.e.*, there is complete recovery), can occur in specific frequency ranges (*i.e.*, an animal might only have a temporary loss of hearing sensitivity between the frequencies of 1 and 10 kHz), and can be of varying amounts (for example, an animal's hearing sensitivity might be reduced initially by only 6 dB or reduced by 30 dB). PTS is permanent, but some recovery is possible. PTS can also occur in a specific frequency range and amount as mentioned above for TTS.

The following physiological mechanisms are thought to play a role in inducing auditory TS: Effects to sensory hair cells in the inner ear that reduce their sensitivity, modification of the chemical environment within the sensory cells, residual muscular activity in the middle ear, displacement of certain inner ear membranes, increased blood flow, and post-stimulatory reduction in both efferent and sensory neural output (Southall *et al.*, 2007). The amplitude, duration, frequency, temporal pattern, and energy distribution of sound exposure all can affect the amount of associated TS and the frequency range in which it occurs. As amplitude and duration of sound exposure increase, so, generally, does the amount of TS, along with the recovery time. For intermittent sounds, less TS could occur than compared to a continuous exposure with the same energy (some recovery could occur between intermittent exposures depending on the duty cycle between sounds) (Kryter *et al.*, 1966; Ward, 1997). For example, one short but loud (higher SPL) sound exposure may induce the same impairment as one longer but softer sound, which in turn may cause more impairment than a series of several intermittent softer sounds with the same total energy (Ward, 1997). Additionally, though TTS is temporary, prolonged exposure to sounds strong enough to elicit TTS, or shorter-term exposure to sound levels well above the TTS threshold, can cause PTS, at least in terrestrial mammals (Kryter, 1985). Although in the case of EMALL'ssurvey, NMFS does not expect that animals would experience levels high enough or durations long enough to result in PTS given that the airgun is a very low volume airgun, and the use of the airgun will be restricted to seven days in a small geographic area.

PTS is considered auditory injury (Southall *et al.*, 2007). Irreparable damage to the inner or outer cochlear hair cells may cause PTS; however, other mechanisms are also involved, such as exceeding the elastic limits of certain tissues and membranes in the middle and inner ears and resultant changes in the chemical composition of the inner ear fluids (Southall *et al.*, 2007).

Although the published body of scientific literature contains numerous theoretical studies and discussion papers on hearing impairments that can occur with exposure to a loud sound, only a few studies provide empirical information on the levels at which noise-induced loss in hearing sensitivity occurs in non-human animals.

Recent studies by Kujawa and Liberman (2009) and Lin *et al.* (2011) found that despite completely reversible threshold shifts that leave cochlear sensory cells intact, large threshold shifts could cause synaptic level changes and delayed cochlear nerve

degeneration in mice and guinea pigs, respectively. NMFS notes that the high level of TTS that led to the synaptic changes shown in these studies is in the range of the high degree of TTS that Southall *et al.* (2007) used to calculate PTS levels. It is unknown whether smaller levels of TTS would lead to similar changes. NMFS, however, acknowledges the complexity of noise exposure on the nervous system, and will re-examine this issue as more data become available.

For marine mammals, published data are limited to the captive bottlenose dolphin, beluga, harbor porpoise, and Yangtze finless porpoise (Finneran *et al.*, 2000, 2002, 2003, 2005, 2007, 2010a, 2010b; Finneran and Schlundt, 2010; Lucke *et al.*, 2009; Mooney *et al.*, 2009a, 2009b; Popov *et al.*, 2011a, 2011b; Kastelein *et al.*, 2012a; Schlundt *et al.*, 2000; Nachtigall *et al.*, 2003, 2004). For pinnipeds in water, data are limited to measurements of TTS in harbor seals, an elephant seal, and California sea lions (Kastak *et al.*, 1999, 2005; Kastelein *et al.*, 2012b).

Lucke *et al.* (2009) found a threshold shift (TS) of a harbor porpoise after exposing it to airgun noise with a received sound pressure level (SPL) at 200.2 dB (peak-to-peak) re: 1 μPa, which corresponds to a sound exposure level of 164.5 dB re: 1 μPa2 s after integrating exposure. NMFS currently uses the root-mean-square (rms) of received SPL at 180 dB and 190 dB re: 1 μPa as the threshold above which permanent threshold shift (PTS) could occur for cetaceans and pinnipeds, respectively. Because the airgun noise is a broadband impulse, one cannot directly determine the equivalent of rms SPL from the reported peak-to-peak SPLs. However, applying a conservative conversion factor of 16 dB for broadband signals from seismic surveys (McCauley, *et al.*, 2000) to correct for the difference between peak-to-peak levels reported in Lucke *et al.* (2009) and rms SPLs, the rms SPL for TTS would be approximately 184 dB re: 1 μPa, and the received levels associated with PTS (Level A harassment) would be higher. This is still above NMFS' current 180 dB rms re: 1 μPa threshold for injury. However, NMFS recognizes that TTS of harbor porpoises is lower than other cetacean species empirically tested (Finneran & Schlundt, 2010; Finneran *et al.*, 2002; Kastelein and Jennings, 2012).

A recent study on bottlenose dolphins (Schlundt, *et al.*, 2013) measured hearing thresholds at multiple frequencies to determine the amount of TTS induced before and after exposure to a sequence of impulses produced by a seismic air gun. The air gun volume and operating pressure varied from 40–150 in^3 and 1000–2000 psi, respectively. After three years and 180 sessions, the authors observed no significant TTS at any test frequency, for any combinations of air gun volume, pressure, or proximity to the dolphin during behavioral tests (Schlundt, *et al.*, 2013). Schlundt *et al.* (2013) suggest that the potential for airguns to cause hearing loss in dolphins is lower than previously predicted, perhaps as a result of the low-frequency content of air gun impulses compared to the high-frequency hearing ability of dolphins.

Marine mammal hearing plays a critical role in communication with conspecifics, and interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (*i.e.*, recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that occurs during a time where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts. Also, depending on the degree and frequency range, the effects of PTS on an animal could range in severity, although it is considered generally more serious because it is a permanent condition. Of note, reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.*, 2007), so one can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Given the higher level of sound necessary to cause PTS as compared with TTS, it is considerably less likely that PTS would occur during the survey; TTS is also unlikely. Cetaceans generally avoid the immediate area around operating seismic vessels, as do some other marine mammals. Some pinnipeds show avoidance reactions to airguns, but their avoidance reactions are generally not as strong or consistent compared to cetacean reactions.

Non-auditory Physical Effects: Non-auditory physical effects might occur in marine mammals exposed to strong underwater pulsed sound. Possible types of non-auditory physiological effects or injuries that theoretically might occur in mammals close to a strong sound source include stress, neurological effects, bubble formation, and other types of organ or tissue damage. Some marine mammal species (*i.e.*, beaked whales) may be especially susceptible to injury and/or stranding when exposed to strong pulsed sounds.

Classic stress responses begin when an animal's central nervous system perceives a potential threat to its homeostasis. That perception triggers stress responses regardless of whether a stimulus actually threatens the animal; the mere perception of a threat is sufficient to trigger a stress response (Moberg, 2000; Sapolsky *et al.*, 2005; Seyle, 1950). Once an animal's central nervous system perceives a threat, it mounts a biological response or defense that consists of a combination of the four general biological defense responses: Behavioral responses; autonomic nervous system responses; neuroendocrine responses; or immune responses.

In the case of many stressors, an animal's first and most economical (in terms of biotic costs) response is behavioral avoidance of the potential stressor or avoidance of continued exposure to a stressor. An animal's second line of defense to stressors involves the sympathetic part of the autonomic nervous system and the classical ''fight or flight'' response, which includes the cardiovascular system, the gastrointestinal system, the exocrine glands, and the adrenal medulla to produce changes in heart rate, blood pressure, and gastrointestinal activity that humans commonly associate with stress. These responses have a relatively short duration and may or may not have significant long-term effects on an animal's welfare.

An animal's third line of defense to stressors involves its neuroendocrine or sympathetic nervous systems; the system that has received the most study has been the hypothalmus-pituitary-adrenal (HPA) system (also known as the HPA axis in mammals or the hypothalamus-pituitary-interrenal axis in fish and some reptiles). Unlike stress responses associated with the autonomic nervous system, the pituitary hormones regulate virtually all neuroendocrine functions affected by stress—including immune competence, reproduction, metabolism, and behavior. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction (Moberg, 1987; Rivier, 1995), altered metabolism (Elasser *et al.*, 2000), reduced immune competence (Blecha, 2000), and behavioral disturbance.

Increases in the circulation of glucocorticosteroids (cortisol, corticosterone, and aldosterone in marine mammals; see Romano *et al.*, 2004) have been equated with stress for many years.

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and distress is the biotic cost of the response. During a stress response, an animal uses glycogen stores that the body quickly replenishes after alleviation of the stressor. In such circumstances, the cost of the stress response would not pose a risk to the animal's welfare. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, it diverts energy resources from other biotic functions, which impair those functions that experience the diversion. For example, when mounting a stress response diverts energy away from growth in young animals, those animals may experience stunted growth (McEwen and Wingfield, 2003). When mounting a stress response diverts energy from a fetus, an animal's reproductive success and fitness will suffer. In these cases, the animals will have entered a pre-pathological or pathological state called ''distress'' (*sensu* Seyle, 1950) or ''allostatic loading'' (*sensu* McEwen and Wingfield, 2003). This pathological state will last until the animal replenishes its biotic reserves sufficient to restore normal function. Note that these examples involved a long-term (days or weeks) stress response exposure to stimuli.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses have also been documented fairly well through controlled experiment; because this physiology exists in every vertebrate that has been studied, it is not surprising that stress responses and their costs have been documented in both laboratory and free-living animals (for examples see, Holberton *et al.*, 1996; Hood *et al.*, 1998; Jessop *et al.*, 2003; Krausman *et al.*, 2004; Lankford *et al.*, 2005; Reneerkens *et al.*, 2002; Thompson and Hamer, 2000). Although no information has been collected on the physiological responses of marine mammals to anthropogenic sound exposure, studies of other marine animals and terrestrial animals would lead us to expect some marine mammals to experience physiological stress responses and, perhaps, physiological responses that would be classified as ''distress'' upon exposure to anthropogenic sounds.

For example, Jansen (1998) reported on the relationship between acoustic exposures and physiological responses that are indicative of stress responses in humans (*e.g.,* elevated respiration and increased heart rates). Jones (1998) reported on reductions in human performance when faced with acute, repetitive exposures to acoustic disturbance. Trimper *et al.* (1998) reported on the physiological stress responses of osprey to low-level aircraft noise while Krausman *et al.* (2004) reported on the auditory and physiology stress responses of endangered Sonoran pronghorn to military overflights. Smith *et al.* (2004a, 2004b) identified noise-induced physiological transient stress responses in hearing-specialist fish (*i.e.,* goldfish) that accompanied short- and long-term hearing losses. Welch and Welch (1970) reported physiological and behavioral stress responses that accompanied damage to the inner ears of fish and several mammals.

Hearing is one of the primary senses marine mammals use to gather information about their environment and communicate with conspecifics. Although empirical information on the relationship between sensory impairment (TTS, PTS, and acoustic masking) on marine mammals remains limited, we assume that reducing a marine mammal's ability to gather information about its environment and communicate with other members of its species would induce stress, based on data that terrestrial animals exhibit those responses under similar conditions (NRC, 2003) and because marine mammals use hearing as their primary sensory mechanism. Therefore, NMFS assumes that acoustic exposures sufficient to trigger onset PTS or TTS would be accompanied by physiological stress responses. More importantly, marine mammals might experience stress responses at received levels lower than those necessary to trigger onset TTS. Based on empirical studies of the time required to recover from stress responses (Moberg, 2000), NMFS also assumes that stress responses could persist beyond the time interval required for animals to recover from TTS and might result in pathological and pre-pathological states that would be as significant as behavioral responses to TTS.

Resonance effects (Gentry, 2002) and direct noise-induced bubble formations (Crum *et al.,* 2005) are implausible in the case of exposure to an impulsive broadband source like an airgun array. If seismic surveys disrupt diving patterns of deep-diving species, this might result in bubble formation and a form of the bends, as speculated to occur in beaked whales exposed to sonar. However, there is no specific evidence of this upon exposure to airgun pulses.

In general, there are few data about the potential for strong, anthropogenic underwater sounds to cause non-auditory physical effects in marine mammals. Such effects, if they occur at all, would presumably be limited to short distances and to activities that extend over a prolonged period. The available data do not allow identification of a specific exposure level above which non-auditory effects can be expected (Southall *et al.,* 2007) or any meaningful quantitative predictions of the numbers (if any) of marine mammals that might be affected in those ways. There is no definitive evidence that any of these effects occur even for marine mammals in close proximity to large arrays of airguns. In addition, marine mammals that show behavioral avoidance of seismic vessels, including some pinnipeds, are unlikely to incur non-auditory impairment or other physical effects. The low volume of the airgun proposed for this activity combined with the limited scope of use makes non-auditory physical effects from airgun use, including stress, unlikely. Therefore, we do not anticipate such effects would occur given the brief duration of exposure during the survey.

Stranding and Mortality

When a living or dead marine mammal swims or floats onto shore and becomes ''beached'' or incapable of returning to sea, the event is a ''stranding'' (Geraci *et al.,* 1999; Perrin and Geraci, 2002; Geraci and Lounsbury, 2005; NMFS, 2007). The legal definition for a stranding under the MMPA is that ''(A) a marine mammal is dead and is (i) on a beach or shore of the United States; or (ii) in waters under the jurisdiction of the United States (including any navigable waters); or (B) a marine mammal is alive and is (i) on a beach or shore of the United States and is unable to return to the water; (ii) on a beach or shore of the United States and, although able to return to the water, is in need of apparent medical attention; or (iii) in the waters under the jurisdiction of the United States (including any navigable waters), but is unable to return to its natural habitat under its own power or without assistance.''

Marine mammals strand for a variety of reasons, such as infectious agents, biotoxicosis, starvation, fishery interaction, ship strike, unusual oceanographic or weather events, sound exposure, or combinations of these stressors sustained concurrently or in series. However, the cause or causes of

most strandings are unknown (Geraci *et al.*, 1976; Eaton, 1979; Odell *et al.*, 1980; Best, 1982). Numerous studies suggest that the physiology, behavior, habitat relationships, age, or condition of cetaceans may cause them to strand or might pre-dispose them to strand when exposed to another phenomenon. These suggestions are consistent with the conclusions of numerous other studies that have demonstrated that combinations of dissimilar stressors commonly combine to kill an animal or dramatically reduce its fitness, even though one exposure without the other does not produce the same result (Chroussos, 2000; Creel, 2005; DeVries *et al.*, 2003; Fair and Becker, 2000; Foley *et al.*, 2001; Moberg, 2000; Relyea, 2005a; 2005b, Romero, 2004; Sih *et al.*, 2004). Given the low volume and source level of the proposed airgun, standing and mortality are not anticipated due to use of the airgun proposed for this activity.

2. Potential Effects of Other Acoustic Devices

Sub-Bottom Profiler

EMALL would also operate a sub-bottom profiler chirp and boomer from the source vessel during the proposed survey. The chirp's sounds are very short pulses, occurring for one ms, six times per second. Most of the energy in the sound pulses emitted by the profiler is at 2–6 kHz, and the beam is directed downward. The chirp has a maximum source level of 202 dB re: 1 μPa, with a tilt angle of 90 degrees below horizontal and a beam width of 24 degrees. The sub-bottom profiler boomer will shoot approximately every 3.125m, with shots lasting 1.5 to 2 seconds. Most of the energy in the sound pulses emitted by the boomer is concentrated between 0.5 and 6 kHz, with a source level of 205dB re: 1μPa. The tilt of the boomer is 90 degrees below horizontal, but the emission is omnidirectional. Kremser *et al.*, (2005) noted that the probability of a cetacean swimming through the area of exposure when a bottom profiler emits a pulse is small—because if the animal was in the area, it would have to pass the transducer at close range in order to be subjected to sound levels that could cause temporary threshold shift and would likely exhibit avoidance behavior to the area near the transducer rather than swim through at such a close range.

Masking: Both the chirper and boomer sub-bottom profilers produce impulsive sound exceeding 160 dB re 1 μPa-m (rms). The louder boomer operates at a source value of 205 dB re 1 μPa-m (rms), but with a frequency between 0.5 and 6 kHz, which is lower than the maximum sensitivity hearing range of any the local species (belugas—40–130 kHz;, killer whales—7–30 kHz; harbor porpoise—100–140 kHz; and harbor seals—10–30 kHz; Wartzok and Ketten 1999, Southall *et al.* 2007, Kastelein *et al.* 2002). While the chirper is not as loud (202 dB re 1 μPa-m [rms]), it does operate at a higher frequency range (2–16 kHz), and within the maximum sensitive range of all of the local species except beluga whales.

Marine mammal communications would not likely be masked appreciably by the profiler's signals given the directionality of the signal and the brief period when an individual mammal is likely to be within its beam. Furthermore, despite the fact that the profiler overlaps with hearing ranges of many marine mammal species in the area, the profiler's signals do not overlap with the predominant frequencies in the calls, which would avoid significant masking.

Behavioral Responses: Responses to the profiler are likely to be similar to the other pulsed sources discussed earlier if received at the same levels. The behavioral response of local marine mammals to the operation of the sub-bottom profilers is expected to be similar to that of the small airgun. The odontocetes are likely to avoid the sub-bottom profiler activity, especially the naturally shy harbor porpoise, while the harbor seals might be attracted to them out of curiosity. However, because the sub-bottom profilers operate from a moving vessel, and the maximum radius to the 160 dB harassment threshold is only 263 m (863 ft), the area and time that this equipment would be affecting a given location is very small.

Hearing Impairment and Other Physical Effects: It is unlikely that the sub-bottom profilers produce sound levels strong enough to cause hearing impairment or other physical injuries even in an animal that is (briefly) in a position near the source (Wood *et al.*, 2012). The likelihood of marine mammals moving away from the source make if further unlikely that a marine mammal would be able to approach close to the transducers.

Animals may avoid the area around the survey vessels, thereby reducing exposure. Any disturbance to marine mammals is likely to be in the form of temporary avoidance or alteration of opportunistic foraging behavior near the survey location.

Vibracore

EMALL would conduct vibracoring in a corridor across a northern portion of Cook Inlet and near the marine terminal area for a total of 55 vibracoring occurrences. While duration is dependent on sediment type, the driving mechanism, which emits sound at a source level of 187dB re: 1μPa, will only bore for 1 to 2 minutes. The sound is emitted at a frequency of 10 Hz to 20 kHz. Cores will be bored at approximately every 4 km along the pipeline corridor, for about 22 cores in that area. Approximately 33 cores will be taken in the Marine Terminal area.

Masking: It is unlikely that masking will occur due to vibracore operations. Chorney *et al.* (2011) conducted sound measurements on an operating vibracorer in Alaska and found that it emitted a sound pressure level at 1-m source of 188 dB re 1 μPa-m (rms), with a frequency range of between 10 Hz and 20 kHz. While the frequency range overlaps the lower ends of the maximum sensitivity hearing ranges of harbor porpoises, killer whales, and harbor seals, and the continuous sound extends 2.54 km (1.6 mi) to the 120 dB threshold, the vibracorer will operate about the one or two minutes it takes to drive the core pipe 7 m (20 ft) into the sediment, and approximately twice per day. Therefore, there is very little opportunity for this activity to mask the communication of local marine mammals.

Behavioral Response: It is unlikely that vibracoring will elicit behavioral responses from marine mammal species in the area. An analysis of similar survey activity in New Zealand classified the likely effects from vibracore and similar activity to be some habitat degradation and prey species effects, but primarily behavioral responses, although the species in the analyzed area were different to those found in Cook Inlet (Thompson, 2012).

There are no data on the behavioral response to vibracore activity of marine mammals in Cook Inlet. The closest analog to vibracoring might be exploratory drilling, although there is a notable difference in magnitude between an oil and gas drilling operation and collecting sediment samples with a vibracorer. Thomas *et al.* (1990) played back drilling sound to four captive beluga whales and found no statistical difference in swim patterns, social groups, respiration and dive rates, or stress hormone levels before and during playbacks. There is no reason to believe that beluga whales or any other marine mammal exposed to vibracoring sound would behave any differently, especially since vibracoring occurs for only one or two minutes.

Hearing Impairment and Other Physical Effects: The vibracorer operates for only one or two minutes at a time with a 1-m source of 187.4 dB re 1 μPa-

m (rms). It is neither loud enough nor does it operate for a long enough duration to induce either TTS or PTS.

Stranding and Mortality

Stress, Stranding, and Mortality Safety zones will be established to prevent acoustical injury to local marine mammals, especially injury that could indirectly lead to mortality. Also, G&G sound is not expected to cause resonate effects to gas-filled spaces or airspaces in marine mammals based on the research of Finneran (2003) on beluga whales showing that the tissue and other body masses dampen any potential effects of resonance on ear cavities, lungs, and intestines. Chronic exposure to sound could lead to physiological stress eventually causing hormonal imbalances (NRC 2005). If survival demands are already high, and/or additional stressors are present, the ability of the animal to cope decreases, leading to pathological conditions or death (NRC 2005). Potential effects may be greatest where sound disturbance can disrupt feeding patterns including displacement from critical feeding grounds. However, all G&G exposure to marine mammals would be of duration measured in minutes.

Specific sound-related processes that lead to strandings and mortality are not well documented, but may include (1) swimming in avoidance of a sound into shallow water; (2) a change in behavior (such as a change in diving behavior) that might contribute to tissue damage, gas bubble formation, hypoxia, cardiac arrhythmia, hypertensive hemorrhage, or other forms of trauma; (3) a physiological change such as a vestibular response leading to a behavioral change or stress-induced hemorrhagic diathesis, leading in turn to tissue damage; and, (4) tissue damage directly from sound exposure, such as through acoustically mediated bubble formation and growth or acoustic resonance of tissues (Wood *et al.* 2012). Some of these mechanisms are unlikely to apply in the case of impulse G&G sounds, especially since airguns and sub-bottom profilers produce broadband sound with low pressure rise. Strandings to date which have been attributed to sound exposure related to date from military exercises using narrowband mid-frequency sonar with a much greater likelihood to cause physical damage (Balcomb and Claridge 2001, NOAA and USN, 2001, Hildebrand 2005).

The low intensity, low frequency, broadband sound associated with airguns and sub-bottom profilers, combined with the shutdown safety zone mitigation measure for the airgun would prevent physical damage to marine mammals. The vibracoring would also be unlikely to have the capability of causing physical damage to marine mammals because of its low intensity and short duration.

3. Potential Effects of Vessel Movement and Collisions

Vessel movement in the vicinity of marine mammals has the potential to result in either a behavioral response or a direct physical interaction. We discuss both scenarios here.

Behavioral Responses to Vessel Movement: There are limited data concerning marine mammal behavioral responses to vessel traffic and vessel noise, and a lack of consensus among scientists with respect to what these responses mean or whether they result in short-term or long-term adverse effects. In those cases where there is a busy shipping lane or where there is a large amount of vessel traffic, marine mammals may experience acoustic masking (Hildebrand, 2005) if they are present in the area (*e.g.*, killer whales in Puget Sound; Foote *et al.*, 2004; Holt *et al.*, 2008). In cases where vessels actively approach marine mammals (*e.g.*, whale watching or dolphin watching boats), scientists have documented that animals exhibit altered behavior such as increased swimming speed, erratic movement, and active avoidance behavior (Bursk, 1983; Acevedo, 1991; Baker and MacGibbon, 1991; Trites and Bain, 2000; Williams *et al.*, 2002; Constantine *et al.*, 2003), reduced blow interval (Ritcher *et al.*, 2003), disruption of normal social behaviors (Lusseau, 2003; 2006), and the shift of behavioral activities which may increase energetic costs (Constantine *et al.*, 2003; 2004). A detailed review of marine mammal reactions to ships and boats is available in Richardson *et al.* (1995). For each of the marine mammal taxonomy groups, Richardson *et al.* (1995) provides the following assessment regarding reactions to vessel traffic:

Pinnipeds: Reactions by pinnipeds to vessel disturbance largely involve relocation. Harbor seals hauled out on mud flats have been documented returning to the water in response to nearing boat traffic. Vessels that approach haulouts slowly may also elicit alert reactions without flushing from the haulout. Small boats with slow, constant speed elicit the least noticeable reactions. However, in Alaska specifically, harbor seals are documented to tolerate fishing vessels with no discernable reactions, and habituation is common (Burns in Johnson *et al.*, 1989).

Porpoises: Harbor porpoises are often seen changing direction in the presence of vessel traffic. Avoidance has been documented up to 1km away from an approaching vessel, but the avoidance response is strengthened in closer proximity to vessels (Barlow, 1998; Palka, 1993). This avoidance behavior is not consistent across all porpoises, as Dall's porpoises have been observed approaching boats.

Toothed whales: In summary, toothed whales sometimes show no avoidance reaction to vessels, or even approach them. However, avoidance can occur, especially in response to vessels of types used to chase or hunt the animals. This may cause temporary displacement, but we know of no clear evidence that toothed whales have abandoned significant parts of their range because of vessel traffic.

Behavioral responses to stimuli are complex and influenced to varying degrees by a number of factors, such as species, behavioral contexts, geographical regions, source characteristics (moving or stationary, speed, direction, etc.), prior experience of the animal and physical status of the animal. For example, studies have shown that beluga whales' reactions varied when exposed to vessel noise and traffic. In some cases, naive beluga whales exhibited rapid swimming from ice-breaking vessels up to 80 km (49.7 mi) away, and showed changes in surfacing, breathing, diving, and group composition in the Canadian high Arctic where vessel traffic is rare (Finley *et al.*, 1990). In other cases, beluga whales were more tolerant of vessels, but responded differentially to certain vessels and operating characteristics by reducing their calling rates (especially older animals) in the St. Lawrence River where vessel traffic is common (Blane and Jaakson, 1994). In Bristol Bay, Alaska, beluga whales continued to feed when surrounded by fishing vessels and resisted dispersal even when purposefully harassed (Fish and Vania, 1971).

In reviewing more than 25 years of whale observation data, Watkins (1986) concluded that whale reactions to vessel traffic were ''modified by their previous experience and current activity: Habituation often occurred rapidly, attention to other stimuli or preoccupation with other activities sometimes overcame their interest or wariness of stimuli.'' Watkins noticed that over the years of exposure to ships in the Cape Cod area, minke whales changed from frequent positive interest (*e.g.*, approaching vessels) to generally uninterested reactions; fin whales changed from mostly negative (*e.g.*,

avoidance) to uninterested reactions; right whales apparently continued the same variety of responses (negative, uninterested, and positive responses) with little change; and humpbacks dramatically changed from mixed responses that were often negative to reactions that were often strongly positive. Watkins (1986) summarized that ''whales near shore, even in regions with low vessel traffic, generally have become less wary of boats and their noises, and they have appeared to be less easily disturbed than previously. In particular locations with intense shipping and repeated approaches by boats (such as the whale-watching areas of Stellwagen Bank), more and more whales had positive reactions to familiar vessels, and they also occasionally approached other boats and yachts in the same ways.''

Vessel Strike

Ship strikes of cetaceans can cause major wounds, which may lead to the death of the animal. An animal at the surface could be struck directly by a vessel, a surfacing animal could hit the bottom of a vessel, or a vessel's propeller could injure an animal just below the surface. The severity of injuries typically depends on the size and speed of the vessel (Knowlton and Kraus, 2001; Laist *et al.*, 2001; Vanderlaan and Taggart, 2007).

The most vulnerable marine mammals are those that spend extended periods of time at the surface in order to restore oxygen levels within their tissues after deep dives (*e.g.*, the sperm whale). In addition, some baleen whales, such as the North Atlantic right whale, seem generally unresponsive to vessel sound, making them more susceptible to vessel collisions (Nowacek *et al.*, 2004). These species are primarily large, slow moving whales. Smaller marine mammals (*e.g.*, bottlenose dolphin) move quickly through the water column and are often seen riding the bow wave of large ships. Marine mammal responses to vessels may include avoidance and changes in dive pattern (NRC, 2003).

An examination of all known ship strikes from all shipping sources (civilian and military) indicates vessel speed is a principal factor in whether a vessel strike results in death (Knowlton and Kraus, 2001; Laist *et al.*, 2001; Jensen and Silber, 2003; Vanderlaan and Taggart, 2007). In assessing records with known vessel speeds, Laist *et al.* (2001) found a direct relationship between the occurrence of a whale strike and the speed of the vessel involved in the collision. The authors concluded that most deaths occurred when a vessel was traveling in excess of 24.1 km/h (14.9 mph; 13 kts). Given the slow vessel speeds necessary for data acquisition, ship strike is unlikely to occur during this survey.

Entanglement

Entanglement can occur if wildlife becomes immobilized in survey lines, cables, nets, or other equipment that is moving through the water column. The proposed survey would require towing approximately 150 ft of cables. This size of the array generally carries a lower risk of entanglement for marine mammals. Wildlife, especially slow moving individuals, such as large whales, have a low probability of entanglement due to the low amount of slack in the lines, slow speed of the survey vessel, and onboard monitoring. Pinnipeds and porpoises are the least likely to entangle in equipment, as most documented cases of entanglement involve fishing gear and prey species (Gales *et al.*, 2003). There are no reported cases of entanglement from geophysical equipment in the Cook Inlet area.

Anticipated Effects on Marine Mammal Habitat

The G&G Program survey areas are primarily within upper Cook Inlet, although the Marine Terminal survey area is located near Nikiski just south of the East Foreland (technically in Lower Cook Inlet), which includes habitat for prey species of marine mammals, including fish as well as invertebrates eaten by Cook Inlet beluga whales. This area contains Critical Habitat for Cook Inlet belugas, is near the breeding grounds for the local harbor seal population, and serves as an occasional feeding ground for killer whales and harbor porpoises. Cook Inlet is a large subarctic estuary roughly 299 km (186 mi) in length and averaging 96 km (60 mi) in width. It extends from the city of Anchorage at its northern end and flows into the Gulf of Alaska at its southernmost end. For descriptive purposes, Cook Inlet is separated into unique upper and lower sections, divided at the East and West Forelands, where the opposing peninsulas create a natural waistline in the length of the waterway, measuring approximately 16 km (10 mi) across (Mulherin *et al.* 2001).

Potential effects on beluga habitat would be limited to noise effects on prey; direct impact to benthic habitat from jack-up platform leg placement, and sampling with grabs, coring, and boring; and small discharges of drill cuttings and drilling mud associated with the borings. Portions of the survey areas include waters of Cook Inlet that are <9.1 m (30 ft) in depth and within 8.0 km (5.0 mi) of anadromous streams. Several anadromous streams (Three-mile Creek, Indian Creek, and two unnamed streams) enter the Cook Inlet within the survey areas. Other anadromous streams are located within 8.0 km (5.0 mi) of the survey areas. The survey program will not prevent beluga access to the mouths of these streams and will result in no short-term or long-term loss of intertidal or subtidal waters that are <9.1 m (30 ft) in depth and within 8.0 km (5.0 mi) of anadromous streams. Minor seafloor impacts will occur in these areas from grab samples, PCPTs, vibracores, or geotechnical borings but will have no effect on the area as beluga habitat once the vessel or jack-up platform has left. The survey program will have no effect on this habitat.

Cook Inlet beluga whales may avoid areas ensonified by the geophysical or geotechnical activities that generate sound with frequencies within the beluga hearing range and at levels above threshold values. This includes the chirp sub-bottom profiler with a radius of 184 m (604 ft), the boomer sub-bottom profiler with a radius of 263 m (863 ft), the airgun with a radius of 300 m (984 ft) and the vibracores with a radius of 2.54 km (1.58 mi). The sub-bottom profilers and the airgun will be operated from a vessel moving at speeds of about 4 kt. The operation of a vibracore has a duration of approximately 1–2 minutes. All of these activities will be conducted in relatively open areas of the Cook Inlet within Critical Habitat Area 2. Given the size and openness of the Cook Inlet in the survey areas, and the relatively small area and mobile/temporary nature of the zones of ensonification, the generation of sound by the G&G activities is not expected to result in any restriction of passage of belugas within or between critical habitat areas. The jack-up platform from which the geotechnical borings will be conducted will be attached to the seafloor with legs, and will be in place at a given location for up to 4–5 days, but given its small size (Table 4 in the application) would not result in any obstruction of passage by belugas.

Upper Cook Inlet comprises the area between Point Campbell (Anchorage) down to the Forelands, and is roughly 95 km (59 mi) in length and 24.9 km (15.5 mi) in width (Mulherin *et al.* 2001). Five major rivers (Knik, Matanuska, Susitna, Little Susitna, and Beluga) deliver freshwater to upper Cook Inlet, carrying a heavy annual sediment load of over 40 million tons of eroded materials and glacial silt (Brabets 1999). As a result, upper Cook Inlet is

relatively shallow, averaging 18.3 m (60 ft) in depth. It is characterized by shoals, mudflats, and a wide coastal shelf, less than 17.9 m (59 ft) deep, extending from the eastern shore. A deep trough exists between Trading Bay and the Middle Ground Shoal, ranging from 35 to 77 m (114–253 ft) deep (NOAA Nautical Chart 16660). The substrate consists of a mixture of coarse gravels, cobbles, pebbles, sand, clay, and silt (Bouma *et al.* 1978, Rappeport 1982).

Upper Cook Inlet experiences some of the most extreme tides in the world, demonstrated by a mean tidal range from 4.0 m (13 ft) at the Gulf of Alaska end to 8.8 m (29 ft) near Anchorage (U.S. Army Corps of Engineers 2013). Tidal currents reach 3.9 kts per second (Mulherin *et al.* 2001) in upper Cook Inlet, increasing to 5.7–7.7 kts per second near the Forelands where the inlet is constricted. Each tidal cycle creates significant turbulence and vertical mixing of the water column in the upper inlet (U.S. Army Corps of Engineers 2013), and are reversing, meaning that they are marked by a period of slack tide followed an acceleration in the opposite direction (Mulherin *et al.* 2001).

Because of scouring, mixing, and sediment transport from these currents, the marine invertebrate community is very limited (Pentec 2005). Of the 50 stations sampled by Saupe *et al.* 2005 for marine invertebrates in Southcentral Alaska, their upper Cook Inlet station had by far the lowest abundance and diversity. Further, the fish community of upper Cook Inlet is characterized largely by migratory fish—eulachon and Pacific salmon—returning to spawning rivers, or outmigrating salmon smolts. Moulton (1997) documented only 18 fish species in upper Cook Inlet compared to at least 50 species found in lower Cook Inlet (Robards *et al.* 1999).

Lower Cook Inlet extends from the Forelands southwest to the inlet mouth demarked by an approximate line between Cape Douglas and English Bay. Water circulation in lower Cook Inlet is dominated by the Alaska Coastal Current (ACC) that flows northward along the shores of the Kenai Peninsula until it turns westward and is mixed by the combined influences of freshwater input from upper Cook Inlet, wind, topography, tidal surges, and the coriolis effect (Field and Walker 2003, MMS 1996). Upwelling by the ACC brings nutrient-rich waters to lower Cook Inlet and contributes to a biologically rich and productive ecology (Sambrotto and Lorenzen 1986). Tidal currents average 2–3 kt per second and are rotary in that they do not completely go slack before rotating around into an opposite direction (Gatto 1976, Mulherin *et al.* 2001). Depths in the central portion of lower Cook Inlet are 60–80 m (197–262 ft) and decrease steadily toward the shores (Muench 1981). Bottom sediments in the lower inlet are coarse gravel and sand that grade to finer sand and mud toward the south (Bouma 1978).

Coarser substrate support a wide variety of invertebrates and fish including Pacific halibut, Dungeness crab, tanner crab, pandalid shrimp, Pacific cod, and rock sole, while the soft-bottom sand and silt communities are dominated by polychaetes, bivalves and other flatfish (Field and Walker 2003). These species constitute prey species for several marine mammals in Cook Inlet, including pinnipeds and Cook Inlet belugas. Sea urchins and sea cucumbers are important otter prey and are found in shell debris communities. Razor clams are found all along the beaches of the Kenai Peninsula. In general, the lower Cook Inlet marine invertebrate community is of low abundance, dominated by polychaetes, until reaching the mouth of the inlet (Saupe *et al.* 2005). Overall, the lower Cook Inlet marine ecosystem is fed by midwater communities of phytoplankton and zooplankton, with the latter composed mostly of copepods and barnacle and crab larvae (Damkaer 1977, English 1980).

G&G Program activities that could potentially impact marine mammal habitats include sediment sampling (vibracore, boring, grab sampling) on the sea bottom, placement of the jack-up platform spud cans, and acoustical injury of prey resources. However, there are few benthic resources in the survey area that could be impacted by collection of the small samples (Saupe *et al.* 2005).

Acoustical effects to marine mammal prey resources are also limited. Christian *et al.* (2004) studied seismic energy impacts on male snow crabs and found no significant increases in physiological stress due to exposure to high sound pressure levels. No acoustical impact studies have been conducted to date on the above fish species, but studies have been conducted on Atlantic cod and sardine. Davis *et al.* (1998) cited various studies that found no effects to Atlantic cod eggs, larvae, and fry when received levels were 222 dB. Effects found were to larval fish within about 5.0 m (16 ft), and from air guns with volumes between 49,661 and 65,548 cm3 (3,000 and 4,000 in^3). Similarly, effects to sardine were greatest on eggs and 2-day larvae, but these effects were greatest at 0.5 m (1.6 ft), and again confined to 5.0 m (16 ft). Further, Greenlaw *et al.* (1988) found no evidence of gross histological damage to eggs and larvae of northern anchovy exposed to seismic air guns, and concluded that noticeable effects would result only from multiple, close exposures. Based on these results, much lower energy impulsive geophysical equipment planned for this program would not damage larval fish or any other marine mammal prey resource.

Potential damage to the Cook Inlet benthic community will be limited to the actual surface area of the four spud cans that form the ''foot'' of each 0.762-m (30-in) diameter leg, the 42 0.1524-m (6-in) diameter borings, and the 55 0.0762-m (3-in) diameter vibracore samplings (plus several grab and PCPT samples). Collectively, these samples would temporarily damage about a hundred square meters of benthic habitat relative to the size (nearly 21,000 km2/8,108 mi2) of Cook Inlet. Overall, sediment sampling and acoustical effects on prey resources will have a negligible effect at most on the marine mammal habitat within the G&G Program survey area. Some prey resources might be temporarily displaced, but no long-term effects are expected.

The Cook Inlet 2015 G&G Program will result in a number of minor discharges to the waters of Cook Inlet. Discharges associated with the geotechnical borings will include: (1) The discharge of drill cuttings and drilling fluids and (2) the discharge of deck drainage (runoff of precipitation and deck wash water) from the geotechnical drilling platform. Other vessels associated with the G&G surveys will discharge wastewaters that are normally associated with the operation of vessels in transit including deck drainage, ballast water, bilge water, non-contact cooling water, and gray water.

The discharges of drill cuttings, drilling fluids, and deck drainage associated with the geotechnical borings will be within limitations authorized by the Alaska Department of Environmental Conservation under the Alaska Pollutant Discharge Elimination System. The drill cuttings consist of natural geologic materials of the seafloor sediments brought to the surface via the drill bit/drill stem of the rotary drilling operation, will be relatively minor in volume, and deposit over a very small area of Cook Inlet seafloor. The drilling fluids which are used to lubricate the bit, stabilize the hole, and viscosify the slurry for transport of the solids to the surface will consist of seawater and guar gum. Guar gum is a high-molecular weight polysaccharide (galactose and

mannose units) derived from the ground seeds of the plant *Cyampsis gonolobus.* It is a non-toxic fluid also used as a food additive in soups, drinks, breads, and meat products.

Vessel discharges will be authorized under the U.S. Environmental Protection Agency's (EPA's) National Pollutant Discharge Elimination System (NPDES) Vessel General Permit (VGP) for Discharges Incidental to the Normal Operation of Vessels. Each vessel will have obtained authorization under the VGP and will discharge according to the conditions and limitations mandated by the permit. As required by statute and regulation, the EPA has made a determination that such discharges will not result in any unreasonable degradation of the marine environment, including:

- significant adverse changes in ecosystem diversity, productivity and stability of the biological community within the area of discharge and surrounding biological communities,
- threat to human health through direct exposure to pollutants or through consumption of exposed aquatic organisms, or
- loss of aesthetic, recreational, scientific or economic values which is unreasonable in relation to the benefit derived from the discharge.

Mitigation

In order to issue an incidental take authorization under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (where relevant).

To mitigate potential acoustical impacts to local marine mammals, Protected Species Observers (PSOs) will operate aboard the vessels from which the chirper, boomer, airgun, and vibracorer will be deployed. The PSOs will implement the mitigation measures described in the Marine Mammal Monitoring and Mitigation Plan (Appendix A of the application). These mitigations include: (1) Establishing safety zones to ensure marine mammals are not injured by sound pressure levels exceeding Level A injury thresholds; (2) shutting down the airgun when required to avoid harassment of beluga whales approaching the 160-dB disturbance zone; and (3) timing survey activity to avoid concentrations of beluga whales on a seasonal basis.

Before chirper, boomer, airgun, and vibracoring operations begin each day and before restarting operations after a shutdown of 15 minutes or greater, the PSOs will ''clear'' both the Level A and Level B Zones of Influence (ZOIs—area from the source to the 160dB or 180/190dB isopleths) of marine mammals by intensively surveying these ZOIs prior to activity to confirm that marine mammals are not seen in the applicable area. All three geophysical activities (boomer, chirp, airgun) will be shut down in mid-operation at the approach to any marine mammal to the Level A safety zone, and at the approach of an ESA-listed beluga whale to the Level B harassment zone for these sources. The geotechnical vibracoring lasts only one or two minutes and shutdowns are likely impossible. Finally, the G&G Program will be planned to avoid high beluga whale density areas. This would be achieved by conducting surveys at the Marine Terminal and the southern end of the pipeline survey area when beluga whales are farther north, feeding near the Susitna Delta, and completing activities in the northern portion of the pipeline survey area when the Cook Inlet beluga whales have begun to disperse from the Susitna Delta and other summer concentration areas.

Vessel-Based Visual Mitigation Monitoring

EMALL will hire qualified and NMFS-approved PSOs. These PSOs will be stationed aboard the geophysical survey source or support vessels during sub-bottom profiling, air gun, and vibracoring operations. A single senior PSO will be assigned to oversee all Marine Mammal Mitigation and Monitoring Program mandates and function as the on-site person-in-chargeimplementing the 4MP.

Generally, two PSOs will work on a rotational basis during daylight hours with shifts of 4 to 6 hours, and one PSO on duty on each source vessel at all times. Work days for an individual PSO will not exceed 12 hours in duration. Sufficient numbers of PSOs will be available and provided to meet requirements.

Roles and responsibilities of all PSOs include the following:

- Accurately observe and record sensitive marine mammal species;
- Follow monitoring and data collection procedures; and
- Ensure mitigation measures are followed.

PSOs will be stationed at the best available vantage point on the source vessels. PSOs will scan systematically with the unaided eye and 7x50 reticle binoculars. As necessary, new PSOs will be paired with experienced PSOs to ensure that the quality of marine mammal observations and data recording are consistent.

All field data collected will be entered by the end of the day into a custom database using a notebook computer. Weather data relative to viewing conditions will be collected hourly, on rotation, and when sightings occur and include the following:

- Sea state;
- Wind speed and direction;
- Sun position; and
- Percent glare.

The following data will be collected for all marine mammal sightings:

- Bearing and distance to the sighting;
- Species identification;
- Behavior at the time of sighting (*e.g.,* travel, spy-hop, breach, etc.);
- Direction and speed relative to vessel;
- Reaction to activities—changes in behavior (*e.g.,* none, avoidance, approach, paralleling, etc.);
- Group size;
- Orientation when sighted (*e.g.,* toward, away, parallel, etc.);
- Closest point of approach;
- Sighting cue (*e.g.,* animal, splash, birds, etc.);
- Physical description of features that were observed or determined not to be present in the case of unknown or unidentified animals;
- Time of sighting;
- Location, speed, and activity of the source and mitigation vessels, sea state, ice cover, visibility, and sun glare; and positions of other vessel(s) in the vicinity, and
- Mitigation measure taken—if any.

All observations and shut downs will be recorded in a standardized format and data entered into a custom database using a notebook computer. Accuracy of all data will be verified daily by the PIC or designated PSO by a manual verification. These procedures will reduce errors, allow the preparation of short-term data summaries, and facilitate transfer of the data to statistical, graphical, or other programs for further processing and archiving. PSOs will conduct monitoring during daylight periods (weather permitting) during G&G activities, and during most daylight periods when G&G activities are temporarily suspended.

Shutdown Procedures

If any marine mammal is seen approaching the Level A injury zone for the air gun, chirp, or boomer, these sources will be shut down. If ESA-listed marine mammals (*e.g.,* beluga whales) are observed approaching the Level B

harassment zone for the air gun, chirp, or boomer, these sources will be shut down. The PSOs will ensure that the harassment zone is clear of marine mammal activity before vibracoring will occur. Given that vibracoring lasts only about a minute or two, shutdown actions are not practicable.

Resuming Airgun Operations After a Shutdown

A full ramp-up after a shutdown will not begin until there has been a minimum of 30 minutes of observation of the applicable exclusion zone by PSOs to assure that no marine mammals are present. The entire exclusion zone must be visible during the 30-minute lead-in to a full ramp up. If the entire exclusion zone is not visible, then ramp-up from a cold start cannot begin. If a marine mammal(s) is sighted within the injury exclusion zone during the 30-minute watch prior to ramp-up, ramp-up will be delayed until the marine mammal(s) is sighted outside of the zone or the animal(s) is not sighted for at least 15–30 minutes: 15 minutes for small odontocetes and pinnipeds (*e.g.* harbor porpoises, harbor seals), or 30 minutes for large odontocetes (*e.g.,* killer whales and beluga whales).

Speed and Course Alterations

If a marine mammal is detected outside the Level A injury exclusion zone and, based on its position and the relative motion, is likely to enter that zone, the vessel's speed and/or direct course may, when practical and safe, be changed to also minimize the effect on the survey program. The marine mammal activities and movements relative to the sound source and support vessels will be closely monitored to ensure that the marine mammal does not approach within the applicable exclusion radius. If the mammal appears likely to enter the exclusion radius, further mitigative actions will be taken, *i.e.,* either further course alterations or shut down of the active sound sources considered in this Authorization.

Mitigation Required by NMFS

Special Procedures for Situations or Species of Concern

The following additional protective measures for beluga whales and groups of five or more killer whales and harbor porpoises are required. Specifically, a 160-dB vessel monitoring zone would be established and monitored in Cook Inlet during all seismic surveys. If a beluga whale or groups of five or more killer whales and/or harbor porpoises are visually sighted approaching or within the 160-dB disturbance zone, survey activity would not commence until the animals are no longer present within the 160-dB disturbance zone. Whenever Cook Inlet beluga whales or groups of five or more killer whales and/or harbor porpoises are detected approaching or within the 160-dB disturbance zone, the boomer, chirp, and airgun may be powered down before the animal is within the 160-dB disturbance zone, as an alternative to a complete shutdown. If the PSO determines a power down is not sufficient, the sound source(s) shall be shut-down until the animals are no longer present within the 160-dB zone.

Mitigation Exclusion Zones

NMFS requires that EMALL will not operate the chirp, boomer, vibracore, or airgun within 10 miles (16 km) of the mean lower low water (MLLW) line of the Susitna Delta (Beluga River to the Little Susitna River) between April 15 and October 15. The purpose of this mitigation measure is to protect beluga whales in the designated critical habitat in this area that is important for beluga whale feeding and calving during the spring and fall months. The range of the setback required by NMFS was designated to protect this important habitat area and also to create an effective buffer where sound does not encroach on this habitat. This seasonal exclusion will be in effect from April 15th to October 15th annually. Activities can occur within this area from October 16th–April 14th.

Mitigation Conclusions

NMFS has carefully evaluated EMALL's mitigation measures in the context of ensuring that we prescribe the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation.

Any mitigation measure(s) prescribed by NMFS should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed here:

- Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).
- A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to airgun operations that we expect to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).
- A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to airgun operations that we expect to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).
- A reduction in the intensity of exposures (either total number or number at biologically important time or location) to airgun operations that we expect to result in the take of marine mammals (this goal may contribute to a, above, or to reducing the severity of harassment takes only).
- Avoidance or minimization of adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.
- For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on the evaluation of EMALL's measures, as well as other measures required by NMFS, NMFS has determined that the mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance. Measures to ensure availability of such species or stock for taking for certain subsistence uses are discussed later in this document (see ''Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses'' section).

Monitoring and Reporting

Weekly Field Reports

Weekly reports will be submitted to NMFS no later than the close of business (Alaska Time) each Thursday during the weeks when in-water G&G activities take place. The reports will cover information collected from Wednesday of the previous week through Tuesday of the current week.

The field reports will summarize species detected, in-water activity occurring at the time of the sighting, behavioral reactions to in-water activities, and the number of marine mammals exposed to harassment level noise.

Monthly Field Reports

Monthly reports will be submitted to NMFS for all months during which in-water G&G activities take place. The reports will be submitted to NMFS no later than five business days after the end of the month. The monthly report will contain and summarize the following information:

- Dates, times, locations, heading, speed, weather, sea conditions (including Beaufort Sea state and wind force), and associated activities during the G&G Program and marine mammal sightings.
- Species, number, location, distance from the vessel, and behavior of any sighted marine mammals, as well as associated G&G activity (number of shut downs), observed throughout all monitoring activities.
- An estimate of the number (by species) of: (i) Pinnipeds that have been exposed to the authorized geophysical or geotechnical activity (based on visual observation) at received levels greater than or equal to 160 dB re 1 μPa (rms) and/or 190 dB re 1 μPa (rms) with a discussion of any specific behaviors those individuals exhibited; and (ii) cetaceans that have been exposed to the geophysical activity (based on visual observation) at received levels greater than or equal to 160 dB re 1 μPa (rms) and/or 180 dB re 1 μPa (rms) with a discussion of any specific behaviors those individuals exhibited.
- An estimate of the number (by species) of pinnipeds and cetaceans that have been exposed to the geotechnical activity (based on visual observation) at received levels greater than or equal to 120 dB re 1 μPa (rms) with a discussion of any specific behaviors those individuals exhibited.
- A description of the implementation and effectiveness of the: (i) Terms and conditions of the Biological Opinion's Incidental Take Statement; and (ii) mitigation measures of the IHA. For the Biological Opinion, the report shall confirm the implementation of each Term and Condition, as well as any conservation recommendations, and describe their effectiveness, for minimizing the adverse effects of the action on ESA-listed marine mammals.

90-Day Technical Report

A report will be submitted to NMFS within 90 days after the end of the project or at least 60 days before the request for another IHA for the next open water season to enable NMFS to incorporate observation data into the next Authorization. The report will summarize all activities and monitoring results (*i.e.,* vessel-based visual monitoring) conducted during in-water G&G surveys. The Technical Report will include the following:

- Summaries of monitoring effort (*e.g.,* total hours, total distances, and marine mammal distribution through the study period, accounting for sea state and other factors affecting visibility and detectability of marine mammals).
- Analyses of the effects of various factors influencing detectability of marine mammals (*e.g.,* sea state, number of observers, and fog/glare).
- Species composition, occurrence, and distribution of marine mammal sightings, including date, water depth, numbers, age/size/gender categories (if determinable), group sizes, and ice cover.
- Analyses of the effects of survey operations.
- Sighting rates of marine mammals during periods with and without G&G survey activities (and other variables that could affect detectability), such as: (i) Initial sighting distances versus survey activity state; (ii) closest point of approach versus survey activity state; (iii) observed behaviors and types of movements versus survey activity state; (iv) numbers of sightings/individuals seen versus survey activity state; (v) distribution around the source vessels versus survey activity state; and (vi) estimates of Level B harassment based on presence in the 120 or 160 dB harassment zone.

Notification of Injured or Dead Marine Mammals

In the unanticipated event that the specified activity leads to an injury of a marine mammal (Level A harassment) or mortality (*e.g.,* ship-strike, gear interaction, and/or entanglement), EMALL would immediately cease the specified activities and immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, and the Alaska Regional Stranding Coordinators at NMFS. The report would include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Name and type of vessel involved;
- Vessel's speed during and leading up to the incident;
- Description of the incident;
- Status of all sound source use in the 24 hours preceding the incident;
- Water depth;
- Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities would not resume until NMFS is able to review the circumstances of the event. EMALL would work with NMFS to minimize reoccurrence of such an event in the future. The G&G Program would not resume activities until formally notified by NMFS via letter, email, or telephone.

In the event that the G&G Program discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.,* in less than a moderate state of decomposition as described in the next paragraph), the Applicant would immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the NMFS Alaska Stranding Hotline and/or by email to the Alaska Regional Stranding Coordinators. The report would include the same information identified in the paragraph above. Activities would be able to continue while NMFS reviews the circumstances of the incident. NMFS would work with the Applicant to determine if modifications in the activities are appropriate.

In the event that the G&G Program discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), EMALL would report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the NMFS Alaska Stranding Hotline and/or by email to the Alaska Regional Stranding Coordinators, within 24 hours of the discovery. EMALL would provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Acoustic stimuli (*i.e.,* increased underwater sound) generated during the operation of the airgun or the sub-bottom profiler have the potential to result in the behavioral disturbance of some marine mammals. NMFS believes that take from the operation of the vibracore is unlikely but possible and is issuing take at the request of the applicant. Thus, NMFS proposes to authorize take by Level B harassment resulting from the operation of the sound sources for the proposed survey based upon the current acoustic exposure criteria shown in Table 3.

TABLE 3—NMFS' CURRENT ACOUSTIC EXPOSURE CRITERIA

Criterion	Criterion definition	Threshold
Level A Harassment (Injury)	Permanent Threshold Shift (PTS) (Any level above that which is known to cause TTS).	180 dB re 1 microPa-m (cetaceans)/190 dB re 1 microPa-m (pinnipeds) root mean square (rms)
Level B Harassment	Behavioral Disruption (for impulse noises) Behavioral Disruption (for continuous noises).	160 dB re 1 microPa-m (rms) 120 dB re 1 microPa-m (rms)

NMFS' practice is to apply the 120 or 160 dB re: 1 μPa received level threshold (whichever is appropriate) for underwater impulse sound levels to determine whether take by Level B harassment occurs.

All four types of survey equipment addressed in the application will be operated from the geophysical source vessels that will either be moving steadily across the ocean surface (chirper, boomer, airgun), or from station to station (vibracoring). The numbers of marine mammals that might be exposed to sound pressure levels exceeding NMFS Level B harassment threshold levels due to G&G surveys, without mitigation, were determined by multiplying the average raw density for each species by the daily ensonified area, and then multiplying that figure by the number of days each sound source is estimated to be in use. The chirp and boomer activities were combined into one calculation because they will be operating concurrently, using the daily ensonified area of the boomer, as it is a slightly larger isopleth. The exposure estimates for each activity were then summed to provide total exposures for the duration of the project. The exposure estimates for the activity are detailed below. Although NMFS believes that take of marine mammals from vibracore is extremely unlikely, it has been included in this authorization out of an abundance of caution and at the request of the applicant.

Ensonified Area

The ZOI is the area ensonified by a particular sound source greater than threshold levels (120 dB for continuous and 160 dB for impulsive). The radius of the ZOI for a particular equipment was determined by applying the source sound pressure levels described in Table 6 of the application to Collins *et al.*'s (2007) attenuation model of 18.4 Log(r) − 0.00188 derived from Cook Inlet. For those equipment generating loud underwater sound within the audible hearing range of marine mammals (<200 kHz), the distance to threshold ranges between 184 m (604 ft) and 2.54 km (1.58 mi), with ZOIs ranging between 0.106 and 20.26 km2 (0.041–7.82 mi2) (Table 4).

TABLE 4—SUMMARY OF DISTANCES TO THE NMFS THRESHOLDS AND ASSOCIATED ZOIS

Survey equipment	Distance to 160 dB isopleth [1] m (ft)	Distance to 120 dB isopleth [1] km (mi)	160 dB ZOI km² (mi²)	120 dB ZOI km² (mi²)
Sub-bottom Profiler (Chirp)	184 (604)	N/A	0.106 (0.041)	N/A
Sub-bottom Profiler (Boomer)	263 (863)	N/A	0.217 (0.084)	N/A
Airgun	300 (984)	N/A	0.283 (0.109)	N/A
Vibracore	N/A	2.54 (1.58)	N/A	20.26 (7.82)

[1] Calculated by applying Collins *et al.* (2007) spreading formula to source levels in Table 2.

Marine Mammal Densities

Density estimates were derived for harbor porpoises, killer whales, and harbor seals from NMFS 2002–2012 Cook Inlet survey data as described below in Section 6.1.2.1 and shown in Table 8. The beluga whale exposure estimates were calculated using density estimates from Goetz *et al.* (2012) as described in Section 6.1.2.2.

Harbor Porpoise, Killer Whale, Harbor Seal

Density estimates were calculated for all marine mammals (except beluga whales) by using aerial survey data collected by NMFS in Cook Inlet between 2002 and 2012 (Rugh *et al.* 2002, 2003, 2004a, 2004b, 2005a, 2005b, 2005c, 2006, 2007; Shelden *et al.* 2008, 2009, 2010; Hobbs *et al.* 2011, Shelden *et al.* 2012) and compiled by Apache, Inc. (Apache IHA application 2014). To estimate the average raw densities of marine mammals, the total number of animals for each species observed over the 11-year survey period was divided by the total area of 65,889 km² (25,540 mi²) surveyed over the 11 years. The aerial survey marine mammal sightings, survey effort (area), and derived average raw densities are provided in Table 5.

TABLE 5—RAW DENSITY ESTIMATES FOR COOK INLET MARINE MAMMALS BASED ON NMFS AERIAL SURVEYS

Species	Number of animals	NMFS survey area km² (mi²)	Mean raw density animals/km² (animals/mi²)
Harbor Porpoise	249	65,889 (25,440)	0.0033 (0.0098)
Killer Whale [1]	42	65,889 (25,440)	0.0008 (0.0017)
Harbor Seal	16,117	65,889 (25,440)	0.28 (0.6335)

[1] Density is for all killer whales regardless of the stock although all killer whales in the upper Cook Inlet are thought to be transient.

These raw densities were not corrected for animals missed during the aerial surveys as no accurate correction factors are currently available for these species; however, observer error may be limited as the NMFS surveyors often circled marine mammal groups to get an accurate count of group size. The harbor seal densities are probably biased upwards given that a large number of the animals recorded were of large groups hauled out at river mouths, and do not represent the distribution in the waters where the G&G activity will actually occur. However, these data are the most comprehensive available for Cook Inlet harbor seals and therefore constitute the best available science.

Beluga Whale

Goetz *et al.* (2012) modeled aerial survey data collected by the NMFS between 1993 and 2008 and developed specific beluga summer densities for each 1-km2 cell of Cook Inlet. The results provide a more precise estimate of beluga density at a given location than simply multiplying all aerial observations by the total survey effort given the clumped distribution of beluga whales during the summer months. To develop a density estimate associated with planned action areas (*i.e.,* Marine Terminal and pipeline survey areas), the ensonified area associated with each activity was overlain a map of the 1-km density cells, the cells falling within each ensonified area were quantified, and an average cell density was calculated. The summary of the density results is found in Table 9 in the application. The associated ensonified areas and beluga density contours relative to the action areas are shown in Table 6.

TABLE 6—MEAN RAW DENSITIES OF BELUGA WHALES WITHIN THE ACTION AREAS BASED ON GOETZ *et al.* (2012) COOK INLET BELUGA WHALE DISTRIBUTION MODELING

Action area	Number of cells	Mean density (animals/km²)	Density range (animals/km²)
Marine Terminal Survey Area	386	0.000166	0.000021–0.001512
Pipeline Survey Area	571	0.011552	0.000275–0.156718

Activity Duration

The Cook Inlet 2015 G&G Program is expected to require approximately 12 weeks (84 days) to complete. During approximately 63 of these days, the chirp and boomer sub-bottom profiler will produce the loudest sound levels. Airgun use will occur during approximately 7 days and will occur only near the proposed Marine Terminal. The airgun activity will occur during the summer when beluga whale use of Cook Inlet is primarily concentrated near the Susitna Delta, approximately 65 km (40 mi) north of the airgun survey area. Vibracoring, with its large ZOI, will occur intermittently over approximately 14 days. The applicant provided an estimate of 50 miles per day that the survey vessel could travel.

Exposure Calculations

The numbers of marine mammals that might be exposed to sound pressure levels exceeding NMFS Level B harassment threshold levels due to G&G surveys, without mitigation, were determined by multiplying the average raw density for each species by the daily ensonified area, then multiplying by the number of days each sound source is estimated to be in use. While this method produces a good estimate of the number of instances of take, it is likely an overestimate of the number of individual marine mammals taken because it assumes that entirely new individuals are taken on subsequent days and that no animals are taken more than once. The chirp and boomer activities were combined to calculate exposure from days of activities in the Upper Cook Inlet area and the Lower Cook Inlet area because they will be operating concurrently. The exposure estimates for each activity were then summed to provide total exposures for the duration of the project. The exposure estimates for the activity are detailed below.

TABLE 7—EXPOSURE ESTIMATES FOR ACTIVITY

Species	Density	Boomer—Upper	Boomer—Lower	Airgun	Vibracore—Upper	Vibracore—Lower	Total	Authorization
Beluga	0.0012 .00017	18.18	0.18	0.056	5.15	0.11	23.69	24
Killer whale	0.00082	1.29	0.91	0.28	0.37	0.55	3.39	5
Harbor seal	0.28	444.52	312.37	95.99	125.92	188.89	1,167.68	1,168
Harbor porpoise	0.0033	5.18	3.64	1.12	1.47	2.20	13.60	20

NMFS recognizes that in addition to what was mentioned above, there are other factors that contribute to an overestimate of exposures,, *e.g.,* the fact that many of these technologies will be operating simultaneously, and not

exposing animals in separate instances for the duration of the survey period. Additionally, the beamwidth and tilt angle of the sub-bottom profiler are not factored into the characterization of the sound field, making it conservative and large, creating additional overestimates in take estimation.

The possibility of Level A exposure was analyzed, however the distances to 180 dB/190 dB isopleths are incredibly small, ranging from 0 to 26 meters. The number of exposures, without accounting for mitigation or likely avoidance of louder sounds, is small for these zones, and with mitigation and the likelihood of detecting marine mammals within this small area combined with the likelihood of avoidance, it is likely these takes can be avoided. The only technology that would not shutdown is the vibracore, which has a distance to Level A isopleth (180 dB) of 3 meters. Therefore, authorization of Level A take is not necessary.

NMFS will authorize the following takes by Level B harassment:

TABLE 8—AUTHORIZATIONS

Species	Exposure estimate	Take authorized	Percent of stock or population	Population trend
Beluga	23.69	24	7.06	Decreasing.
Killer whale	3.39	5	1.44 transient	Transient—Stable.
Harbor seal	1,167.68	1,168	5.10	Stable.
Harbor porpoise	13.60	20	0.064	No reliable info.

Analysis and Determinations

Negligible Impact

Negligible impact is ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival'' (50 CFR 216.103). The lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population level effects) forms the basis of a negligible impact finding. Thus, an estimate of the number of takes, alone, is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through behavioral harassment, NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, effects on habitat, and the status of the species.

To avoid repetition, except where otherwise identified, the discussion of our analyses applies to all the species listed in Table 8, given that the anticipated effects of this project on marine mammals are expected to be relatively similar in nature. Where there is information about specific impacts to, or about the size, status, or structure of, any species or stock that would lead to a different analysis for this activity, species-specific factors are identified and analyzed.

In making a negligible impact determination, NMFS considers:

- The number of anticipated injuries, serious injuries, or mortalities;
- The number, nature, and intensity, and duration of Level B harassment; and
- The context in which the takes occur (*e.g.,* impacts to areas of significance, impacts to local populations, and cumulative impacts when taking into account successive/contemporaneous actions when added to baseline data);
- The status of stock or species of marine mammals (*i.e.,* depleted, not depleted, decreasing, increasing, stable, impact relative to the size of the population);
- Impacts on habitat affecting rates of recruitment/survival; and
- The effectiveness of monitoring and mitigation measures to reduce the number or severity of incidental take.

As discussed in the Potential Effects section, temporary or permanent threshold shift, non-auditory physical or physiological effects, ship strike, entanglement are not expected to occur. Given the required mitigation and related monitoring, no injuries or mortalities are anticipated to occur to any species as a result of EMALL's proposed survey in Cook Inlet, and none are authorized. Animals in the area are not expected to incur hearing impairment (*i.e.,* TTS or PTS) or non-auditory physiological effects due to low source levels and the fact that most marine mammals would more likely avoid a loud sound source rather than swim in such close proximity as to result in TTS or PTS. The most likely effect from the proposed action is localized, short-term behavioral disturbance from active acoustic sources. The number of takes that are anticipated and authorized are expected to be limited to short-term Level B behavioral harassment for all stocks for which take is authorized. This is largely due to the short time scale of the proposed activity, the low source levels for many of the technologies proposed to be used, as well as the required mitigation. The technologies do not operate continuously over a 24-hour period. Rather, airguns are operational for a few hours at a time for 7 days, with the sub-bottom profiler chirp and boomer operating for 63 days, and the vibracore operating over 14 days.

The addition of five vessels, and noise due to vessel operations associated with the survey, would not be outside the present experience of marine mammals in Cook Inlet, although levels may increase locally. Potential impacts to marine mammal habitat were discussed previously in this document (see the ''Anticipated Effects on Habitat'' section). Although some disturbance is possible to food sources of marine mammals, the impacts are anticipated to be minor enough as to not affect annual rates of recruitment or survival of marine mammals in the area. Based on the size of Cook Inlet where feeding by marine mammals occurs versus the localized area of the marine survey activities, any missed feeding opportunities in the direct project area would be minor based on the fact that other feeding areas exist elsewhere.

Taking into account the mitigation measures that are planned, effects on cetaceans are generally expected to be restricted to avoidance of a limited area around the survey operation and short-term changes in behavior, falling within the MMPA definition of ''Level B harassment.'' Shut-downs are required for belugas and groups of killer whales or harbor porpoises when they approach the 160dB disturbance zone, to further reduce potential impacts to these populations. Visual observation by trained PSOs is also implemented to reduce the impact of the proposed

activity by informing operators of marine mammals approaching the relevant disturbance or injury zones. Animals are not expected to permanently abandon any area that is surveyed, and any behaviors that are interrupted during the activity are expected to resume once the activity ceases. Only a small portion of marine mammal habitat will be affected at any time, and other areas within Cook Inlet will be available for necessary biological functions.

Odontocete (including Cook Inlet beluga whales, killer whales, and harbor porpoises) reactions to seismic energy pulses are usually assumed to be limited to shorter distances from the airgun(s) than are those of mysticetes, in part because odontocete low-frequency hearing is assumed to be less sensitive than that of mysticetes. This information supports the idea that the numerated takes for odonotocetes are likely on the lower end of severity in the terms of responses that rise to the level of a take.

Beluga Whales

Cook Inlet beluga whales are listed as endangered under the ESA. This stock is also considered depleted under the MMPA. The estimated annual rate of decline for Cook Inlet beluga whales was 0.6 percent between 2002 and 2012. The authorization of take by Level B harassment of 24 Cook Inlet beluga whales represents 7.06 percent of the population.

Belugas in the Canadian Beaufort Sea in summer appear to be fairly responsive to seismic energy, with few being sighted within 10–20 km (6–12 mi) of seismic vessels during aerial surveys (Miller *et al.*, 2005). However, as noted above, Cook Inlet belugas are more accustomed to anthropogenic sound than beluga whales in the Beaufort Sea. Therefore, the results from the Beaufort Sea surveys do not directly translate to potential reactions of Cook Inlet beluga whales. Also, due to the dispersed distribution of beluga whales in Cook Inlet during winter and the concentration of beluga whales in upper Cook Inlet from late April through early fall, belugas would likely occur in small numbers in the majority of EMALL's proposed survey area during the majority of EMALL's annual operational timeframe of August through December. For the same reason, as well as the mitigation measure that requires shutting down for belugas seen approaching the 160dB disturbance zone, and the likelihood of avoidance at high levels, it is unlikely that animals would be exposed to received levels capable of causing injury.

Given the large number of vessels in Cook Inlet and the apparent habituation to vessels by Cook Inlet beluga whales and the other marine mammals that may occur in the area, vessel activity from the two source vessels, tug and jack-up rig and associated vessel noise is not expected to have effects that could cause significant or long-term consequences for individual marine mammals or their populations, given that vessels will operate for a maximum of 84 days.

In addition, NMFS has seasonally restricted survey operations in the area known to be important for beluga whale feeding, calving, or nursing. The primary location for these biological life functions occurs in the Susitna Delta region of upper Cook Inlet. NMFS required EMALL to implement a 16 km (10 mi) seasonal exclusion from survey operations in this region from April 15-October 15. The highest concentrations of belugas are typically found in this area from early May through September each year. NMFS has incorporated a 2-week buffer on each end of this seasonal use timeframe to account for any anomalies in distribution and marine mammal usage.

Killer Whales

The authorization of take by Level B harassment of 5 killer whales represents only 1.44 percent of the population. Killer whales are not encountered as frequently in Cook Inlet as some of the other species in this analysis, however when sighted they are usually in groups. The addition of a mitigation measure to shutdown if a group of 5 or more killer whales is seen approaching the 160 dB zone is intended to minimize any impact to an aggregation of killer whales if encountered. The killer whales in the survey area are also thought to be transient killer whales and therefore rely on the habitat in the EMALL survey area less than other resident species.

Harbor Porpoise

The authorization of take by Level B harassment for 20 harbor porpoises represents only 0.064 percent of the population. Harbor porpoises are among the most sensitive marine mammal species with regard to behavioral response and anthropogenic noise. They are known to exhibit behavioral responses to operation of seismic airguns, pingers, and other technologies at low thresholds. However, they are abundant in Cook Inlet and therefore the authorized take is unlikely to affect recruitment or status of the population in any way. In addition, mitigation measures include shutdowns for groups of more than 5 harbor porpoises that will minimize the amount of take to the local harbor porpoise population. This mitigation as well as the short duration and low source levels of the proposed activity will reduce the impact to the harbor porpoises found in Cook Inlet.

Harbor Seal

The authorization of take by Level B harassment for 1,168 harbor seals represents only 5.1% of a stable population. Observations during other anthropogenic activities in Cook Inlet have reported large congregations of harbor seals hauling out in upper Cook Inlet. However, mitigation measures, such as vessel speed, course alteration, and visual monitoring, and time-area restrictions will be implemented to help reduce impacts to the animals. Additionally, this activity does not encompass a large number of known harbor seal haulouts, particularly as this activity proposes operations traversing across the Inlet, as opposed to entirely nearshore activities. While some harbor seals will likely be exposed, the required mitigation along with their smaller aggregations in water than on shore should minimize impacts to the harbor seal population. Additionally, the short duration of the survey, and the use of visual observers to inform shutdowns and ramp up delays should further reduce the severity of behavioral reactions to Cook Inlet harbor seals. Therefore, the exposure of pinnipeds to sounds produced by this phase of EMALL's proposed survey is not anticipated to have an effect on annual rates of recruitment or survival on those species or stocks.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the required monitoring and mitigation measures, NMFS finds that the total annual marine mammal take from EMALL's proposed survey will have a negligible impact on the affected marine mammal species or stocks (see Table 8).

Although NMFS believes it is unlikely the operation of the vibracore would result in the take of marine mammals and did not propose to authorize take by vibracore in the **Federal Register** notice of the proposed Authorization, we note here that take from vibracoring activities has been included in the Final Authorization out of an abundance of caution and at the request of the applicant. Take by Level B harassment from vibracoring accounts for approximately 25 percent of the take authorized for the entire survey, ranging from 0.9 killer whales to 313 harbor seals. The vibracoring activity is

proposed to occur at 55 locations across the Inlet from the Forelands, north to the upper end of Cook Inlet. However, the actual noise-producing activity will only occur for only 90 seconds at a time, during which PSOs will be observing for marine mammals. The limited scope and duration of vibracoring makes it extremely unlikely that take by Level B harassment would occur during the vibracore portion of the operation. Nonetheless, we included the potential take from vibracore in our analysis above, and as we indicated, we found that there would be a negligible impact on the affect species or stocks from the total takes, including any that are authorized for vibracore.

Small Numbers Analysis

The requested takes authorized annually represent 7.06 percent of the Cook Inlet beluga whale population of approximately 340 animals (Allen and Angliss, 2014), 1.44 percent of the Gulf of Alaska, Aleutian Island and Bering Sea stock of killer whales (345 transients), and 0.064 percent of the Gulf of Alaska stock of approximately 31,046 harbor porpoises. The take requests presented for harbor seals represent 5.02 percent of the Cook Inlet/Shelikof stock of approximately 22,900 animals. These take estimates represent small numbers relative to the affected species or stock sizes as shown in Table 8.

In addition to the quantitative methods used to estimate take, NMFS also considered qualitative factors that further support the ''small numbers'' determination, including: (1) The seasonal distribution and habitat use patterns of Cook Inlet beluga whales, which suggest that for much of the time only a small portion of the population would be accessible to impacts from EMALL's activity, as most animals are found in the Susitna Delta region of Upper Cook Inlet from early May through September; (2) other cetacean species are not common in the survey area; (3) the required mitigation requirements, which provide spatio-temporal limitations that avoid impacts to large numbers of belugas feeding and calving in the Susitna Delta; (4) the required monitoring requirements and mitigation measures described earlier in this document for all marine mammal species that will reduce the amount of takes; and (5) monitoring results from previous activities that indicated low numbers of beluga whale sightings within the Level B disturbance exclusion zone and low levels of Level B harassment takes of other marine mammals. Therefore, NMFS determined that the numbers of animals likely to be taken are small.

Impact on Availability of Affected Species for Taking for Subsistence Uses

Relevant Subsistence Uses

The subsistence harvest of marine mammals transcends the nutritional and economic values attributed to the animal and is an integral part of the cultural identity of the region's Alaska Native communities. Inedible parts of the whale provide Native artisans with materials for cultural handicrafts, and the hunting itself perpetuates Native traditions by transmitting traditional skills and knowledge to younger generations (NOAA, 2007).

The Cook Inlet beluga whale has traditionally been hunted by Alaska Natives for subsistence purposes. For several decades prior to the 1980s, the Native Village of Tyonek residents were the primary subsistence hunters of Cook Inlet beluga whales. During the 1980s and 1990s, Alaska Natives from villages in the western, northwestern, and North Slope regions of Alaska either moved to or visited the south central region and participated in the yearly subsistence harvest (Stanek, 1994). From 1994 to 1998, NMFS estimated 65 whales per year (range 21–123) were taken in this harvest, including those successfully taken for food and those struck and lost. NMFS concluded that this number was high enough to account for the estimated 14 percent annual decline in the population during this time (Hobbs *et al.*, 2008). Actual mortality may have been higher, given the difficulty of estimating the number of whales struck and lost during the hunts. In 1999, a moratorium was enacted (Pub. L. 106–31) prohibiting the subsistence take of Cook Inlet beluga whales except through a cooperative agreement between NMFS and the affected Alaska Native organizations. Since the Cook Inlet beluga whale harvest was regulated in 1999 requiring cooperative agreements, five beluga whales have been struck and harvested. Those beluga whales were harvested in 2001 (one animal), 2002 (one animal), 2003 (one animal), and 2005 (two animals). The Native Village of Tyonek agreed not to hunt or request a hunt in 2007, when no co-management agreement was to be signed (NMFS, 2008a).

On October 15, 2008, NMFS published a final rule that established long-term harvest limits on Cook Inlet beluga whales that may be taken by Alaska Natives for subsistence purposes (73 FR 60976). That rule prohibits harvest for a 5-year interval period if the average stock abundance of Cook Inlet beluga whales over the prior five-year interval is below 350 whales. Harvest levels for the current 5-year planning interval (2013–2017) are zero because the average stock abundance for the previous five-year period (2008–2012) was below 350 whales. Based on the average abundance over the 2002–2007 period, no hunt occurred between 2008 and 2012 (NMFS, 2008a). The Cook Inlet Marine Mammal Council, which managed the Alaska Native Subsistence fishery with NMFS, was disbanded by a unanimous vote of the Tribes' representatives on June 20, 2012. At this time, no harvest is expected in 2015 or, likely, in 2016.

Data on the harvest of other marine mammals in Cook Inlet are lacking. Some data are available on the subsistence harvest of harbor seals, harbor porpoises, and killer whales in Alaska in the marine mammal stock assessments. However, these numbers are for the Gulf of Alaska including Cook Inlet, and they are not indicative of the harvest in Cook Inlet.

There is a low level of subsistence hunting for harbor seals in Cook Inlet. Seal hunting occurs opportunistically among Alaska Natives who may be fishing or travelling in the upper Inlet near the mouths of the Susitna River, Beluga River, and Little Susitna. Some detailed information on the subsistence harvest of harbor seals is available from past studies conducted by the Alaska Department of Fish & Game (Wolfe *et al.*, 2009). In 2008, 33 harbor seals were taken for harvest in the Upper Kenai-Cook Inlet area. In the same study, reports from hunters stated that harbor seal populations in the area were increasing (28.6%) or remaining stable (71.4%). The specific hunting regions identified were Anchorage, Homer, Kenai, and Tyonek, and hunting generally peaks in March, September, and November (Wolfe *et al.*, 2009).

Potential Impacts on Availability for Subsistence Uses

Section 101(a)(5)(D) also requires NMFS to determine that the taking will not have an unmitigable adverse effect on the availability of marine mammal species or stocks for subsistence use. NMFS has defined ''unmitigable adverse impact'' in 50 CFR 216.103 as an impact resulting from the specified activity: (1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) Causing the marine mammals to abandon or avoid hunting areas; (ii) Directly displacing subsistence users; or (iii) Placing physical barriers between the marine mammals and the subsistence hunters; and (2) That cannot

be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

The primary concern is the disturbance of marine mammals through the introduction of anthropogenic sound into the marine environment during the proposed survey. Marine mammals could be behaviorally harassed and either become more difficult to hunt or temporarily abandon traditional hunting grounds. However, the proposed survey will not have any impacts to beluga harvests as none currently occur in Cook Inlet. Additionally, subsistence harvests of other marine mammal species are limited in Cook Inlet.

Plan of Cooperation or Measures To Minimize Impacts to Subsistence Hunts

The entire upper Cook unit and a portion of the lower Cook unit falls north of 60° N., or within the region NMFS has designated as an Arctic subsistence use area. EMALL provided detailed information in Section 8 of their application regarding their plan to cooperate with local subsistence users and stakeholders regarding the potential effects of their proposed activity. There are several villages in EMALL's proposed project area that have traditionally hunted marine mammals, primarily harbor seals. Tyonek is the only tribal village in upper Cook Inlet with a tradition of hunting marine mammals, in this case harbor seals and beluga whales. However, for either species the annual recorded harvest since the 1980s has averaged about one or fewer of either species (Fall *et al.* 1984, Wolfe *et al.* 2009, SRBA and HC 2011), and there is currently a moratorium on subsistence harvest of belugas. Further, many of the seals that are harvested are done incidentally to salmon fishing or moose hunting (Fall *et al.* 1984, Merrill and Orpheim 2013), often near the mouths of the Susitna Delta rivers (Fall *et al.* 1984) north of EMALL's proposed seismic survey area.

Villages in lower Cook Inlet adjacent to EMALL's proposed survey area (Kenai, Salamatof, and Nikiski) have either not traditionally hunted beluga whales, or at least not in recent years, and rarely do they harvest sea lions. These villages more commonly harvest harbor seals, with Kenai reporting an average of about 13 per year between 1992 and 2008 (Wolfe *et al.* 2009). According to Fall *et al.* (1984), many of the seals harvested by hunters from these villages were taken on the west side of the inlet during hunting excursions for moose and black bears.

Although marine mammals remain an important subsistence resource in Cook Inlet, the number of animals annually harvested is low, and are primarily harbor seals. Much of the harbor seal harvest occurs incidental to other fishing and hunting activities, and at areas outside of the EMALL's proposed survey areas such as the Susitna Delta or the west side of lower Cook Inlet. Also, EMALL is unlikely to conduct activity in the vicinity of any of the river mouths where large numbers of seals haul out.

EMALL and NMFS recognize the importance of ensuring that Alaska Natives and federally recognized tribes are informed, engaged, and involved during the permitting process and will continue to work with the Alaska Natives and tribes to discuss operations and activities.

Prior to offshore activities EMALL was to consult with nearby communities such as Tyonek, Salamatof, and the Kenaitze Indian Tribe to attend and present the program description prior to operations within those areas. These meetings were conducted and no issues related to subsistence use of marine mammals was raised.

If a conflict does occur with project activities involving subsistence or fishing, the project manager will immediately contact the affected party to resolve the conflict.

Unmitigable Adverse Impact Analysis and Determination

The project will not have any effect on beluga whale harvests because no beluga harvest will take place in 2015. Additionally, the proposed seismic survey area is not an important native subsistence site for other subsistence species of marine mammals thus, the number harvested is expected to be extremely low. The timing and location of subsistence harvest of Cook Inlet harbor seals may coincide with EMALL's project, but because this subsistence hunt is conducted opportunistically and at such a low level (NMFS, 2013c), EMALL's program is not expected to have an impact on the subsistence use of harbor seals. Moreover, the proposed survey would result in only temporary disturbances. Accordingly, the specified activity would not impact the availability of these other marine mammal species for subsistence uses.

NMFS anticipates that any effects from EMALL's proposed survey on marine mammals, especially harbor seals and Cook Inlet beluga whales, which are or have been taken for subsistence uses, would be short-term, site specific, and limited to inconsequential changes in behavior and mild stress responses. NMFS does not anticipate that the authorized taking of affected species or stocks will reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (1) Causing the marine mammals to abandon or avoid hunting areas; (2) directly displacing subsistence users; or (3) placing physical barriers between the marine mammals and the subsistence hunters; and that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met. Based on the description of the specified activity, the measures described to minimize adverse effects on the availability of marine mammals for subsistence purposes, and the required mitigation and monitoring measures, NMFS has determined that there will not be an unmitigable adverse impact on subsistence uses from EMALL's proposed activities.

Endangered Species Act

There is one marine mammal species listed as endangered under the ESA with confirmed or possible occurrence in the project area: The Cook Inlet beluga whale. In addition, the action could occur within 10 miles of designated critical habitat for the Cook Inlet beluga whale. NMFS's Permits and Conservation Division has initiated consultation with NMFS' Alaska Region Protected Resources Division under section 7 of the ESA. This consultation concluded on August 13, 2015, when a Biological Opinion was issued. The Biological Opinion determined that the issuance of an IHA is not likely to jeapordize the continued existence of the Cook Inlet beluga whales or destroy or adversely modify Cook Inlet beluga whale critical habitat. Finally, the Alaska region issued an Incidental Take Statement (ITS) for Cook Inlet beluga whales. The ITS contains reasonable and prudent measures implemented by the terms and conditions to minimize the effect of this take.

National Environmental Policy Act

NMFS prepared an EA that includes an analysis of potential environmental effects associated with NMFS' issuance of an IHA to EMALL to take marine mammals incidental to conducting a geophysical and geotechnical survey program in Cook Inlet, Alaska. NMFS has finalized the EA and prepared a Finding of No Significant Impact for this action. Therefore, preparation of an Environmental Impact Statement is not necessary.

Authorization

As a result of these determinations, NMFS has issued an IHA to Exxon Mobil Alaska LNG LLC (EMALL) for taking marine mammals incidental to a geophysical and geotechnical survey in Cook Inlet, Alaska, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: August 17, 2015.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2015–20605 Filed 8–20–15; 8:45 am]

BILLING CODE 3510–22–P

FEDERAL REGISTER

Vol. 80 Friday,

No. 162 August 21, 2015

Part IV

Environmental Protection Agency

40 CFR Part 131

Water Quality Standards Regulatory Revisions; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[EPA–HQ–OW–2010–0606; FRL–9921–21–OW]

RIN 2040–AF16

Water Quality Standards Regulatory Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA updates the federal water quality standards (WQS) regulation to provide a better-defined pathway for states and authorized tribes to improve water quality and protect high quality waters. The WQS regulation establishes a strong foundation for water quality management programs, including water quality assessments, impaired waters lists, and total maximum daily loads, as well as water quality-based effluent limits in National Pollutant Discharge Elimination System (NPDES) discharge permits. In this rule, EPA is revising six program areas to improve the WQS regulation's effectiveness, increase transparency, and enhance opportunities for meaningful public engagement at the state, tribal and local levels. Specifically, in this rule EPA: Clarifies what constitutes an Administrator's determination that new or revised WQS are necessary; refines how states and authorized tribes assign and revise designated uses for individual water bodies; revises the triennial review requirements to clarify the role of new or updated Clean Water Act (CWA) section 304(a) criteria recommendations in the development of WQS by states and authorized tribes, and applicable WQS that must be reviewed triennially; establishes stronger antidegradation requirements to enhance protection of high quality waters and promotes public transparency; adds new regulatory provisions to promote the appropriate use of WQS variances; and clarifies that a state or authorized tribe must adopt, and EPA must approve, a permit compliance schedule authorizing provision prior to authorizing the use of schedules of compliance for water quality-based effluent limits (WQBELs) in NPDES permits. In total, these revisions to the WQS regulation enable states and authorized tribes to more effectively address complex water quality challenges, protect existing water quality, and facilitate environmental improvements. The final rule also leads to better understanding and proper use of available CWA tools by promoting transparent and engaged public participation. This action finalizes the WQS regulation revisions initially proposed by EPA on September 4, 2013.

DATES: This final rule is effective on October 20, 2015.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OW–2010–0606. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Office of Water Docket Center, EPA/DC, William Jefferson Clinton West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20004. 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 Office of Water Docket Center is (202) 566–2426. To view docket materials, call ahead to schedule an appointment. Every user is entitled to copy 266 pages per day before incurring a charge. The Docket Center may charge $0.15 for each page over the 266-page limit, plus an administrative fee of $25.00.

FOR FURTHER INFORMATION CONTACT: Janita Aguirre, Standards and Health Protection Division, Office of Science and Technology (4305T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington DC 20460; telephone number: (202) 566–1860; fax number: (202) 566–0409; email address: *WQSRegulatoryClarifications@epa.gov.*

SUPPLEMENTARY INFORMATION: The supplementary information section is organized as follows:

Table of Contents

I. General Information
- A. Does this action apply to me?
- B. What is the statutory and regulatory history of the federal WQS regulation?
- C. What environmental issues do the final changes to the federal WQS regulation address?
- D. How was this final rule developed?
- E. When does this action take effect?

II. Rule Revisions Addressed in This Rule
- A. Administrator's Determinations that New or Revised WQS Are Necessary
- B. Designated Uses
- C. Triennial Reviews
- D. Antidegradation
- E. WQS Variances
- F. Provisions Authorizing the Use of Schedules of Compliance for WQBELs in NPDES Permits
- G. Other Changes

III. Economic Impacts on State and Authorized Tribal WQS Programs

IV. Statutory and Executive Order Reviews
- A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
- B. Paperwork Reduction Act (PRA)
- C. Regulatory Flexibility Act (RFA)
- D. Unfunded Mandates Reform Act (UMRA)
- E. Executive Order 13132: Federalism
- F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
- G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
- H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
- I. National Technology Transfer and Advancement Act
- J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
- K. Congressional Review Act (CRA)

I. General Information

A. Does this action apply to me?

The entities potentially affected by this rule are shown in the table below.

Category	Examples of potentially affected entities
States and Tribes.	States and authorized tribes responsible for administering or overseeing water quality programs.[1]
Industry	Industries discharging pollutants to waters of the United States.
Municipalities.	Publicly owned treatment works or other facilities discharging pollutants to waters of the United States.

This table is not exhaustive, but rather it provides a guide for entities that may be directly or indirectly affected by this action. Citizens concerned with water quality and other types of entities may also be interested in this rulemaking, although they might not be directly impacted. If you have questions

[1] Hereafter referred to as ''states and authorized tribes.'' ''State'' in the CWA and this document refers to a state, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. ''Authorized tribes'' refers to those federally recognized Indian tribes with authority to administer a CWA WQS program.

regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. What is the statutory and regulatory history of the federal WQS regulation?

The Clean Water Act (CWA or the Act)—initially enacted as the Federal Water Pollution Control Act Amendments of 1972 (Pub. L. 92–500) and subsequent amendments—determined the basic structure in place today for regulating pollutant discharges into waters of the United States. The objective of the CWA is ''to restore and maintain the chemical, physical, and biological integrity of the Nation's waters,'' and to achieve ''wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water'' (CWA sections 101(a) and 101(a)(2)).

The CWA establishes the basis for the water quality standards (WQS or standards) regulation and program. CWA section 303 addresses the development of state and authorized tribal WQS that serve the CWA objective for waters of the United States. The core components of WQS are designated uses, water quality criteria that support the uses, and antidegradation requirements. Designated uses establish the environmental objectives for a water body and water quality criteria [2] define the minimum conditions necessary to achieve those environmental objectives. The antidegradation requirements provide a framework for maintaining and protecting water quality that has already been achieved.

CWA section 301 establishes pollutant discharge restrictions for point sources. Specifically, it provides that ''the discharge of any pollutant by any person shall be unlawful'' except in compliance with the terms of the Act, including industrial and municipal effluent limitations specified under CWA sections 301 and 304 and ''any more stringent limitation, including those necessary to meet water quality standards, treatment standards, or schedule of compliance, established pursuant to any [s]tate law or regulations.''

The CWA gives states and authorized tribes discretion on how to control pollution from nonpoint sources. Although the CWA includes specific requirements for the control of pollution from certain discharges, state and authorized tribal WQS established pursuant to CWA section 303 apply to the water bodies themselves, regardless of the source(s) of pollution/pollutants. Thus, the WQS express the desired condition and level of protection for a water body, regardless of whether a state or authorized tribe chooses to place controls on nonpoint source activities, in addition to point source activities required to obtain permits under the CWA. Section 303(c) of the Act also requires that states and authorized tribes hold a public hearing to review their standards at least once every three years (*i.e.,* triennial review), and that EPA review and approve or disapprove any new or revised state and authorized tribal standards. Furthermore, if EPA disapproves a state's or authorized tribe's WQS under CWA sections 303(c)(3) and 303(c)(4)(A), or if the Administrator makes a determination under CWA section 303(c)(4)(B) that a new or revised WQS is necessary, EPA must propose and promulgate federal standards for a state or authorized tribe, unless the state or authorized tribe develops and EPA approves its own WQS first.

EPA established the core of the WQS regulation in a final rule issued in 1983. That rule strengthened provisions that had been in place since 1977 and codified them as 40 CFR part 131.[3] In support of the 1983 regulation, EPA issued a number of guidance documents, such as the *Water Quality Standards Handbook* (WQS Handbook),[4] that provide guidance on the interpretation and implementation of the WQS regulation and on scientific and technical analyses that are used in making decisions that would impact WQS. EPA also developed the *Technical Support Document for Water Quality-Based Toxics Control* [5] that provides additional guidance for implementing state and authorized tribal WQS.

EPA modified the 40 CFR part 131 regulation twice since 1983. First, in 1991 pursuant to section 518 of the Act, EPA added §§ 131.7 and 131.8 which extended to Indian tribes the opportunity to administer the WQS program and outlined dispute resolution mechanisms.[6] Second, in 2000, EPA finalized § 131.21(c)–(f), commonly known as the ''Alaska Rule,'' which specifies that new and revised standards adopted by states and authorized tribes and submitted to EPA after May 30, 2000, become applicable standards for CWA purposes only when approved by EPA.[7]

In 1998, EPA issued an Advance Notice of Proposed Rulemaking (ANPRM) to discuss and invite comment on over 130 aspects of the federal WQS regulation and program, with the goal of identifying specific changes that might strengthen water quality protection and restoration, facilitate watershed management initiatives, and incorporate evolving water quality criteria and assessment science into state and authorized tribal WQS programs.[8] Although EPA chose not to move forward with a rulemaking after the ANPRM, EPA identified a number of high priority issue areas for which the Agency developed guidance, provided technical assistance, and continued further discussion and dialogue to ensure more effective program implementation. This action is part of EPA's ongoing effort to clarify and strengthen the WQS program.

C. What environmental issues do the final changes to the federal WQS regulation address?

Since EPA first established the WQS regulation in 1983, the regulation has acted as a powerful force to prevent pollution and improve water quality by providing a foundation for a broad range of water quality management programs. Since 1983, however, diverse and complex challenges have arisen, including new types of contaminants, pollution stemming from multiple sources, extreme weather events, hydrologic alteration, and climate change-related impacts. These challenges necessitate a more effective, flexible and practicable approach for the implementation of WQS and protecting water quality. Additionally, extensive experience with WQS implementation by states, authorized tribes, and EPA revealed a need to update the regulation to help meet these challenges.

This rulemaking revises the requirements in six program areas: (1) Administrator's determination that new or revised WQS are necessary, (2) designated uses, (3) triennial reviews, (4) antidegradation, (5) WQS variances, and (6) permit compliance schedule authorizing provisions.

The provisions related to designated uses help states and authorized tribes restore and maintain resilient and

[2] Under CWA section 304(a), EPA publishes recommended water quality criteria guidance that consists of scientific information regarding concentrations of specific chemicals or levels of parameters in water that protect aquatic life and human health. CWA section 303(c) refers to state and authorized tribal water quality criteria that are subject to EPA review and approval or disapproval.

[3] 54 FR 51400 (November 8, 1983).

[4] First edition, December 1983; second edition, EPA 823–B–94–005a, August 1994.

[5] First edition, EPA 440/4–85–032, September 1985; revised edition, EPA 505/2–90–001, March 1991.

[6] 56 FR 64893 (December 12, 1991).

[7] 65 FR 24641 (April 27, 2000).

[8] 63 FR 36742 (July 7, 1998).

robust ecosystems by requiring that states and authorized tribes evaluate and adopt the highest attainable use when changing designated uses. The rule provides clearer expectations for when an analysis of attainability of designated uses is or is not required. Such clarity allows for better and more transparent communication among EPA, states, authorized tribes, stakeholders and the public about the designated use revision process, and the appropriate level of protection necessary to meet the purposes of the CWA.

This rule ensures better protection and maintenance of high quality waters that have better water quality than minimally necessary to support propagation of fish, shellfish, and wildlife, and recreation in and on the water. Through protection of habitat, water quality, and aquatic community structure, high quality waters are better able to resist stressors, such as atmospherically deposited pollutants, emerging contaminants, severe weather events, altered hydrology, or other effects resulting from climate change. This rule strengthens the evaluation used to identify and manage high quality waters and increases the opportunities for the public and stakeholders to be involved in the decision-making process. Specifically, there must be a transparent, public, robust evaluation before any decision is made to allow lowering of high quality water. Thus, this rule will lead to better protection of high quality waters.

The rule addresses WQS variances and permit compliance schedules, which are two CWA tools which can be used where WQS are not being attained. The provisions related to WQS variances allow states and authorized tribes to address water quality challenges in a transparent and predictable way. The rule also includes provisions for authorizing the use of permit compliance schedules to ensure that a state or authorized tribal decision to allow permit compliance schedules includes public engagement and transparency. These two tools help states and authorized tribes focus on making incremental progress in improving water quality, rather than pursuing a downgrade of the underlying water quality goals through a designated use change, when the current designated use is difficult to attain.

Lastly, the Administrator's determination and triennial review provisions in this rule promote public transparency and allow for effective communication among EPA, states, authorized tribes, and stakeholders to ensure WQS continue to be consistent with the CWA and EPA's implementing regulation. Meaningful and transparent involvement of the public is an important component of triennial review when making decisions about whether and when criteria will be adopted or revised to protect designated uses. The rule provides more clearly defined and transparent requirements, so that states and authorized tribes consider the latest science as reflected in the CWA section 304(a) criteria recommendations, and the public understands the decisions made.

D. How was this final rule developed?

In developing this rule, EPA considered the public comments and feedback received from stakeholders. EPA provided a 120-day public comment period after the proposed rule was published in the **Federal Register** on September 4, 2013.[9] In addition, EPA held two public webinars, a public meeting, and a tribal consultation to discuss the contents of the proposed rule and answer clarifying questions in order to allow the public to submit well-informed comments.

Over 150 organizations and individuals submitted comments on a range of issues. EPA also received 2,500 letters from individuals associated with mass letter writing campaigns. Some comments addressed issues beyond the scope of the proposed rulemaking. EPA did not expand the scope of the rulemaking or make regulatory changes to address the substance of these comments. In each section of this preamble, EPA discusses certain public comments so that the public is fully aware of its position. For a full response to these and all other comments, see EPA's Response to Comments document in the official public docket.

In addition, EPA met with all stakeholders who requested time to discuss the contents of the proposed rule. Such discussions occurred with members of state and tribal organizations and the environmental community. Records of each meeting are included in the official public docket.

E. When does this action take effect?

This regulation is effective October 20, 2015. For judicial review purposes, this rule is promulgated as of 1 p.m. EST (Eastern Standard Time) on the effective date, which will be 60 days after the date of publication of the rule in the **Federal Register**.

States and authorized tribes are subject to the requirements of this final rule on the effective date of the rule. EPA's expectation is that, where a new or revised requirement necessitates a change to state or authorized tribal WQS, such revisions will occur within the next triennial review that the state or authorized tribe initiates after publication of the rule.

As a general matter, when EPA reviews new or revised state or authorized tribal WQS it reviews the provisions to determine whether they are consistent with the CWA and regulation applicable at the time of EPA's review. However, for a short period of transition, EPA will review the provisions and approve or disapprove based on whether they are consistent with the CWA and the relevant part 131 regulation that is in effect prior to the final rule's effective date if (1) they were submitted before the effective date of this final rule or (2) if a state or authorized tribe has held its public hearing(s) and the public comment period has closed before the effective date of this rule and the state or authorized tribe has submitted the new or revised WQS within nine months of the effective date of this final rule. This approach is reasonable for the transition period because EPA recognizes that states and authorized tribes may have invested a significant amount of resources drafting new or revised WQS for the public to comment on without the benefit of knowing EPA's final rule requirements and the state or authorized tribe may not have had sufficient notice to alter the WQS prior to submission to EPA. It would be inefficient and unfair for the state or authorized tribe to have to re-propose and re-start the rulemaking process when it can address the issue in the next triennial review consistent with the final rule. In addition, changing the applicable federal standards that will be basis of EPA's review after the public has put in the effort to provide constructive comments to the state or authorized tribe would be inefficient and could render the comments obsolete. Nine months is a reasonable timeframe to accommodate states and authorized tribes that have legislative processes such that new or revised WQS cannot be submitted to EPA until the legislature has passed the regulation at its soonest legislative session after close of the public comment period. Except for the circumstances outlined in this paragraph regarding the transition period, EPA will work with states and authorized tribes to ensure that new or revised WQS meet the requirements of the final rule.

In the event that a court sets aside any portion of this rule, EPA intends for the remainder of the rule to remain in effect.

[9] See Water Quality Standards Regulatory Clarifications, 78 FR 54517 (September 4, 2013).

II. Rule Revisions Addressed in This Rule

EPA provides a comparison document showing the revisions made by this final rule, and a second document showing the revisions made between the proposed and final rule. EPA has posted both documents at *http://water.epa.gov/lawsregs/lawsguidance/wqs_index.cfm.*

A. Administrator's Determinations That New or Revised WQS Are Necessary

What does this rule provide and why?

Open communication among states, tribes and EPA facilitates the sharing of information to ensure that WQS continue to adequately protect waters as new challenges arise. However, the public has occasionally mistaken such communication from EPA for a ''determination'' by the Administrator that new or revised WQS are necessary under CWA section 303(c)(4)(B) (hereafter referred to as ''Administrator's determination'').[10]

With the clarification provided by this rule, stakeholders and the public can readily distinguish Administrator's determinations from routine EPA communications on issues of concern and recommendations regarding the scope and content of state and authorized tribal WQS. This rule minimizes the potential for stakeholders to misunderstand EPA's intent with its communications and allows EPA to provide direct and transparent feedback. It will also preserve limited resources that would otherwise be spent resolving the confusion through litigation.

An Administrator's determination is a powerful tool, and this rule ensures that it continues to be used purposefully and thoughtfully. This rule contains two requirements related to an Administrator's determination at § 131.22(b). The first requirement provides that, in order for a document to constitute an Administrator's determination, it must be signed by the Administrator or duly authorized delegate. The second requirement is that such a determination must include a statement that the document is an Administrator's determination for purposes of section 303(c)(4)(B) of the Act. This requirement makes clear that this provision applies to Administrator's determinations made under CWA section 303(c)(4)(B) rather than determinations made under CWA section 303(c)(4)(A).

Section 303(c)(4) of the Act provides two different scenarios under which the Administrator has the authority to ''promptly prepare and publish proposed regulations setting forth a revised or new water quality standard for the navigable waters involved'' following some sort of determination. Section 303(c)(4)(A) of the Act gives EPA the authority to propose regulations where states or authorized tribes have submitted new or revised WQS that the Administrator ''determines'' are not consistent with the Act. In this instance, EPA disapproves new or revised WQS and specifies the changes necessary to meet CWA requirements. If a state or authorized tribe fails to adopt and submit the necessary revisions within 90 days after notification of the disapproval determination, EPA must promptly propose and promulgate federal WQS as specified in CWA section 303(c)(4)(A) and 40 CFR 131.22(a). This action does not address or affect this authority.

Absent state or authorized tribal adoption or submission of new or revised WQS, section 303(c)(4)(B) of the CWA gives EPA the authority to determine that new or revised WQS are necessary to meet the requirements of the Act. Once the Administrator makes such a determination, EPA must promptly propose regulations setting forth new or revised WQS for the waters of the United States involved, and must then promulgate such WQS, unless a state or authorized tribe adopts and EPA approves such WQS first.

Commenters expressed concern that the proposed rule was not clear with respect to which of these authorities was addressed in this rule. EPA's final rule makes clear that these requirements only refer to Administrator's determinations under CWA section 303(c)(4)(B).

Based on comments, EPA reviewed the use of the term ''states'' throughout the regulation and found that, in § 131.22(b), this term did not accurately describe the scope of waters for which the CWA provides authority to the EPA Administrator. Thus, consistent with CWA section 303(c)(4), this rule provides that the Administrator may propose and promulgate a regulation applicable to one or more ''navigable waters,'' as that term is defined in CWA section 502(7) after determining that new or revised WQS are necessary to meet the requirements of the CWA. Consistent with the statute's plain language, this authority applies to all navigable waters located in any state or in any area of Indian country.[11]

What did EPA consider?

EPA considered finalizing the revision to § 131.22(b) as proposed. However, EPA decided it was important to clarify that this provision only addresses Administrator's determinations made pursuant to section 303(c)(4)(B) of the Act, which was not clear given the comments received. EPA also considered foregoing revisions to § 131.22(b) altogether. However, this option would not meet EPA's policy objective, described previously, which many commenters supported.

What is EPA's position on certain public comments?

Some commenters requested that EPA clarify whether this revision will affect the petition process under section 553(e) of the Administrative Procedure Act (APA) (5 U.S.C. 553(e)). This action does not affect the public's ability to petition EPA to issue, amend, or repeal a rule. Nor does this action affect the Agency's obligations for responding to an APA petition or the ability of a petitioner to challenge the Agency for unreasonable delay in responding to a petition. In the event that the Administrator grants a petition for WQS rulemaking and makes an Administrator's determination that new or revised WQS are necessary, this provision does not affect the obligation the Agency has to promptly propose and promulgate federal WQS.

Some commenters requested that EPA clarify how the Administrator delegates authority. The laws, Executive Orders, and regulations that give EPA its authority typically, but not always, indicate that ''the Administrator'' shall or may exercise certain authorities. In order for other EPA management officials to act on behalf of the Administrator, the Administrator must delegate the authority granted by Congress or the Executive Branch. The Administrator may do so by regulation or through the Agency's delegation process by signing an official letter that is then maintained as a legal record of authority.

B. Designated Uses

What does this rule provide and why?

CWA section 303(c)(2)(A) requires that new or revised WQS shall consist

[10] A listing of Administrator's determinations that new or revised WQS are necessary to meet the requirements of the CWA pursuant to section 303(c)(4)(B) can be found at: *http://water.epa.gov/scitech/swguidance/standards/wqsregs.cfm#federal* under the heading ''Federal Clean Water Act Determinations that New or Revised Standards Are Necessary.'' EPA intends to post future Administrator's determinations pursuant to CWA section 303(c)(4)(B) to its Web site.

[11] Indian country is defined at 18 U.S.C. 1151. A prior example of federally promulgated WQS in Indian country can be found at 40 CFR 131.35, federally promulgated WQS for the Colville Confederated Tribes Indian Reservation (54 FR 28625, July 6, 1989).

of designated uses and water quality criteria based on such uses. It also requires that such WQS shall protect the public health or welfare, enhance the quality of the water, and serve the purposes of the Act. Section 101(a) of the CWA provides that the ultimate objective of the Act is to restore and to maintain the chemical, physical, and biological integrity of the Nation's waters. The national goal in CWA section 101(a)(2) is water quality that provides for the protection and propagation of fish, shellfish, and wildlife and for recreation in and on the water ''wherever attainable.'' EPA's WQS regulation at 40 CFR part 131, specifically §§ 131.10(j) and (k), interprets and implements these provisions through requirements that WQS protect the uses specified in CWA section 101(a)(2) unless states and authorized tribes show those uses are unattainable through a use attainability analysis (UAA) consistent with EPA's regulation, effectively creating a rebuttable presumption of attainability.[12] This underlying requirement remains unchanged by this rule. EPA discussed the 1983 requirements and the rebuttable presumption in the preamble to the proposed rule as background discussion of the existing regulatory requirements. The revisions to § 131.10 establish the additional requirement to adopt the highest attainable use (HAU) after demonstrating that CWA section 101(a)(2) uses are not attainable.

CWA section 303(c)(2)(A) also requires states and authorized tribes to establish WQS ''taking into consideration their use and value'' for a number of purposes, including those addressed in section 101(a)(2) of the Act. EPA's final 1983 regulation at § 131.10(a) implements this provision by requiring that the ''[s]tate must specify appropriate water uses to be achieved and protected'' and that the ''classification of the waters of the [s]tate must take into consideration the use and value of water for public water supplies, protection and propagation of fish, shellfish and wildlife, recreation in and on the water, agricultural, industrial, and other purposes including navigation.''

The revisions to the designated use requirements improve the process by which states and authorized tribes designate and revise uses to better help restore and maintain resilient water quality and robust aquatic ecosystems. The revisions reduce potential confusion and conflicting interpretations of the regulatory requirements for establishing designated uses that can hinder environmental progress. Designated uses drive state and authorized tribal criteria development and water quality management decisions. Therefore, clear and accurate designated uses are essential in maintaining the actions necessary to restore and protect water quality and to meet the goals and objectives of the CWA.

The CWA distinguishes between two broad categories of uses: uses specified in section 101(a)(2) of the Act and uses specified in section 303(c)(2) of the Act. For the purposes of this final rule, the phrase ''uses specified in section 101(a)(2) of the Act'' refers to uses that provide for the protection and propagation of fish,[13] shellfish, and wildlife, and recreation in and on the water, as well as for the protection of human health when consuming fish, shellfish, and other aquatic life. A ''sub-category of a use specified in section 101(a)(2) of the Act'' refers to any use that reflects the subdivision of uses specified in section 101(a)(2) of the Act into smaller, more homogenous groups for the purposes of reducing variability within the group.[14] A ''non-101(a)(2) use'' is a use that is not related to the protection or propagation of fish, shellfish, wildlife or recreation in or on the water. Non-101(a)(2) uses include those listed in CWA section 303(c)(2), but not those listed in CWA section 101(a)(2), including use for public water supply, agriculture, industry, and navigation.

For uses specified in section 101(a)(2) of the Act, this rule clarifies when a UAA is and is not required. This rule also makes clear that once a state or authorized tribe has rebutted the presumption of attainability by demonstrating through a required UAA that a use specified in section 101(a)(2) of the Act is not attainable, it must adopt the HAU, as defined in this rule. The HAU requirement supports adoption of states' and authorized tribes' WQS to enhance the quality of the water and to serve the purposes of the Act, including ensuring water quality that provides for uses described in CWA section 101(a)(2) where attainable and to restore and maintain the chemical, physical and biological integrity of the Nation's waters.

For non-101(a)(2) uses, this rule provides that a UAA is not required when a state or authorized tribe removes or revises a non-101(a)(2) use, but clarifies that states and authorized tribes must still submit documentation consistent with CWA section 303(c)(2)(A) to support the state or authorized tribe's action. This requirement recognizes that states' and authorized tribes' decisions about non-101(a)(2) uses must be consistent with the statute and transparent to the public and EPA. This rule also provides a regulatory definition for a non-101(a)(2) use at § 131.3(q). Non-101(a)(2) uses are separate and distinct from uses specified in CWA section 101(a)(2) and sub-categories of such uses.

To clarify when a UAA is and is not required, this rule revises § 131.10(g) and (j) so that when the provisions are read together, it is clear that the factors at § 131.10(g) are only required to be considered when the state or authorized tribe must conduct a UAA under § 131.10(j). In addition, this rule revises § 131.10(k) into new § 131.10(k)(1) and (2) to eliminate a possible contradiction with § 131.10(j)(2), as described in the preamble to the proposed rule.[15]

Section 131.10(j) describes when a UAA is required. Section 131.10(k) specifies when a UAA is not required. Further, the definition of a UAA at § 131.3(g) says that a UAA ''is a structured scientific assessment of the factors affecting the attainment of the use which may include physical, chemical, biological, and economic factors as described in § 131.10(g).'' Section 131.10(g) provides that states and authorized tribes may remove a designated use if they can demonstrate that attaining a designated use is not feasible because of one of six specified factors.

EPA revises § 131.10(j)(1) to clarify that a UAA is required whenever a state or authorized tribe designates uses for the first time that do not include the uses specified in section 101(a)(2) of the Act. Section 131.10(j)(1) also clarifies that a UAA is required where a state or authorized tribe has previously designated uses that do not include the

[12] EPA's 1983 regulation and ''the rebuttable presumption stemming therefrom'' have been upheld as a ''permissible construction of the statute'' (*Idaho Mining Association* v. *Browner,* 90 F. Supp. 2d 1078, 1097–98 (D. Idaho 2000)).

[13] To achieve the CWA's goal of ''wherever attainable . . . protection and propagation of fish . . . '' all aquatic life, including aquatic invertebrates, must be protected because they are a critical component of the food web.

[14] A sub-category of a use specified in section 101(a)(2) of the Act is not necessarily less protective than a use specified in section 101(a)(2) of the Act. For example, a cold water aquatic life use is considered a use sub-category, but provides ''for the protection and propagation of fish, shellfish and wildlife,'' consistent with CWA section 101(a)(2). On the other hand, a secondary contact recreation use (*i.e.,* a use, such as wading or boating, where there is a low likelihood of full body immersion in water or incidental ingestion of water) is considered a use sub-category, but does not provide ''for recreation in and on the water,'' consistent with CWA section 101(a)(2).

[15] See 78 FR 54525 (September 4, 2013).

uses specified in section 101(a)(2) of the Act.[16] EPA revises § 131.10(j)(2) to clarify that a UAA is required when removing or revising a use specified in section 101(a)(2) of the Act as well as when removing or revising a sub-category of such a use. These revisions also clarify that when adopting a sub-category of a use specified in section 101(a)(2) of the Act with less stringent criteria, a UAA is only required when the criteria are less stringent than the previously applicable criteria. EPA made corresponding revisions to § 131.10(g) to explicitly reference § 131.10(j). This rule also includes editorial changes to § 131.10(g) that are not substantive in nature. Lastly, EPA establishes a new § 131.10(k)(1) and (2) to explain when a UAA is not required.

To ensure that states and authorized tribes adopt WQS that continue to serve the Act's goal of water quality that provides for the uses specified in section 101(a)(2) of the CWA to the extent attainable and enhance the quality of the water, this rule revises § 131.10(g) to provide that where states and authorized tribes adopt new or revised WQS based on a required UAA, they must adopt the HAU as defined at § 131.3(m). These new requirements make clear that states and authorized tribes may remove unattainable uses, but they must retain and designate the attainable use(s). The final regulation does not prohibit states and authorized tribes from removing a designated use specified in CWA section 101(a)(2) or a sub-category of such a use, altogether, where demonstrated to be unattainable. For example, a state or authorized tribe may remove an aquatic life use if it can demonstrate through a UAA that no aquatic life use or sub-category of aquatic life use is attainable. EPA expects such situations to be rare; however to clarify that this outcome is possible, EPA adds a sentence to the definition of HAU at § 131.3(m) to make explicit that where the state or authorized tribe demonstrates the relevant use specified in section 101(a)(2) of the Act and sub-categories of such a use are not attainable, there is no required HAU to be adopted. If a state or authorized tribe removes the designated use, altogether, and in the same action adopts another designated use in a different broad use category (*e.g.,* agricultural use, recreational use), it may appear as though the state or authorized tribe intends the newly adopted use to be the HAU. In fact, this is a separate state or tribal decision in the same rulemaking.

The concept of HAU is fundamental to the WQS program. Adopting a use that is less than the HAU could result in the adoption of water quality criteria that inappropriately lower water quality and could adversely affect aquatic ecosystems and the health of the public recreating in and on such waters. For example, a state or authorized tribe may be able to demonstrate that a use supporting a particular class of aquatic life is not attainable. However, if some less sensitive aquatic organisms are able to survive at the site under current or attainable future conditions, the state's or authorized tribe's WQS are not continuing to serve the goals of the CWA by removing the aquatic life use designation and applicable criteria altogether without adopting an alternate CWA section 101(a)(2) use or sub-category of such a use that is feasible to attain, and the criteria that protect that use. EPA's regulation at §§ 131.5(a)(2), 131.6(c), and 131.11(a) explicitly requires states and authorized tribes to adopt water quality criteria that protect designated uses.

Commenters expressed concern that the proposed definition of HAU used overly subjective terminology that would make it difficult for states and authorized tribes to adopt an HAU that would not be challenged by stakeholders. The definition of HAU at § 131.3(m) includes specific terms to ensure that the resulting HAU is clear to states, authorized tribes, stakeholders and the public.

First, the word ''modified'' makes clear that when adopting the HAU, the state or authorized tribe is adopting a different use within the same broad CWA section 101(a)(2) use category, if any such use is attainable. For example, if a state or authorized tribe removes a warm water aquatic life use, then the HAU is a modified version of the warm water aquatic life use, such as a ''limited warm water aquatic life use.'' The definition makes clear that states and authorized tribes are not required to determine whether one broad use category is better than another (*e.g.,* to determine that a recreation use is better than an aquatic life use).

Second, EPA adds the phrase ''based on the evaluation of the factor(s) in § 131.10(g) that preclude(s) attainment of the use and any other information or analyses that were used to evaluate attainability'' to the final HAU definition to be clear that the HAU is the attainable use that results from the process of determining what is not attainable. For example, where the state or authorized tribe demonstrates that a use cannot be attained due to substantial and widespread economic and social impacts, the state or authorized tribe may then determine the HAU by considering the use that is attainable without incurring costs that would cause a substantial and widespread economic and social impact consistent with § 131.10(g)(6). Although the definition continues to include the terms ''highest'' and ''closest to,'' which some commenters said were subjective terms, the new definition does not necessarily mean that the use with the most numerically stringent criteria must be designated as the HAU. The CWA does not require states and authorized tribes to adopt designated uses to protect a level beyond what is naturally occurring in the water body. Therefore, a state's or authorized tribe's determination of the HAU must take into consideration the naturally expected condition for the water body or waterbody segment. For example, Pacific Northwest states provide specific levels of protection for different life stages of salmonids. While the different life stages require different temperature criteria, the designated use with the most numerically stringent temperature criterion may not be required under § 131.11(a) to protect the HAU, if the life stage that temperature criterion protects does not naturally occur in that water body or waterbody segment.

When conducting a UAA and soliciting input from the public, states and authorized tribes need to consider not only what is currently attained, but also what is attainable in the future after achievable gains in water quality are realized. EPA recommends that such a prospective analysis involve the following:

- Identifying the current and expected condition for a water body;
- Evaluating the effectiveness of best management practices (BMPs) and associated water quality improvements;
- Examining the efficacy of treatment technology from engineering studies; and
- Using water quality models, loading calculations, and other predictive tools.

The preamble to the proposed rule also provided several examples of how states and authorized tribes can articulate the HAU. These examples include using an existing designated use framework, adopting a new statewide sub-category of a use, or adopting a new sub-category of a use that uniquely recognizes the limiting condition for a specific water body (*e.g.,* aquatic life limited by naturally high levels of copper).

One example of where a state adopted new statewide sub-categories to protect

[16] This provision includes situations where a state or authorized tribe adopts for the first time, or previously designated, only non-101(a)(2) uses.

the highest attainable use was related to a class of waters the state defines as ''effluent dependent waters.'' The state conducted a UAA to justify the removal of the aquatic life use in these waters. It was not feasible for these waters to attain the same aquatic life assemblage expected of waters assigned the statewide aquatic life use. The state identified the highest attainable aquatic life use for these waters and created two new sub-categories (effluent-dependent fisheries and effluent-dependent non-fish bearing waters) with criteria that are sufficiently protective of these uses. These EPA-approved sub-categories reflect the aquatic life use that can be attained in these waters, while still protecting the effluent dependent aquatic life.

Some commenters expressed concern with the difficulty of articulating a specific HAU because doing so may require additional analyses. Where this may be the case, an alternative method of articulating the HAU can be for a state or authorized tribe to designate for a water body a new or already established, broadly defined HAU (*e.g.,* limited aquatic life use) and the criteria associated with the best pollutant/parameter levels attainable based on the information or analysis the state or authorized tribe used to evaluate attainability of the designated use. This is reasonable because the state or authorized tribe is essentially articulating that the HAU reflects whatever use is attained when the most protective, attainable criteria are achieved.

One example where a state used this alternative method involved adoption of a process by which the state can tailor site-specific criteria to protect the highest attainable use as determined by a UAA. EPA approved the state's adoption of a broad ''Limited Use'' and the subsequent adoption of a provision to allow the development of site-specific criteria for certain pollutants to protect that use. The ''Limited Use'' shares the same water quality criteria as the state's full designated use for recreation and fish and wildlife protection ''except for any site-specific alternative criteria that have been established for the water body.'' Such site-specific criteria are limited to numeric criteria for nutrients, bacteria, dissolved oxygen, alkalinity, specific conductance, transparency, turbidity, biological integrity, or pH. The state restricts application of the ''Limited Use'' to waters with human induced physical or habitat conditions that prevent attainment of the full designated use for recreation and fish and wildlife protection, and to either (1) wholly artificial waters, or (2) altered water bodies dredged and filled prior to November 28, 1975. Through this process, the state is able to articulate the HAU by identifying the most protective, attainable criteria that can be achieved.

Where a state or authorized tribe does not already have a statewide use in their regulation that is protective of the HAU, the state or authorized tribe will need to find an approach that meets the requirements of the CWA and § 131.10(g). States and authorized tribes are not limited by the examples described in this section and can choose a different approach that aligns with their specific needs, as long as their preferred approach is protective of the HAU and is consistent with the CWA and § 131.10.[17]

As an example of how a UAA informs the identification of the HAU, consider a state or authorized tribe with a designated aquatic life use and associated dissolved oxygen criterion. The state or authorized tribe determines through a UAA that a particular water body cannot attain its designated aquatic life use due to naturally occurring dissolved oxygen concentrations that prevent attainment of the use (*i.e.,* the use is not attainable pursuant to § 131.10(g)(1)). Such an analysis also shows that the low dissolved oxygen concentrations are not due to anthropogenic sources, but rather due to the bathymetry of the water body. The state or authorized tribe then evaluates what level of aquatic life use is attainable in light of the naturally low dissolved oxygen concentration, as well as any data that were used to evaluate attainability (*e.g.,* biological data). The state or authorized tribe concludes that the naturally low dissolved oxygen concentration precludes attainment of the full aquatic life use, and requires an alternative dissolved oxygen criterion that protects the ''highest'' but limited aquatic life that is attainable. Once this analysis is complete and fully documented in the UAA, the state or authorized tribe would then designate the HAU and adopt criteria to protect that use.

To clarify what is required when a state or authorized tribe adopts new or revised non-101(a)(2) uses, this rule finalizes a new paragraph (3) at § 131.10(k) to specify that states and authorized tribes are not required to conduct a UAA whenever they wish to remove or revise a non-101(a)(2) use, but must meet the requirements in § 131.10(a). This rule defines a non-101(a)(2) use at § 131.3(q) as: ''any use unrelated to the protection and propagation of fish, shellfish, wildlife or recreation in or on the water.'' While the CWA specifically calls out the protection and propagation of fish, shellfish, and wildlife and recreation in and on the water as the national goal, wherever attainable, this does not mean that non-101(a)(2) uses are not important. This rule revises § 131.10(a) to be explicit that where a state or authorized tribe is adopting new or revised designated uses other than the uses specified in section 101(a)(2) of the Act, or removing designated uses, it must submit documentation justifying how its consideration of the use and value of water for those uses listed in § 131.10(a) appropriately supports the state's or authorized tribe's action. EPA refers to this documentation as a ''use and value demonstration.'' These requirements are consistent with EPA's previously existing regulation at §§ 131.10(a)[18] and 131.6.[19] A UAA can also be used to satisfy the requirements at § 131.10(a).

EPA encourages states and authorized tribes to work closely with EPA when developing a use and value demonstration. States and authorized tribes must consider relevant provisions in § 131.10, including downstream protection (§ 131.10(b)) and existing uses of the water (§ 131.10(h)(1)). EPA recommends states and authorized tribes also consider a suite of other factors, including, but not limited to:

- Relevant descriptive information (*e.g.,* identification of the use that is under consideration for removal, location of the water body/waterbody

[17] Section 131.10(c) provides that states and authorized tribes ''*may* adopt sub-categories of a use. . .'' (emphasis added). This provision generally allows states and authorized tribes to adopt sub-categories of the uses specified in the CWA. This rule is finalizing revisions to § 131.10(g) to specify that when a state or authorized tribe conducts a UAA required by § 131.10(j), and the state or authorized tribe revises its WQS to something other than a use specified in section 101(a)(2) of the Act, the state or authorized tribe must adopt the highest attainable modified aquatic life, wildlife, and/or recreation use (*i.e.,* a sub-category of an aquatic life, wildlife, and/or recreation use). Where a UAA is not required by § 131.10(j), the state or authorized tribe retains discretion to choose whether to adopt sub-categories of uses per § 131.10(c).

[18] Section 131.10(a) already provided that states and authorized tribes ''must specify appropriate water uses to be achieved and protected'' and that the ''classification of the waters of the [s]tate must take into consideration the use and value of water for public water supplies, protection and propagation of fish, shellfish and wildlife, recreation in and on the water, agricultural, industrial, and other purposes including navigation'').

[19] Section 131.6(a) and (b) already provided that states and authorized tribes must submit to EPA for review ''use designations consistent with the provisions of sections 101(a)(2) and 303(c)(2) of the Act'' and ''[m]ethods used and analyses conducted to support WQS revisions.''

segment, overview of land use patterns, summary of available water quality data and/or stream surveys, physical information, information from public comments and/or public meetings, anecdotal information, etc.),

- Attainability information (*i.e.,* the § 131.10(g) factors as described previously, if applicable),
- Value and/or benefits (including environmental, social, cultural, and/or economic value/benefits) associated with either retaining or removing the use, and
- Impacts of the use removal on other designated uses.

As an example of what a use and value demonstration for a non-101(a)(2) use can look like, consider a small water body that a state or authorized tribe generically designated as a public water supply as part of a statewide action. The state or authorized tribe decides there is no use and value in retaining such a use for that water body. The state or authorized tribe could provide the public and EPA with documentation that public water supply is not an existing use (*e.g.,* there is no evidence that the water body was used for this purpose and the water quality does not support this use); the nearby population uses an alternative drinking water supply; and projected population trends suggest that the current supply is sufficient to accommodate future growth. States and authorized tribes must make this documentation available to the public prior to any public hearing, and submit it to EPA with the WQS revision.

What did EPA consider?

In developing this rule, EPA considered foregoing the revisions to § 131.10(g), (j), and (k), but this option would not clarify when a UAA is or is not required and thus not accomplish the Agency's objectives. EPA considered finalizing the revisions to § 131.10(g), (j), and (k)(1) and (2) as proposed; however, in response to comments received, EPA made revisions to better accomplish its objectives.

EPA considered foregoing the HAU requirement at § 131.10(g), but this option would not support the adoption of WQS that continue to serve the purposes of the Act and enhance the quality of the water. EPA also considered finalizing the requirement as proposed but not finalizing a regulatory definition; however, the absence of a regulatory definition could lead to confusion and hinder environmental protection.

EPA considered not specifying what is required when removing or revising a non-101(a)(2) use in the final rule; however, multiple commenters indicated that EPA's proposed rule only specified that a UAA is not required to remove or revise a non-101(a)(2) use and did not specify what is required. Given the confusion about existing requirements, EPA decided to make the requirement explicit in § 131.10(a) and (k)(3).

What is EPA's position on certain public comments?

Numerous commenters disagreed with EPA's position that the consumption of aquatic life is a use specified in section 101(a)(2) of the Act and requested that EPA document the rationale for this position. Based on the CWA section 303(c)(2)(A) requirement that WQS protect public health, EPA interprets the uses under section 101(a)(2) of the Act to mean that not only can fish and shellfish thrive in a water body, but when caught, they can also be safely eaten by humans.[20]

EPA first articulated this interpretation in the 1992 National Toxics Rule.[21] For example, EPA specified that all waters designated for even minimal aquatic life protection (and therefore a potential fish and shellfish consumption exposure route) are protected for human health. EPA also described its interpretation in the October 2000 Human Health Methodology.[22] Consistent with this interpretation, most states have adopted human health criteria as part of their aquatic life uses, as the purpose of the criteria is to limit the amount of a pollutant in aquatic species prior to consumption by humans. However, states and authorized tribes may also choose to adopt human health criteria as part of their recreational uses, recognizing that humans will consume fish and shellfish after fishing, which many states consider to be a recreational use. EPA leaves this flexibility to states and authorized tribes as long as the waters are protecting humans from adverse effects of consuming aquatic life, unless the state or authorized tribe has shown that consumption of aquatic life is unattainable consistent with EPA's regulation.

EPA also received comments requesting clarification on existing uses. EPA notes that in addressing these comments, EPA is not reopening or changing the regulatory provision at § 131.10(h)(1). The proposed change to § 131.10(g) simply referred back to the requirement that is housed in § 131.10(h)(1) and was not intended to change requirements regarding existing uses. This is also the case in the final rule. The WQS regulation at § 131.3(e) defines an existing use as ''those uses actually attained in the water body on or after November 28, 1975, whether or not they are included in the water quality standards.'' EPA provided additional clarification on existing uses in the background section of the proposed preamble,[23] as well as in a September 2008 letter from EPA to the State of Oklahoma.[24] Specifically, EPA explained that existing uses are known to be ''actually attained'' when the use has actually occurred *and* the water quality necessary to support the use has been attained. EPA recognizes, however, that all the necessary data may not be available to determine whether the use actually occurred or the water quality to support the use has been attained. When determining an existing use, EPA provides substantial flexibility to states and authorized tribes to evaluate the strength of the available data and information where data may be limited, inconclusive, or insufficient regarding whether the use has occurred and the water quality necessary to support the use has been attained. In this instance, states and authorized tribes may decide that based on such information, the use is indeed existing.

Some commenters expressed concern that this interpretation supports the removal of a designated use in a situation where the use has actually occurred but the water quality necessary to protect the use has never been attained, as well as in a situation where the water quality has been attained but the use has not actually occurred. Such an interpretation may be contrary to a state's or authorized tribe's environmental restoration efforts or water quality management goals. For example, a state or authorized tribe may designate a highly modified water body for primary contact recreation even though the water quality has never been attained to support such a use. In this situation, if the state or authorized tribe exercises its discretion to recognize such an existing use, then consistent with EPA's regulation the designated use may not be removed.

[20] *http://water.epa.gov/scitech/swguidance/standards/upload/2000_10_31_standards_shellfish.pdf.*

[21] 57 FR 60859 (December 22, 1992). See also 40 CFR 131.36.

[22] *http://water.epa.gov/scitech/swguidance/standards/criteria/health/methodology/index.cfm; Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health,* see pages 4–2 and 4–3.

[23] 78 FR 54523 (September 4, 2013).

[24] *http://water.epa.gov/scitech/swguidance/standards/upload/Smithee-existing-uses-2008-09-23.pdf.*

If a state or authorized tribe chooses not to recognize primary contact recreation as an existing use in this same situation, the state or authorized tribe still must conduct a UAA to remove the primary contact use. The state or authorized tribe may only remove the primary contact recreation use if the use is not an existing use or if more stringent criteria are being added; the use cannot be attained by implementing effluent limits required under sections 301(b) and 306 of the Act and by implementing cost-effective and reasonable best management practices for nonpoint source control (§ 131.10(h)(1) and(2)); and the state or authorized tribe can demonstrate that one of the factors listed at § 131.10(g) precludes attainment of the primary contact recreation use. The combination of all the requirements at § 131.10 ensures that states and authorized tribes designate uses consistent with the goals of the Act unless the state or authorized tribe has demonstrated that such a use is not attainable. It also requires states and authorized tribes to maintain uses that have actually been attained.

C. Triennial Reviews

What does this rule provide and why?

The CWA and EPA's implementing regulation require states and authorized tribes to hold, at least once every three years, a public hearing for the purpose of reviewing applicable WQS (*i.e.* a triennial review). The CWA creates a partnership between states and authorized tribes, and EPA, by assigning states and authorized tribes the primary role of adopting WQS (CWA sections 101(b) and 303), and EPA the oversight role of reviewing and approving or disapproving state and authorized tribal WQS (CWA section 303(c)). Consistent with this partnership, the statute also assigns EPA the role of publishing national recommended criteria to assist states and authorized tribes in establishing water quality criteria in their WQS (CWA section 304(a)(1)). States and authorized tribes have several options for developing and adopting chemical, physical and biological criteria. They may use EPA's CWA section 304(a) criteria recommendations, modify EPA's CWA section 304(a) criteria recommendations to reflect site-specific conditions, or establish criteria using other scientifically defensible methods. Ultimately, states and authorized tribes must adopt criteria that are scientifically defensible and protective of the designated use to ensure that WQS continue to ''protect the public health or welfare, enhance the quality of water and serve the purposes of'' the Act (CWA section 303(c)(2)(A)).

In some cases, states and authorized tribes do not transparently communicate with the public their consideration of EPA's CWA section 304(a) criteria recommendations when deciding whether to revise their WQS. As a result, the public may be led to believe that states and authorized tribes are not considering some of the latest science that is reflected in EPA's new or updated CWA section 304(a) criteria recommendations. To ensure public transparency and clarify existing requirements, the final rule contains two revisions to the triennial review requirements at 40 CFR 131.20(a). First, the rule requires that if states and authorized tribes choose not to adopt new or revised criteria during their triennial review for any parameters for which EPA has published new or updated criteria recommendations under CWA section 304(a), they must explain their decision when reporting the results of their triennial review to EPA under CWA section 303(c)(1) and 40 CFR 131.20(c). Second, the rule clarifies the ''applicable water quality standards'' that states and authorized tribes must review triennially.

The first revision addresses the role of EPA's CWA section 304(a) criteria recommendations in triennial reviews. While states and authorized tribes are not required to adopt EPA's CWA section 304(a) criteria recommendations, they must consider them. EPA continues to invest significant resources to examine evolving science for the purpose of updating existing and developing new CWA section 304(a) criteria recommendations to help states and authorized tribes meet the requirements of the Act. Those recommendations are based on data and scientific judgments about pollutant concentrations and environmental or human health effects.[25]

EPA's proposed rule, requiring states and authorized tribes to ''consider'' EPA's new or updated CWA section 304(a) criteria recommendations, raised several commenter questions and concerns about how states and authorized tribes were to ''document'' such consideration.

Commenters also expressed concern that EPA was overstepping its authority by dictating how states and authorized tribes conduct their triennial reviews and by requiring states and authorized tribes to adopt EPA's CWA section 304(a) criteria recommendations. This rule focuses on how a state or authorized tribe explains its decisions to EPA (and the public) rather than on how the state or authorized tribe conducts its review. The CWA section 304(a) criteria are national recommendations, and states or authorized tribes may wish to consider site-specific physical and/or chemical water body characteristics and/or varying sensitivities of local aquatic communities. While states and authorized tribes are not required to adopt the CWA section 304(a) criteria recommendations, they are required under the Act and EPA's implementing regulations to adopt criteria that protect applicable designated uses and that are based on sound scientific rationale. Since EPA revises its CWA section 304(a) recommendations periodically to reflect the latest science, it is important that states and authorized tribes consider EPA's new or updated recommendations and explain any decisions on their part to not incorporate the latest science into their WQS.

An important component of triennial reviews is meaningful and transparent involvement of the public and intergovernmental coordination with local, state, federal, and tribal entities. Communication with EPA (and the public) about these decisions provides opportunities to assist states and authorized tribes in improving the scientific basis of its WQS and can build support for state and authorized tribal decisions. Such coordination ultimately increases the effectiveness of the state and authorized tribal water quality management processes. Following this rulemaking, when states and authorized tribes conduct their next triennial review they must provide an explanation for why they did not adopt new or revised criteria for parameters for which EPA has published new or updated CWA section 304(a) criteria recommendations since May 30, 2000.[26] During the triennial reviews that follow, states and authorized tribes must do the same for criteria related to parameters for which EPA has published CWA section 304(a) criteria recommendations since the states' or authorized tribes' most recent triennial review. This requirement applies regardless of whether new or updated CWA section 304(a) criteria recommendations are

[25] EPA's compilation of national water quality criteria recommendations, published pursuant to CWA section 304(a), can be found at: *http://water.epa.gov/scitech/swguidance/standards/criteria/current/index.cfm.*

[26] WQS adopted and submitted to EPA by states and authorized tribes on or after May 30, 2000, must be approved by EPA before they become effective for CWA purposes, including the establishment of water quality-based effluent limits or development of total maximum daily loads (40 CFR 131.21, 65 FR 24641, April 27, 2000).

more stringent or less stringent than the state's or authorized tribe's applicable criteria because all stakeholders should know how the state or authorized tribe considered the CWA section 304(a) criteria recommendations when determining whether to revise their own WQS following a triennial review. A state's or authorized tribe's explanation may be situation-specific and could involve consideration of priorities and resources. EPA will not approve or disapprove this explanation pursuant to CWA section 303(c) nor will the explanation be used to disapprove new or revised WQS that otherwise meet the requirements of the CWA. Rather, it will inform both the public and EPA of the state's or authorized tribe's plans with respect to adopting new or revised criteria in light of the latest science. EPA strongly encourages states and authorized tribes to include their explanation on a publically accessible Web site or some other mechanism to inform the public of their decision.

The second revision addresses confusion expressed in public comments regarding the meaning of § 131.20(a) so that states, authorized tribes and the public are clear on the scope of WQS to be reviewed during a triennial review. By not addressing this issue directly in the proposal, EPA may have inadvertently created ambiguity by implying that the only criteria states and authorized tribes need to re-examine during a triennial review are those criteria related to the parameters for which EPA has published new or updated CWA section 304(a) criteria recommendations. However, EPA's intent was not to qualify the initial sentence in § 131.20(a) regarding ''applicable water quality standards'' (which are all WQS either approved or promulgated by EPA for a state or tribe) but to supplement it by adding more detail regarding the triennial review of any and all existing criteria established pursuant to 40 CFR 131.11. Thus, the final rule clarifies what the regulation means by ''applicable water quality standards.'' [27]

When conducting triennial reviews, states and authorized tribes must review all applicable WQS adopted into state or tribal law pursuant to §§ 131.10–131.15 [28] and any federally promulgated WQS.[29] Applicable WQS specifically include designated uses (§ 131.10), water quality criteria (§ 131.11), antidegradation (§ 131.12), general policies (§ 131.13), WQS variances (§ 131.14), and provisions authorizing the use of schedules of compliance for WQBELs in NPDES permits (§ 131.15).[30] If, during a triennial review, the state or authorized tribe determines that the federally promulgated WQS no longer protect its waters, the state or authorized tribe should adopt new or revised WQS. If EPA approves such new or revised WQS, EPA would withdraw the federally promulgated WQS because they would no longer be necessary.

Some states and authorized tribes target specific WQS during an individual triennial review to balance resources and priorities. The final rule does not affect states' or authorized tribes' discretion to identify such priority areas for action. However, the CWA and EPA's implementing regulation require the state or authorized tribe to hold, at least once every three years, a public hearing [31] for the purpose of reviewing applicable WQS, not just a subset of WQS that the state or authorized tribe has identified as high priority. In this regard, states and authorized tribes must still, at a minimum, seek and consider public comment on all applicable WQS.

What did EPA consider?

EPA considered finalizing the revision to § 131.20(a) as proposed. However, given public commenters' confusion and concerns, as discussed previously, EPA ultimately rejected this option. EPA also considered foregoing revisions to § 131.20(a) altogether. However, this option would not ensure that states and authorized tribes adopt criteria that reflect the latest science, and thus EPA rejected it.

What is EPA's position on certain public comments?

One commenter requested a longer period than three years for states and authorized tribes to consider new or updated CWA section 304(a) criteria recommendations because it was neither reasonable nor feasible to conduct a comprehensive review and rulemaking in this timeframe, including the public participation component. Other commenters suggested that EPA allow triennial reviews to occur ''periodically,'' while some suggested that nine or 12 years would be a more appropriate frequency of review.

Although EPA acknowledges the challenges (*e.g.,* the legal and administrative processes, resource constraints) that states and authorized tribes may experience when conducting triennial reviews, the three-year timeframe for triennial review comes directly from CWA section 303(c)(1). EPA has no authority to provide a longer timeframe for triennial reviews.

D. Antidegradation

One of the principal objectives of the CWA is to ''*maintain* the chemical, physical and biological integrity of the Nation's waters.'' [32] Congress expressly affirmed this principle of ''antidegradation'' in the Water Quality Act of 1987 in CWA sections 101(a) and 303(d)(4)(B). EPA's WQS regulation has included antidegradation provisions since 1983. In particular, 40 CFR 131.12(a)(2) includes a provision that protects ''high quality'' waters (*i.e.,* those with water quality that is better than necessary to support the uses specified in section 101(a)(2) of the Act.)

Maintaining high water quality is critical to supporting economic and community growth and sustainability. Protecting high water quality also provides a margin of safety that will afford the water body increased resilience to potential future stressors, including climate change. Degradation of water quality can result in increased public health risks, higher treatment costs that must be borne by ratepayers and local governments, and diminished aquatic communities, ecological diversity, and ecosystem services. Conversely, maintaining high water quality can lower drinking water costs, provide revenue for tourism and recreation, support commercial and recreational fisheries, increase property values, create jobs and sustain local communities.[33] While preventing degradation and maintaining a reliable source of clean water involves costs, it can be more effective and efficient than

[27] EPA published the *What is a New or Revised Water Quality Standard Under CWA 303(c)(3) Frequently Asked Questions* (EPA–820–F–12–017, October 2012) to consolidate EPA's interpretation (informed by the CWA, EPA's implementing regulation at 40 CFR part 131, and relevant case law) of what constitutes a new or revised WQS that the Agency has the CWA section 303(c)(3) authority and duty to approve or disapprove (*http://water.epa.gov/scitech/swguidance/standards/upload/cwa303faq.pdf*).

[28] Definitions adopted by states and authorized tribes are considered WQS when they are inextricably linked to provisions adopted pursuant to §§ 131.10–131.15.

[29] Any WQS that EPA has promulgated for a state or tribe are found in 40 CFR part 131, subpart D. See also: *http://water.epa.gov/scitech/swguidance/standards/wqsregs.cfm#proposed.*

[30] This rule finalizes § 131.14 (WQS Variances) and § 131.15 (Provisions Authorizing the Use of Schedules of Compliance for WQBELs in NPDES permits). For detailed discussion about these sections, see sections II.E and II.F of this document, respectively.

[31] For detailed discussion about this final rule for § 131.20(b), related to public participation, see section II.G of this document.

[32] See CWA section 101(a) (emphasis added).

[33] *http://water.epa.gov/polwaste/nps/watershed/upload/economic_benefits_factsheet3.pdf; Economic Benefits of Protecting Healthy Watersheds* (EPA 841–N–12–004, April 2012).

investing in long-term restoration efforts or remedial actions.

This rule revises the antidegradation regulation to enhance protection of high quality waters and to promote consistency in implementation. The new provisions require states and authorized tribes to follow a more structured process when making decisions about preserving high water quality. They also increase transparency and opportunities for public involvement, while preserving states' and authorized tribes' decision-making flexibility. The revisions meet the objectives of EPA's proposal, although EPA made some changes to the regulatory language after further consideration of the Agency's policy objectives and in response to public comments.

This rule establishes requirements in the following areas: Identification of high quality waters, analysis of alternatives, and antidegradation implementation methods. In addition to the substantive changes described in the following section, this rule also includes editorial changes that are not substantive in nature. For a detailed discussion of EPA's CWA authority regarding antidegradation, see the preamble to the proposed rule at 78 FR 54526 (September 4, 2013).

Identification of Waters for High Quality Water (Tier 2) Protection

What does this rule provide and why?

Tier 2 refers to a decision-making process by which a state or authorized tribe decides how and how much to protect water quality that exceeds levels necessary to support the uses specified in Section 101(a)(2) of the Act. The final rule at § 131.12(a)(2)(i) provides that states and authorized tribes may identify waters for Tier 2 protection on either a parameter-by-parameter or a water body-by-water body basis. The rule also specifies that, where states and authorized tribes identify waters on a water body-by-water body basis, states and authorized tribes must involve the public in any decisions pertaining to when they will provide Tier 2 protection, and the factors considered in such decisions. Further, states and authorized tribes must not exclude water bodies from Tier 2 protection solely because water quality does not exceed levels necessary to support all of the uses specified in CWA section 101(a)(2). This rule requires that states' and authorized tribes' antidegradation policies be consistent with these new requirements.

States and authorized tribes typically use one of two approaches to identify high quality waters consistent with the CWA. States and authorized tribes using a parameter-by-parameter approach generally identify high quality waters at the time an entity proposes the activity that would lower water quality. Under this approach, states and authorized tribes identify parameters for which water quality is better than necessary to support the uses specified in CWA section 101(a)(2) and provide Tier 2 protection for any such parameters. Alternatively, states and authorized tribes using a water body-by-water body approach generally identify waters that will receive Tier 2 protection by weighing a variety of factors, in advance of any proposed activity. States and authorized tribes can identify some waters using a parameter-by-parameter approach and other waters using a water body-by-water body approach.

The 1983 WQS regulation did not specify which approach states and authorized tribes must use to identify waters for Tier 2 protection. In the 1998 ANPRM, EPA articulated that either approach, when properly implemented, is consistent with the CWA, and described advantages and disadvantages to both approaches. A parameter-by-parameter approach can be easier to implement, can be less susceptible to challenge, and can result in more waters receiving some degree of Tier 2 protection. The ANPRM also articulated: ''[t]he water body-by-water body approach, on the other hand, allows for a weighted assessment of chemical, physical, biological, and other information (*e.g.,* unique ecological or scenic attributes). In this regard, the water body-by-water body approach may be better suited to EPA's stated vision for the [WQS] program . . . This approach also allows for the high quality water decision to be made in advance of the antidegradation review . . ., which may facilitate implementation. A water body-by-water body approach also allows [s]tates and [t]ribes to focus limited resources on protecting higher-value [s]tate or [t]ribal waters. The water body-by-water body approach can . . . preserve high quality waters on the basis of physical and biological attributes, rather than high water quality attributes alone.''

Because the original WQS regulation did not provide specific requirements regarding use of the water body-by-water body approach, it was possible for states and authorized tribes to identify high quality waters in a manner inconsistent with the CWA and the intent of EPA's implementing regulation. In some cases, states and authorized tribes have used the water body-by-water body approach without documenting the factors that inform the decision or informing the public. For example, some states or authorized tribes have excluded waters from Tier 2 protection entirely based on the fact that the water was included on a CWA section 303(d) list for a single parameter without allowing an opportunity for the public to provide input.

This rule reaffirms EPA's support for both approaches. The new regulatory requirements included at § 131.12(a)(2)(i) only apply to the water body-by-water body approach because they are unnecessary for the parameter-by-parameter approach. States and authorized tribes using the parameter-by-parameter approach provide Tier 2 protection to all chemical, physical, and biological parameters for which water quality is better than necessary to protect the uses specified in CWA section 101(a)(2). Because the identification of waters that are high quality with respect to relevant parameters would occur in the context of allowing a specific activity, the level of protection is already subject to any public involvement required for that activity. For example, an NPDES permit writer calculating WQBELs would use available data and information about the water body to determine whether assimilative capacity exists for the relevant parameters. The state or authorized tribe would then provide Tier 2 protection for all parameters for which assimilative capacity exists. The draft permit would reflect the results of the Tier 2 review, hence providing an opportunity for public involvement.

The requirement at § 131.12(a)(2)(i) regarding public involvement increases the transparency of and accountability for states' and authorized tribes' water quality management decisions. The final rule is consistent with the CWA and the WQS regulation's emphasis on the public's role in water quality protection. A key part of a state's or authorized tribe's antidegradation process involves decisions on how to manage high water quality, a shared public resource. Commenters expressed concern that the proposed rule did not require states and authorized tribes to engage the public on decisions when implementing a water body-by-water body approach. Consequently, the public would not know the factors a state or authorized tribe considered in deciding that the water body did not merit Tier 2 protection, which would limit the public's ability to provide constructive input during the permit's public notice and comment period.

To provide for well-informed public input and to aid states and authorized tribes in making robust decisions, EPA

recommends states and authorized tribes document their evaluation of the Tier 2 decision, including the factors considered and how those factors were weighed. The case of *Ohio Valley Envtl. Coalition* v. *Horinko* demonstrates why it is important for states and authorized tribes to articulate the rationale for their decisions.[34] In this case, the U.S. District Court for the Southern District of West Virginia considered whether the record contained sufficient evidence to justify EPA's approval of the state's exclusion of particular water bodies from Tier 2 protection. The state had classified some CWA section 303(d) listed waters as waters to receive Tier 2 protection, while it had excluded other similar waters with similar impairments from Tier 2 protection. The Court found the administrative record insufficient to support EPA's decision to approve the state's classification because the state's CWA section 303(d) listing was the only evidence related to the water quality of those river segments. The Court did not opine on whether, in a different factual situation, categorically excluding waters from Tier 2 protection based on CWA section 303(d) impairments would be consistent with the CWA.

To minimize the administrative processes associated with this rule, EPA uses the phrase ''opportunity for public involvement'' rather than ''public participation.'' ''Public participation'' at 40 CFR 131.20(b)[35] refers to a state or authorized tribe holding a public hearing for the purpose of reviewing WQS. With this rule, EPA provides states and authorized tribes the flexibility to engage the public in a way that suits the state or authorized tribe and the public. For example, a state or authorized tribe could develop lists of waters that will and will not receive Tier 2 protection along with descriptions of the factors considered in making each of those decisions and post that information on its Web site. To obtain public input, the state or authorized tribe could share these lists during a triennial review and/or during revision of antidegradation implementation methods. Such an approach has the advantage of streamlining both the decision-making and public involvement processes. As another example, a state could use the NPDES process to engage the public at the time it drafts a permit that would allow a lowering of water quality. The state would document the relevant information related to its decision in the permit fact sheet provided to the public and specifically request comment on its Tier 2 protection decision.

States and authorized tribes can provide additional avenues for public involvement by providing structured opportunities for the public to initiate antidegradation discussions. For example, a state or authorized tribe could provide a petition process in which citizens request Tier 2 protection for specific waters, and those citizens could provide data and information for a state's or authorized tribe's consideration. Also, states and authorized tribes can establish a process to facilitate public involvement in identifying waters as Outstanding National Resource Waters (ONRWs).

An additional requirement at § 131.12(a)(2)(i) provides that states and authorized tribes must not exclude a water body from the protections in § 131.12(a)(2) solely because water quality does not exceed levels necessary to support all of the uses specified in CWA section 101(a)(2). For a discussion on why such an approach is inconsistent with the Act, see the preamble to the proposed rule at 78 FR 54527 (September 4, 2013). Thus, when considering whether to exclude waters from Tier 2 protection, states and authorized tribes must consider the overall quality of the water rather than whether water quality is better than necessary for individual chemical, physical, and biological parameters to support all the uses specified in CWA section 101(a)(2). The rule provides for a decision-making process where states and authorized tribes consider water quality and reasons to protect water quality more broadly. This can lead to more robust evaluations of the water body, and potentially more waters receiving Tier 2 protection. To make a decision to exclude a water body from Tier 2 protection, states and authorized tribes must identify the factors considered which should include factors that are rooted in the goals of the CWA, including the chemical, physical, and biological characteristics of a water body. Where states and authorized tribes wish to consider CWA section 303(d) listed impairments, it would be important that they also consider all other relevant available data and conduct an overall assessment of a water's characteristics. It would also be important that states and authorized tribes consider the public value of the water. This includes the water's impact on public health and welfare, the existing aquatic and recreational uses, and the value of retaining ecosystem resilience against the effects of future stressors, including climate change. For additional information on this overall assessment, see the preamble to the proposed rule at 78 FR 54527 (September 4, 2013).

This requirement is consistent with the proposed rule. However, to accurately articulate the requirement, and to remain consistent with § 131.12(a)(2), the final rule text reflects that for a water to have available assimilative capacity for which to provide Tier 2 protection, the water quality must ''exceed'' the levels necessary (*i.e.,* be better than necessary) to support the uses specified in CWA section 101(a)(2). Commenters stated that some members of the public could misinterpret the phrase ''high quality waters'' in the proposal to include waters that *meet* but do not *exceed* the water quality necessary to support the uses specified in CWA section 101(a)(2). The final rule replaces ''high quality waters'' with the phrase ''waters for the protections described in (a)(2) of this section.'' The final rule also says waters cannot be excluded from Tier 2 protection solely ''because water quality does not exceed levels necessary to support all of the uses specified in section 101(a)(2) of the Act'' instead of ''because not all of the uses specified in CWA section 101(a)(2) are attained,'' as stated in the proposal.

Where water quality is better than necessary to support all of the uses specified in CWA section 101(a)(2), § 131.12(a)(2) requires states and authorized tribes to provide Tier 2 protection. Where water quality is not better than necessary to support all of the uses specified in CWA section 101(a)(2), the final rule does not require states and authorized tribes to provide Tier 2 protection for the water body. However, in instances where states and authorized tribes lack data and information on the water quality to make individual water body conclusions, EPA recommends that they provide all or a subset of their waters with Tier 2 protection, by default. Doing so will increase the probability that these waters will maintain a level of resiliency to future stressors.

This rule requires states' and authorized tribes' antidegradation policies (which are legally binding state and authorized tribal provisions subject to public participation) to be consistent with the new requirements related to identifying waters for Tier 2 protection. Since states and authorized tribes must provide for public participation on their antidegradation policies, placing their requirements for identification of high quality waters in their antidegradation policies increases accountability and transparency. The proposed rule

[34] *Ohio Valley Envtl. Coal.* v. *Horinko,* 279 F. Supp. 2d 732, 746–50 (S.D. W. Va. 2003).

[35] See section II.G for more information on the final rule change related to public participation.

articulated that states and authorized tribes must design their implementation methods to achieve the requirements for identifying high quality waters. Commenters questioned whether the proposed requirement for identifying high quality waters was mandatory, since the proposal did not require states and authorized tribes to adopt the requirement into their legally binding policies. Some commenters suggested requiring states and authorized tribes to adopt all implementation methods into binding provisions. While some states and authorized tribes find adoption of their implementation methods to be helpful, others view it as burdensome. EPA determined that while adopting implementation methods increases accountability and transparency, states and authorized tribes could still provide this accountability and transparency for identification of waters for Tier 2 protection without a requirement to adopt implementation methods. Therefore, the final rule requires antidegradation policies to be consistent with the provision at § 131.12(a)(2)(i). States and authorized tribes have the discretion and flexibility to adopt antidegradation provisions that address other aspects of antidegradation that are not specifically addressed in § 131.12(a). Where a state or authorized tribe chooses to include antidegradation implementation methods in non-binding guidance, the methods must be consistent with the applicable state or authorized tribal antidegradation requirements that EPA has approved. Consistent with § 122.44(d)(1)(vii)(a), permits must derive from and comply with all applicable WQS. Otherwise, EPA could have a basis to object to the permits.

What did EPA consider?

EPA considered not revising § 131.12(a)(2) and continuing to provide no new regulatory requirements for identification of waters for Tier 2 protection. EPA also considered prohibiting the water body-by-water body approach. Providing no regulatory requirements would continue to allow states and authorized tribes to implement a water body-by-water body approach that is potentially inconsistent with the CWA, while prohibiting the water body-by-water body approach would limit states' and authorized tribes' flexibility to prioritize their waters for Tier 2 protection. EPA rejected these options in favor of a more balanced approach by placing conditions on how states and authorized tribes use their discretion to better ensure protection of high quality waters.

EPA considered finalizing the rule as proposed, without a requirement for public involvement in decisions about whether to provide Tier 2 protection to a water body; however, EPA found that public involvement is critical for increasing accountability and transparency and included the requirement in the final rule. EPA also considered providing for an EPA approval or disapproval action under CWA section 303(c) of states' and authorized tribes' decisions on whether to provide Tier 2 protection to each water. EPA ultimately decided not to include such a requirement because of concern that it would add more administrative and rulemaking burden for states and authorized tribes than EPA determined was necessary to ensure public involvement. EPA considered specifying precisely which waters must receive Tier 2 protection. However, EPA did not include such specificity in the rule because there are multiple ways that states and authorized tribes can make well-reasoned decisions on Tier 2 protection based on case-specific facts.

Analysis of Alternatives

What does this rule provide and why?

The final rule at § 131.12(a)(2)(ii) provides that before allowing a lowering of high water quality, states and authorized tribes must find, after an analysis of alternatives, that such a lowering is necessary to accommodate important economic or social development in the area in which the waters are located. That analysis must evaluate a range of non-degrading and less degrading practicable alternatives. For the purposes of this requirement, the final rule at § 131.3(n) defines ''practicable'' to mean ''technologically possible, able to be put into practice, and economically viable.'' When an analysis identifies one or more such practicable alternatives, states and authorized tribes may only find that a lowering is necessary if one such alternative is selected for implementation. This rule requires that states' and authorized tribes' antidegradation policies must be consistent with these new requirements.

Section 131.12(a)(2)(ii) requires a structured analysis of alternatives, which will increase transparency and consistency in states' and authorized tribes' decisions about high water quality. The new requirement makes the analysis of alternatives an integral part of a state's or authorized tribe's finding that degradation of high quality water is ''necessary.'' Such an analysis provides states and authorized tribes with a basis to make informed and reasoned decisions, assuring that degradation only occurs where truly necessary. This rule refers to ''analysis of alternatives'' rather than ''alternatives analysis'' as in the proposal. This makes clear that the analysis required in § 131.12(a)(2)(ii) is distinct from the ''alternatives analysis'' required in other programs, such as the National Environmental Policy Act and CWA section 404 permitting.

Section 131.12(a)(2)(ii) is consistent with the proposed rule, but makes clear that states' and authorized tribes' findings that a lowering is necessary depends on both an analysis of alternatives and an analysis related to economic or social development. Commenters were concerned that the proposed rule seemed to remove the requirement at § 131.12(a)(2) for states and authorized tribes to consider whether a lowering of water quality will ''accommodate important economic or social development in the area in which the waters are located.''

This rule preserves states' and authorized tribes' discretion to decide the order in which they satisfy these requirements. A state or authorized tribe can choose to first review an analysis of economic or social development. If it finds that the proposed lowering of water quality would accommodate important economic or social development, it can then require an analysis of alternatives to see if the lowering could be prevented or lessened. If, on the other hand, a state or authorized tribe finds that the proposed lowering of water quality would not accommodate important economic or social development, it could choose to disallow lowering of water quality and terminate the Tier 2 review without ever requiring an analysis of alternatives. Similarly, a state or authorized tribe could first choose to require an analysis of alternatives and then examine an analysis of economic or social development. In this case, if a non-degrading alternative is selected for implementation, the state or authorized tribe does not need to proceed with an analysis of economic or social development.

Although states and authorized tribes are responsible for making a finding to allow a lowering of water quality based on a reasonable, credible, and adequate analysis of alternatives, states and authorized tribes themselves need not conduct the analysis of alternatives or select the alternative to be implemented. Commenters expressed concern that the proposed rule language implied that states and authorized tribes must perform the analysis themselves, when

other entities may be best positioned to analyze the alternatives. The final rule language allows states and authorized tribes to rely on analyses prepared by third parties (*e.g.,* a permit applicant). This preserves appropriate flexibility for states' and authorized tribes' decision-makers, and can bring additional resources and expertise to the analysis. States and authorized tribes remain ultimately responsible for making findings to allow degradation and for basing their decisions on adequate analyses. If the state or authorized tribe deems an initial analysis of alternatives insufficient to support a finding that a lowering of high water quality is ''necessary,'' it can request additional analyses of alternatives from the permit applicant or other entities. A state or authorized tribe can also obtain information on common practicable alternatives appropriate for a proposed activity from additional existing resources.[36]

The final rule specifies that states and authorized tribes must analyze ''practicable alternatives that would prevent or lessen the degradation,'' rather than ''non-degrading and minimally degrading practicable alternatives that have the potential to prevent or minimize the degradation,'' as proposed. While non-degrading or minimally degrading alternatives preserve high water quality to a greater extent, in cases where no minimally-degrading alternatives exist, a less degrading alternative will still provide a margin of protection for the high quality water. The final rule requires a broader, more complete analysis.

To enhance clarity and provide for consistency in implementation, this rule finalizes a definition of the word ''practicable.'' The definition embodies a common sense notion of practicability—*i.e.,* an alternative that can actually be implemented under the circumstances. Because ''practicable'' appears in other contexts related to water quality, the definition at § 131.3(n) is only applicable for § 131.12(a)(2)(ii). This definition is consistent with the one articulated in the preamble to the proposed rule,[37] but eliminates redundancy and omits ''at the site in question'' in response to commenters' concern that relocation of a proposed activity may be a less degrading alternative that the state or authorized tribe can consider.

Section 131.12(a)(2)(ii) provides for preservation of high water quality by requiring a less degrading practicable alternative to be selected for implementation, if available, before states and authorized tribes may find that a lowering of water quality is necessary. This requirement applies even if the analysis identifies only one alternative. States and authorized tribes must still make a finding that a lowering is necessary if the analysis does not identify any practicable alternatives that lessen degradation. On the other hand, if the analysis results in choosing an alternative that avoids degradation, a state or authorized tribe need not make a finding. Regardless of the number of alternatives identified, the analysis should document a level of detail that reflects the significance and magnitude of the particular circumstances encountered, to provide the public with the necessary information to understand how the state or authorized tribe made its decision.

EPA chose not to require implementation of the least degrading practicable alternative to allow states and authorized tribes the flexibility to balance multiple considerations. Some alternatives to lowering water quality can have negative environmental impacts in other media (*e.g.,* air, land). For example, incinerating pollutants rather than discharging the pollutants to surface waters could adversely impact air quality and energy use, and land application of pollutants could have adverse terrestrial impacts. EPA recommends that states and authorized tribes consider cross-media impacts and, where possible, seek alternatives that minimize degradation of water quality and also minimize other environmental impacts.

The final rule requires states' and authorized tribes' antidegradation policies (which are legally binding provisions subject to public participation) to be consistent with the new requirements related to analysis of alternatives. As with the provision on identification of waters for Tier 2 protection at § 131.12(a)(2)(i), EPA determined that antidegradation policies must be consistent with the federal regulation on analysis of alternatives at § 131.12(a)(2)(ii) to increase accountability and transparency.

What did EPA consider?

EPA considered finalizing the proposed rule without alteration. EPA did not choose this option in light of commenters' suggestions to clarify the language in order to avoid confusion as to who is responsible for conducting the analysis. EPA also rejected an option to forego any revisions related to an analysis of alternatives, as this would not provide clarification regarding what type of analysis supports states' or authorized tribes' decisions that a lowering of water quality is ''necessary,'' thus risking a greater loss of water quality.

Antidegradation Implementation Methods

What does this rule provide and why?

The rule at § 131.12(b) requires states' and authorized tribes' antidegradation implementation methods (whether or not those methods are adopted into rule) to be consistent with their antidegradation policies and with § 131.12(a). This rule also requires states and authorized tribes to provide an opportunity for public involvement during the development and any subsequent revisions of antidegradation implementation methods, and to make the methods available to the public.

Finally, this rule adds § 131.5(a)(3) to explicitly specify that EPA has the authority to determine whether the states' and authorized tribes' antidegradation policies and any adopted antidegradation implementation methods[38] are consistent with the federal antidegradation requirements at § 131.12. This revision does not expand EPA's existing CWA authority, rather it ensures § 131.5 is consistent with §§ 131.6 and 131.12.

The public involvement requirement at § 131.12(b) increases transparency, accountability, and consistency in states' and authorized tribes' implementation. EPA proposed a requirement that implementation methods be publicly available. As EPA discussed in the preamble to the proposed rule, CWA section 101(e) provides that ''public participation in the development, revision, and enforcement of any regulations, standard, effluent limitation, plan, or program established . . . under this Act shall be provided for, encouraged, and assisted . . .'' Thus, this rule also provides for public involvement during development or revision of implementation methods. A state or authorized tribe may decide to offer more than one opportunity to most effectively engage the public. States and authorized tribes can use various mechanisms to provide such

[36] E.g., EPA's Municipal Technologies Web site, which presents technology fact sheets to assist in the evaluation of different technologies for wastewater (*http://water.epa.gov/scitech/wastetech/mtb_index.cfm*).

[37] See 78 FR 54528 (September 4, 2013).

[38] See *http://water.epa.gov/scitech/swguidance/standards/cwa303faq.cfm. What is a New or Revised Water Quality Standard Under CWA 303(c)(3) Frequently Asked Questions* (EPA–820–F–12–017, October 2012).

opportunities, including a public hearing, a public meeting, a public workshop, and different ways of engaging the public via the Internet, such as webinars and Web site postings. If a state or authorized tribe adopts antidegradation implementation methods as part of its WQS or other legally binding provisions, the state's or authorized tribe's own public participation requirements and 40 CFR part 25 and § 131.20(b) of the federal regulation, will satisfy this requirement.

Section 131.5(a)(3) makes explicit EPA's authority to review states' and authorized tribes' antidegradation policies and any adopted antidegradation implementation methods and to determine whether those policies and methods are consistent with § 131.12. EPA recommends states and authorized tribes adopt binding implementation methods to provide more transparency and consistency for the public and other stakeholders and to increase accountability. States and authorized tribes may find that the Continuing Planning Process provisions described at CWA section 303(e) and § 130.5 can facilitate the state's or authorized tribe's establishment and maintenance of a process for WQS implementation consistent with the requirements of the final rule.

Here, EPA clarifies the terms ''antidegradation policy'' and ''antidegradation implementation methods.'' For the purposes of § 131.12, states' and authorized tribes' ''antidegradation policies'' must be adopted in rule or other legally binding form, and must be consistent with the requirements of § 131.12(a). EPA originally promulgated this requirement in 1983. ''Antidegradation implementation methods'' refer to any additional documents and/or provisions in which a state or authorized tribe describes methods for implementing its antidegradation policy, whether or not the state or authorized tribe formally adopts the methods in regulation or other legally binding form. If a state or authorized tribe does not choose to adopt the entirety of its implementation methods, EPA recommends, at a minimum, adopting in regulation or other legally binding form any antidegradation program elements that substantively express the desired instream level of protection and how that level of protection will be expressed or established for such waters in the future.

What did EPA consider?

EPA considered not adding § 131.5(a)(3). EPA rejected this option in light of commenters' suggestions to clarify the extent of EPA's authority. EPA also considered not adding § 131.12(b) or establishing § 131.12(b), as proposed. However, public involvement in the development and implementation of states' and authorized tribes' antidegradation implementation methods is fundamental to meeting the CWA requirements to restore and maintain water quality. EPA considered revising the rule to require that all states and authorized tribes adopt the entirety of their antidegradation implementation methods in regulation to improve accountability and transparency, as some commenters suggested. EPA did not make this change because it would limit states' and authorized tribes' ability to easily revise their implementation methods in order to adapt and improve antidegradation protection in a timely manner. Some states and authorized tribes have difficulty adopting their methods because of resource constraints, state or tribal laws, or complex rulemaking processes. Instead of requiring adoption of implementation methods, the final rule achieves more accountability by establishing specific requirements for states' and authorized tribes' antidegradation policies regarding two key aspects of Tier 2 implementation.

What is EPA's position on certain public comments?

Commenters requested clarification concerning whether states and authorized tribes must change their approaches to antidegradation to be consistent with the final rule. Where a state or authorized tribe already has established antidegradation requirements consistent with this rule, EPA does not anticipate the need for further changes.

Many commenters requested clarification concerning whether the proposed rule affects states' and authorized tribes' ability to use *de minimis* exclusions. Some states and authorized tribes use *de minimis* exclusions to prioritize and manage limited resources by excluding activities from Tier 2 review if they view the activity as potentially causing an insignificant lowering of water quality. This allows states and authorized tribes to use their limited resources where it can have the greatest environmental impact. Although EPA did not propose any revisions related to defining or authorizing *de minimis* exclusions, some commenters requested that EPA finalize a rule that explicitly accepts them, and others asked EPA to prohibit them. Section 131.12—including the revisions in this rule—does not address *de minimis* exclusions. States and authorized tribes can use *de minimis* exclusions, as long as they use them in a manner consistent with the CWA and § 131.12.

The DC Circuit explained in *Ala. Power* v. *Costle* that under the *de minimis* doctrine, ''[c]ategorical exemptions may also be permissible as an exercise of agency power, inherent in most statutory schemes, to overlook circumstances that in context may fairly be considered *de minimis.''* [39] The Court went on to explain that the authority to create a *de minimis* provision ''is not an ability to depart from the statute, but rather a tool to be used in implementing the legislative design.'' [40] The Sixth Circuit has also explained that *de minimis* provisions are created through an ''administrative law principle which allows an agency to create unwritten exceptions to a statute or rule for insignificant or '*de minimis*' matters.'' [41]

States and authorized tribes have historically defined ''significant degradation'' in a variety of ways. Significance tests range from simple to complex, involve qualitative or quantitative measures or both, and may vary depending upon the type of pollution or pollutant (*e.g.,* the approach may be different for highly toxic or bioaccumulative pollutants). EPA does not endorse one specific approach to identifying what constitutes insignificant degradation, though EPA does recognize that one potential way a state or authorized tribe could describe its *de minimis* methodology would be to identify a ''significance threshold'' as percentage of assimilative capacity loss for a parameter or lowering of water quality that would be considered ''insignificant.'' EPA has not found a scientific basis to identify a specific percentage of loss of assimilative capacity or lowering of water quality that could reasonably be considered insignificant for all parameters, in all waters, at all times, for all activities. Depending on the water body's chemical, physical, and biological characteristics and the circumstances of the lowering of water quality, even very small changes in water quality could cause significant effects to the water body.

Courts have explained that the implied *de minimis* provision authority is ''narrow in reach and tightly bounded by the need to show that the situation

[39] *Ala. Power.* v. *Costle,* 636 F.2d. 323, 360 (D.C. Cir. 1979).

[40] *Id.*

[41] *Ky. Waterways Alliance* v. *Johnson,* 540 F.3d 466, 483 (6th Cir. 2008).

is genuinely *de minimis* or one of administrative necessity.''[42] Accordingly, this authority only applies ''when the burdens of regulation yield a gain of trivial or no value.''[43] Finally, a ''determination of when matters are truly *de minimis* naturally will turn on the assessment of particular circumstances, and the agency will bear the burden of making the required showing.''[44]

Unless a state or authorized tribe can provide appropriate technical justification, it should not create categorical exemptions from Tier 2 review for specific types of activities based on a general finding that such activities do not result in significant degradation. States and authorized tribes should also consider the appropriateness of exemptions depending on the types of chemical, physical, and biological parameters that would be affected. For example, if a potential lowering of water quality contains bioaccumulative chemicals of concern, a state or authorized tribe should not apply a categorical *de minimis* exclusion because even extremely small additions of such chemicals could have a significant effect. For such pollutants, it could be possible to apply a *de minimis* exclusion on a case by case basis, but the state or authorized tribe should carefully consider any such proposed lowering prior to determining that it would be insignificant. States and authorized tribes should also consider the potential effects of cumulative impacts on the same water body to ensure that the cumulative degradation from multiple activities each considered to have a *de minimis* impact will not cumulatively add up to a significant impact. Finally, if a state or authorized tribe intends to use *de minimis* exclusions, then EPA recommends that it describe how it will use *de minimis* in its antidegradation implementation methods. This guarantees that states and authorized tribes will inform the public ahead of time about how they will use *de minimis* exemptions.

EPA also encourages states and authorized tribes to consider other ways to help focus limited resources where they may result in the greatest environmental protection. A state or authorized tribe should consider whether it will require more effort and resources to justify a *de minimis* exemption than it would take to actually complete a Tier 2 review for the activity. EPA encourages states and authorized tribes to develop ways to streamline Tier 2 reviews, rather than seeking to exempt activities from review entirely.

E. WQS Variances

What does this rule provide and why?

This rule establishes an explicit regulatory framework for the adoption of WQS variances that states and authorized tribes can use to implement adaptive management approaches to improve water quality. States and authorized tribes can face substantial uncertainty as to what designated use may ultimately be attainable in their waters. Pollutants that impact such waters can result from large-scale land use changes, extreme weather events, or environmental stressors related to climate change that can hinder restoration and maintenance of water quality. In addition, pollutants can be persistent in the environment and, in some cases, lack economically feasible control options. WQS variances are customized WQS that identify the highest attainable condition applicable throughout the WQS variance term. For a discussion of why it is important for states and authorized tribes to include the highest attainable condition, see the preamble to the proposed rule at 78 FR 54534 (September 4, 2013). States and authorized tribes could use one or more WQS variances to require incremental improvements in water quality leading to eventual attainment of the ultimate designated use.

While EPA has long recognized WQS variances as an available tool, the final rule provides regulatory certainty to states and authorized tribes, the regulated community, and the public that WQS variances are a legal WQS tool. The final rule explicitly authorizes the use of WQS variances and provides requirements to ensure that WQS variances are used appropriately. Such a mechanism allows states and authorized tribes to work with stakeholders and assure the public that WQS variances facilitate progress toward attaining designated uses. When all parties are engaged in a transparent process that is guided by an accountable framework, states and authorized tribes can move past traditional barriers and begin efforts to maintain and restore waters. As discussed in the preamble to the proposed rule at 78 FR 54531 (September 4, 2013), a number of states have not pursued WQS variances. For WQS variances submitted to EPA between 2004 and 2015, 75% came from states covered by the ''Water Quality Guidance for the Great Lakes System'' rulemaking at 40 CFR part 132. EPA attributes the Region 5 states' success in adopting and submitting WQS variances to the fact that the states and their stakeholders have had more specificity in regulation regarding WQS variances than the rest of the country. This final rule is intended to provide the same level of specificity nationally.

EPA's authority to establish requirements for WQS variances comes from CWA sections 101(a) and 303(c)(2). This rule reflects this authority by explicitly recognizing that states and authorized tribes may adopt time-limited WQS with a designated use and criterion reflecting the highest attainable condition applicable throughout the term of the WQS variance, instead of pursing a permanent[45] revision of the designated use and associated criteria. WQS variances serve the national goal in section 101(a)(2) of the Act and the ultimate objective of the CWA to restore and maintain the chemical, physical, and biological integrity of the Nation's waters because WQS variances are narrow in scope and duration and are designed to make progress toward water quality goals. When a WQS variance is in place, all other applicable standards not addressed in the WQS variance continue to apply, in addition to the ultimate water quality objectives (*i.e.,* the underlying WQS). Also, by requiring the highest attainable condition to be identified and applicable throughout the term of the WQS variance, the final rule provides a mechanism to make incremental progress toward the ultimate water quality objective for the water body and toward the restoration and maintenance of the chemical, physical, and biological integrity of the Nation's waters.

This rule adds a new regulatory section at § 131.14 that explicitly authorizes the use of WQS variances when the applicable designated uses are not attainable in the near-term but may be attainable in the future. The rule clarifies how WQS variances relate to other CWA programs and specifies the information that the state and authorized tribe must adopt in any WQS variance, including the highest attainable condition. States and authorized tribes must submit to EPA supporting documentation that demonstrates why the WQS variance is

[42] *Id.* (quoting *Ala. Power.* v. *Costle,* 636 F.2d. 323, 361 (D.C. Cir. 1979)).

[43] *Id.* (quoting *Greenbaum* v. *U.S. Envtl Prot. Agency,* 370 F.3d 527, 534 (6th Cir. 2004)).

[44] *Id.* (quoting *Greenbaum* v. *U.S. Envtl Prot. Agency,* 370 F.3d 527, 534 (6th Cir. 2004)).

[45] ''Permanent'' is used here to contrast between the time-limited nature of WQS variances and designated use changes. In accordance with 40 CFR 131.20, waters that ''do not include the uses specified in section 101(a)(2) of the Act shall be re-examined every 3 years to determine if new information has become available. If such new information indicates that the uses specified in section 101(a)(2) of the Act are attainable, the [s]tate shall revise its standards accordingly.''

needed and justifies the term and interim requirements. Finally, the rule requires states and authorized tribes to reevaluate WQS variances longer than five years on an established schedule with public involvement. The changes from the proposed rule respond to public comments and remain consistent with the Agency's clearly articulated policy objectives in the proposed rule. This rule also includes editorial changes that are not substantive in nature.

First, to provide clarity, this rule includes a new section at § 131.14 to explicitly authorize states and authorized tribes to adopt WQS variances. States and authorized tribes may adopt WQS variances for a single discharger, multiple dischargers, or a water body or waterbody segment, but it only applies to the permittee(s) or water body/waterbody segment(s) specified in the WQS variance. The rule defines a WQS variance at § 131.3(o) as a time-limited designated use and criterion for a specified pollutant(s), permittee(s), and/or water body or waterbody segment(s) that reflects the highest attainable condition applicable throughout the specified time period. The rule further specifies that a WQS variance is a new or revised WQS subject to EPA review and approval or disapproval,[46] requires a public process, and must be reviewed on a triennial basis. All other applicable standards not specifically addressed by the WQS variance remain applicable. This rule adds § 131.5(a)(4) to explicitly specify that EPA has the authority to determine whether any WQS variances adopted by a state or authorized tribe are consistent with the requirements at § 131.14. A WQS variance shall not be adopted if the designated use and criterion can be achieved by implementing technology-based effluent limits required under sections 301(b) and 306 of the Act.

To make incremental water quality improvements, it is important that states' and authorized tribes' WQS continue to reflect the ultimate water quality goal. This rule, therefore, requires states and authorized tribes to retain the underlying designated use and criterion in their standards to apply to all other permittees not addressed in the WQS variance, and for identifying threatened and impaired waters under CWA section 303(d), and for establishing a Total Maximum Daily Load (TMDL).[47] For further clarity, this rule also specifies that once EPA approves a WQS variance, including the highest attainable condition, it applies for purposes of developing NPDES permit limits and requirements under 301(b)(1)(C). WQS variances can also be used by states, authorized tribes, and other certifying entities when issuing certifications under CWA section 401. If EPA disapproves a WQS variance, the state or authorized tribe will have an opportunity to revise and re-submit the WQS variance for approval. Until EPA approves the re-submitted WQS variance, the underlying designated use and criteria remain applicable for all CWA purposes. This rule reinforces the requirements at § 122.44(d)(1)(vii)(A) by specifying that any limitations and requirements necessary to implement the WQS variance must be included as enforceable conditions of the implementing NPDES permit.

Second, to provide public transparency, this rule requires states and authorized tribes to include specific information in the WQS variance. States and authorized tribes must specify the pollutant(s) or water quality parameter(s) and the water body/waterbody segment(s) to which the WQS variance applies. A state or authorized tribe must also identify the discharger(s) subject to a discharger-specific WQS variance. As an alternative to identifying the specific dischargers at the time of adoption of a WQS variance for multiple dischargers, states and authorized tribes may adopt specific eligibility requirements in the WQS variance. This will make clear what characteristics a discharger must have in order to be subject to the WQS variance for multiple dischargers. It is EPA's expectation that states and authorized tribes that choose to identify the dischargers in this manner will subsequently make a list of the facilities covered by the WQS variance publicly available (*e.g.,* posted on the state or authorized tribal Web site). It may be appropriate for a state or authorized tribe to adopt one WQS variance that applies to multiple dischargers experiencing the same challenges in meeting their WQBELs for the same pollutant so long as the WQS variance is consistent with the CWA and § 131.14.[48] A multiple discharger WQS variance may not be appropriate or practical for all situations and can be highly dependent on the applicable pollutants, parameters, and/or permittees.

States and authorized tribes must also specify the term of any WQS variance to ensure that WQS variances are time-limited. States and authorized tribes have the flexibility to express the WQS variance term as a specific date (*e.g.,* expires on December 31, 2024) or as an interval of time after EPA-approval (*e.g.,* expires 10 years after EPA approval), as long as it is only as long as necessary to achieve the highest attainable condition. If, at the end of the WQS variance, the underlying designated use remains unattainable, the state or authorized tribe may adopt a subsequent WQS variance(s), consistent with the requirements of § 131.14.

To ensure that states and authorized tribes use WQS variances that continue to make water quality progress, the rule does not allow a WQS variance to lower currently attained ambient water quality, except in circumstances where a WQS variance will allow short-term lowering necessary for restoration activities consistent with § 131.14(b)(2)(i)(A)(*2*). Moreover, states and authorized tribes must specify in the WQS variance itself the interim requirements reflecting the highest attainable condition. Where a permittee cannot immediately meet the WQBEL derived from the terms of a WQS variance, the permitting authority can decide whether to provide a permit compliance schedule (where authorized) so the permittee can remain in compliance with its NPDES permit.[49] (See CWA section [502(17)] for a definition of ''Schedules of compliance'' and 40 CFR 122.47).[50] Any such compliance schedule must include a final effluent limit based on the applicable highest attainable condition and must require compliance with the permit's WQBEL ''as soon as possible.'' If the compliance schedule exceeds one year, the permitting authority must include interim requirements and the dates for their achievement.

For example, if the underlying criterion requires an NPDES WQBEL of 1 mg/L for pollutant X, but the permittee's current effluent quality is at 10 mg/L, the state or authorized tribe could adopt the highest attainable condition of 3 mg/L to be achieved at the end of 15 years and obtain EPA approval if they have met the requirements of § 131.14. Once approved by EPA, the highest attainable condition of 3 mg/L is the applicable

[46] For this reason, states and authorized tribes are not required to adopt specific authorizing provisions into state or authorized tribal law before using WQS variances consistent with the federal regulation.

[47] See 78 FR 54533 (September 4, 2013).

[48] EPA has developed a list of Frequently Asked Questions addressing when a multiple discharger WQS variance may be appropriate and how a state or authorized tribe can develop a credible rationale for this type of WQS variance. *Discharger-specific Variances on a Broader Scale: Developing Credible Rationales for Variances that Apply to Multiple Dischargers,* EPA–820–F–13–012, March 2013.

[49] As an alternative to a permit compliance schedule, there may be other available mechanisms such as an administrative order.

[50] 78 FR 54532 (September 4, 2013).

criterion for purposes of deriving the NPDES WQBEL and developing the NPDES permit limits and requirements for the facility covered by the WQS variance. For this example, assume the permitting authority is developing the NPDES permit without allowing dilution (*i.e.,* applying the criterion end of pipe). In this case, the facility will need 15 years to implement the activities necessary to meet the limit based on the 3 mg/L. The permitting authority could include a 15 year compliance schedule with a final effluent limit based on 3 mg/L and an enforceable sequence of actions that the permitting authority determines are necessary to achieve the final effluent limit. As discussed later in this section, the documentation that a state or authorized tribe provides to EPA justifying the term of the WQS variance informs the permitting authority when determining the enforceable sequence of actions.

This rule requires states and authorized tribes to provide a quantifiable expression of the highest attainable condition. This requirement is an important feature of a WQS variance that facilitates development of NPDES permit limits and requirements and allows states, authorized tribes, and the public to track progress. This rule provides states and authorized tribes the flexibility to express the highest attainable condition as numeric pollutant concentrations in ambient water, numeric effluent conditions, or other quantitative expressions of pollutant reduction, such as the maximum number of combined sewer overflows that is achievable after implementation of a long-term control plan or a percent reduction in pollutant loads.

The final rule at § 131.14(b)(1)(ii) provides states and authorized tribes with different options to specify the highest attainable condition depending on whether the WQS variance applies to a specific discharger(s) or to a water body or waterbody segment. For a discharger(s)-specific WQS variance, the rule allows states and authorized tribes to express the highest attainable condition as an interim criterion without specifying the designated use it supports. EPA received comments suggesting that identifying both an interim use and interim criterion for a WQS variance is unnecessary. EPA agrees that the level of protection afforded by meeting the highest attainable criterion in the immediate area of the discharge(s) results in the highest attainable interim use at that location. Therefore, the highest attainable interim criterion is a reasonable surrogate for both the highest attainable interim use and interim criterion when the WQS variance applies to a specific discharger(s). For similar reasons, as explained in the preamble to the proposed rule, states and authorized tribes may choose to articulate the highest attainable condition as the highest attainable interim effluent condition.[51] Neither of these options, however, is appropriate for a WQS variance applicable to a water body or waterbody segment. Such a WQS variance impacts the water body or waterbody segment in a manner that is similar to a change in a designated use and, therefore, must explicitly articulate the highest attainable condition as the highest attainable interim designated use and interim criterion. A state's or authorized tribe's assessment of the highest attainable interim designated use and interim criterion for this type of WQS variance necessarily involves an evaluation of all pollutant sources.

Where the state or authorized tribe cannot identify an additional feasible pollutant control technology, this rule provides options for articulating the highest attainable condition using the greatest pollutant reduction achievable with optimization of currently installed pollutant control technologies and adoption and implementation of a Pollutant Minimization Program (PMP). The rule makes this option available for a WQS variance that applies to a specific discharger(s) as well as a WQS variance applicable to a water body or waterbody segment. EPA defines PMP at § 131.3(p) as follows: ''*Pollutant Minimization Program,* in the context of § 131.14, is a structured set of activities to improve processes and pollutant controls that will prevent and reduce pollutant loadings . . . .'' Pollutant control technologies represent a broad set of pollutant reduction options, such as process or raw materials changes and pollution prevention technologies, practices that reduce pollutants prior to entering the wastewater treatment system, or best management practices for restoration and mitigation of the water body. This option requires states and authorized tribes to adopt the PMP along with other elements that comprise the highest attainable condition. As part of the applicable WQS, the permitting authority must use the PMP (along with the quantifiable expression of the ''greatest pollutant reduction achievable'') to derive NPDES permit limits and requirements.

As discussed later in this section, states and authorized tribes must reevaluate WQS variances on a regular and predictable schedule. To ensure that a WQS variance reflects the highest attainable condition throughout the WQS variance term, states and authorized tribes must adopt a provision specifying that the applicable interim WQS shall be either the highest attainable condition initially adopted, or a higher attainable condition later identified during any reevaluation. The rule requires such a provision only for WQS variances longer than five years. This provision must be self-implementing so that if any reevaluation yields a more stringent attainable condition, that condition becomes the applicable interim WQS without additional action. Upon permit reissuance, the permitting authority will base the WQBEL on the more stringent interim WQS consistent with the NPDES permit regulation at § 122.44(d)(vii)(A). Where the reevaluation identifies a condition less stringent than the highest attainable condition, the state or authorized tribe must revise the WQS variance consistent with CWA requirements and obtain EPA approval of the WQS variance before the permitting authority can derive a WQBEL based on that newly identified highest attainable condition.

Third, to ensure EPA has sufficient information to determine whether the WQS variance is consistent with EPA's WQS regulation, states and authorized tribes must provide documentation to justify why the WQS variance is needed, the term for the WQS variance, and the highest attainable condition. For a WQS variance to a designated use specified in CWA section 101(a)(2) and sub-categories of such uses, states and authorized tribes must demonstrate that the use and criterion are not feasible to attain on the basis of one of the factors listed in § 131.10(g) or on the basis of the new restoration-related factor in § 131.14(b)(2)(i)(A)(*2*). EPA added this new factor for when states and authorized tribes wish to obtain a WQS variance because they expect a time-limited exceedance of a criterion when removing a dam or during significant wetlands, lake, or stream reconfiguration/restoration efforts. EPA includes ''lake'' in the regulatory language for this factor, on the basis of public comments suggesting that the rule also apply to lake restoration activities. States and authorized tribes may only use this factor to justify the time necessary to remove the dam or the length of time in which wetland, lake, or stream restoration activities are actively on-going. Although such a WQS

[51] 78 FR 54534 (September 4, 2013).

variance might not directly impact an NPDES permittee or the holder of a federal license or permit, states and authorized tribes could rely on the WQS variance when deciding whether to issue a CWA section 401 certification in connection with an application for a federal license or permit. The central feature of CWA section 401 is the state or authorized tribe's ability to grant, grant with conditions, deny or waive certification for federally licensed or permitted activities that may discharge into navigable waters. Many states and authorized tribes rely on CWA section 401 certification to ensure that federal projects do not cause adverse water quality impacts. By adopting a WQS variance, the state or authorized tribe lays the groundwork for issuing a certification (possibly with conditions, as per CWA section 401(d)) that allows a federal license or permit to be issued. Without a WQS variance, the state or authorized tribe's only options might be to deny certification which prevents issuance of the federal license or permit, or waive certification and allow the license or permit to be issued without conditions. If a state or authorized tribe issues a CWA certification based on a WQS variance, EPA recommends that the state or tribe consider whether to include the applicable interim requirements from the WQS variance as conditions of its certification.

For WQS variances to non-101(a)(2) uses, this rule specifies that states and authorized tribes must document and submit a use and value demonstration consistent with § 131.10(a) (see section II.B for additional discussion on use and value demonstrations). EPA's proposed rule would have required that a ''[s]tate must submit a demonstration justifying the need for a WQS variance'' and the preamble to the proposed rule noted that the demonstrations for uses specified in CWA section 101(a)(2) and non-101(a)(2) may differ. EPA received comments questioning the requirements for WQS variances to non-101(a)(2) uses and this rule explicitly makes clear that the documentation requirement for removing or adopting new or revised designated uses in §§ 131.10(a) and 131.6 also applies to non-101(a)(2) WQS variances. States and authorized tribes may also use the factors at § 131.14(b)(2)(i)(A) to justify how their consideration of the use and value appropriately supports the WQS variance.

States and authorized tribes must justify the term of any WQS variance on the basis of the information and factors evaluated to justify the need for the WQS variance. States and authorized tribes must also describe the pollutant control activities, including those identified through a PMP, that the state or authorized tribe anticipates implementing throughout the WQS variance term to achieve the highest attainable condition. During its review of the WQS variance, EPA will evaluate this description of activities which must reflect only the time needed to plan activities, implement activities, or evaluate the outcome of activities. Explicitly requiring the state or authorized tribe to document the relationship between the pollutant control activities and the WQS variance term ensures that the term is only as long as necessary to achieve the highest attainable condition and that water quality progress is achieved throughout the entire WQS variance term. The pollutant control activities specified in the supporting documentation serve as milestones for the WQS variance and inform the permitting authority when developing the enforceable terms and conditions of the NPDES permit necessary to implement the WQS variance, as required at 40 CFR 122.44(d)(1).

The degree of certainty associated with pollutant control activities and pollutant reductions will inform EPA's review and evaluation of whether the state's or authorized tribe's submission sufficiently justifies the need and the term of WQS variances. There can be instances where a state or authorized tribe has information to determine that the underlying designated use and criterion cannot be attained for a particular period of time, but does not have sufficient information to identify the highest attainable condition that would be achieved in that same period of time. In such cases, EPA anticipates that a state or authorized tribe will adopt a shorter WQS variance reflecting the highest attainable condition that is supported by the available information, including the pollutant control activities identified in the WQS submission. States and authorized tribes could then determine the appropriate mechanism to continue making progress towards the underlying designated use and criterion, which may include adoption of subsequent WQS variances as more data are gathered and additional pollutant control activities are identified.

This rule also includes two additional requirements to ensure states and authorized tribes use all relevant information to establish a WQS variance for a water body or waterbody segment. States and authorized tribes must identify and document cost-effective and reasonable BMPs for nonpoint sources, and provide for public notice and comment on that documentation. States and authorized tribes must also document whether and to what extent BMPs were implemented and the water quality progress achieved during the WQS variance term to justify a subsequent WQS variance. Nonpoint sources can have a significant bearing on whether the designated use and associated criteria for the water body are attainable. It is essential for states and authorized tribes to consider how controlling these sources through application of cost-effective and reasonable BMPs could impact water quality before adopting such a WQS variance. Doing so informs the highest attainable condition, the duration of the WQS variance term, and the state's or authorized tribe's assessment of the interim actions that may be needed to make water quality progress.

Fourth, to ensure that states and authorized tribes thoroughly reevaluate each WQS variance with a term longer than five years, this rule requires states and authorized tribes to specify, in the WQS variance, the reevaluation frequency and how they plan to obtain public input on the reevaluation. Additionally, they must submit the results of the reevaluation to EPA within 30 days of completion. States and authorized tribes may specify the frequency of reevaluations to coincide with other state and authorized tribal processes (*e.g.,* WQS triennial reviews or NPDES permit reissuance), as long as reevaluations occur at least every five years. Although EPA does not review and approve or disapprove the results of a WQS variance reevaluation, the results could inform whether the Administrator exercises his or her discretion to determine that new or revised WQS are necessary. The rule also requires states and authorized tribes to adopt a provision specifying that the WQS variance will no longer be the applicable WQS for CWA purposes if they do not conduct the required reevaluation or do not submit the results of the reevaluation within 30 days of completion. If a state or authorized tribe does not reevaluate the WQS variance or does not submit the results to EPA within 30 days, the underlying designated use and criterion become the applicable WQS for the permittee(s) or water body specified in the WQS variance without EPA, states or authorized tribes taking an additional WQS action. In such cases, subsequent NPDES WQBELs for the associated permit must be based on the underlying designated use and criterion rather than the highest attainable condition, even if the originally specified variance term has not expired. As discussed earlier in

this section, states and authorized tribes must also adopt a provision that ensures the WQS variance reflects the highest attainable condition initially adopted or any more stringent highest attainable condition identified during a reevaluation that is applicable throughout the WQS variance term.

EPA proposed a maximum allowable WQS variance term of 10 years to ensure that states and authorized tribes reevaluate long-term WQS challenges at least every 10 years before deciding whether to continue with a WQS variance. EPA explained in the preamble to the proposed rule that the purpose of this maximum WQS variance term was as follows: ''Establishing an expiration date will ensure that the conditions of a [WQS] variance will be thoroughly reevaluated and subject to a public review on a regular and predictable basis to determine (1) whether conditions have changed such that the designated use and criterion are now attainable; (2) whether new or additional information has become available to indicate that the designated use and criterion are not attainable in the future (*i.e.,* data or information supports a use change/refinement); or (3) whether feasible progress is being made toward the designated use and criterion and that additional time is needed to make further progress (*i.e.,* whether a [WQS] variance may be renewed).'' [52]

Some commenters suggested that 10 years is too long and does not provide adequate assurance that the state or authorized tribe will periodically reevaluate a WQS variance in a publicly transparent manner. Other commenters suggested that 10 years is too short because states often adopt WQS variances through conventional rulemaking processes and that such a maximum term would result in unnecessary rulemaking burden where it is widely understood that long-term pollution challenges require more time to resolve. A 10-year maximum could also discourage the use of WQS variances.

In response, EPA concludes that establishing specific reevaluation requirements for WQS variances longer than five years is the best way to achieve EPA's policy objective of active, thorough, and transparent reevaluation by states and authorized tribes while minimizing rulemaking burden. The reevaluation requirements in this rule eliminate the need to specify a maximum WQS variance term because they ensure the highest attainable condition is always the applicable WQS throughout the WQS variance term, thus driving incremental improvements toward the underlying designated use. These requirements also ensure the public has an opportunity to provide input throughout the WQS variance term. EPA chose five years as the maximum interval between reevaluations because five years is the length of a single NPDES permit cycle, allowing the reevaluation to inform the permit reissuance process. Although this rule does not specify a maximum WQS variance term, states and authorized tribes must still identify the WQS variance term and provide documentation demonstrating that the term is only as long as necessary to achieve the highest attainable condition. EPA will use this information to determine whether to approve or disapprove the WQS variance submitted for review, based on the requirements in § 131.14.

WQS variances remain subject to the triennial review and public participation requirements specified in § 131.20. The final rule requirements ensure that the public has the opportunity to work with states and authorized tribes in a predictable and timely manner to search for new or updated data and information specific to the WQS variance that could indicate a more stringent highest attainable condition exists than the state or authorized tribe originally adopted. ''New or updated data and information'' include, but are not limited to, new information on pollutant control technologies, changes in pollutant sources, flow or water levels, economic conditions, and BMPs that impact the highest attainable condition. Where there is an EPA-approved WQS variance, the permitting authority must refer to the reevaluation results when reissuing NPDES permits to ensure the permit implements any more stringent applicable WQS that the reevaluation provides. States and authorized tribes can facilitate this coordination by publishing and making accessible the results of reevaluations.

While this rule only requires reevaluations of WQS variances with a term longer than five years, states and authorized tribes must review all WQS variances during their triennial review. If a state or authorized tribe synchronizes a WQS variance reevaluation with permit reissuance, the reevaluation must occur on schedule even if there is a delay in the permit reissuance.

EPA previously promulgated specific variance procedures when EPA established federal WQS for Kansas (§ 131.34(c)) and Puerto Rico (§ 131.40(c)). To provide national consistency, this rule authorizes the Regional Administrator to grant WQS variances in Kansas and Puerto Rico in accordance with the provisions of § 131.14.

What did EPA consider?

In addition to considering the option EPA proposed, EPA considered options that provide a maximum WQS variance term more than or less than 10 years. EPA rejected these options because retaining a maximum term of any duration does not accomplish EPA's goal of a balanced approach that ensures both flexibility and accountability as effectively as requiring periodic reevaluations of the WQS variance. Additionally, on the basis of commenters' suggestions, EPA considered requiring identification and documentation of cost-effective and reasonable BMPs for nonpoint sources for all WQS variances and not just for WQS variances applicable to a water body or waterbody segment. To achieve EPA's policy objectives, EPA chose instead to add a requirement for all WQS variances that states and authorized tribes describe the pollutant control activities to achieve the highest attainable condition (see § 131.14(b)(2)(ii)).

What is EPA's position on certain public comments?

EPA received comments that suggested confusion between WQS variances and NPDES permit compliance schedules. WQS variances can be appropriate to address situations where it is known that the designated use and criterion are unattainable today, but progress could be made toward attaining the designated use and criterion. Typically, a permit authority grants a permit compliance schedule when the permittee needs additional time to modify or upgrade treatment facilities in order to meet its WQBEL based on the applicable WQS (*i.e.,* designated use and criterion). After the effective date of this rule, a permit authority could also grant a permit compliance schedule when the permittee needs additional time to meet its WQBEL based on the applicable WQS variance (*i.e.,* highest attainable condition) such that a schedule and resulting milestones will lead to compliance with the effluent limits derived from the WQS variance ''as soon as possible.'' If a WQS variance is about to expire and a state or authorized tribe concludes the underlying designated use is now attainable, it is not appropriate for the state or authorized tribe to adopt a subsequent

[52] 78 FR 54536 (September 4, 2013).

WQS variance. However, if a permittee is unable to immediately meet a WQBEL consistent with the now attainable WQS, and the permitting authority can specify an enforceable sequence of actions that would result in achieving the WQBEL, the permitting authority could grant a permit compliance schedule consistent with § 122.47. If the underlying designated use is still not attainable, the state or authorized tribe can adopt a subsequent WQS variance.

EPA also received comments questioning how a WQS variance works with a TMDL and CWA section 303(d) impaired waters listing(s). These comments suggested the proposed rule creates a conflict in how the NPDES permitting regulation requires permitting authorities to develop WQBELs. Section 122.44(d)(1)(vii)(A) specifies that all WQBELs in an NPDES permit must derive from and comply with all applicable WQS. Section 122.44(d)(1)(vii)(B) specifies that the WQBEL of any NPDES permit must be consistent with the assumptions and requirements of any *available* (emphasis added) waste load allocation (WLA) in an EPA-approved or EPA-established TMDL. Because the WLA of the TMDL is based on the underlying designated use and criterion (and not the highest attainable condition established in the WQS variance), then the WLA in the TMDL is not available to the permittee covered by the WQS variance for NPDES permitting purposes while the WQS variance is in effect. The permitting authority must develop WQBELs for the permittees subject to the WQS variance based on the interim requirements specified in the WQS variance. Upon termination of the WQS variance, the NPDES permit must again derive from and comply with the underlying designated use and criterion and be consistent with the assumptions and requirements of the WLA (as it is again ''available'').

Some commenters questioned what would happen if a state or authorized tribe does not coordinate a WQS variance term with the expiration date of an NPDES permit. If information is available to the permitting authority indicating that the term of a WQS variance will end during the permit cycle, the permitting authority must develop two WQBELs: one WQBEL based on the highest attainable condition applicable throughout the WQS variance term, and another WQBEL based on the underlying designated use and criterion to apply after the WQS variance terminates. Including two sets of WQBELs that apply at different time periods in the permit ensures that the permit will derive from and comply with WQS throughout the permit cycle. If the state or authorized tribe adopts and EPA approves a subsequent WQS variance during the permit term to replace an expiring WQS variance, the new WQS variance would constitute ''new regulations'' pursuant to § 122.62(a)(3)(i), and the permitting authority could modify the permit to derive from and comply with the subsequent WQS variance. At the request of the permittee, the permitting authority can also utilize the Permit Actions condition specified in § 122.41(f) to modify a permit and revise the WQBEL to reflect the new WQS variance.

Some commenters questioned whether states and authorized tribes must modify WQS variances that states and authorized tribes adopted before the effective date of the final rule. States and authorized tribes must meet the requirements of this rule on the effective date of the final rule. As with any WQS effective for CWA purposes, WQS variances are subject to the triennial review requirements at § 131.20(a). When a state or authorized tribe reviews a WQS variance that was adopted before § 131.14 becomes effective, EPA strongly encourages the state or authorized tribe to ensure the WQS variance is consistent with this rule. EPA encourages the public to engage in triennial reviews and request revisions to WQS variances that states and authorized tribes adopted and EPA approved prior to the effective date of the final rule so that the public can provide information supporting the need to modify the WQS variances. Some states and authorized tribes may also have adopted binding WQS variance policies and/or procedures. Such policies and procedures are not required by EPA's regulation before utilizing WQS variances, however, where state and authorized tribes have them and they are inconsistent with this rule, those states and authorized tribes must revise such policies and/or procedures prior to, or simultaneously with, adopting the first WQS variance after the effective date of the final rule.

A state or authorized tribe may be able to streamline its WQS variance process in several ways. As discussed earlier in this section, one way is to adopt multiple discharger WQS variances. In justifying the need for a multiple discharger WQS variance, states and authorized tribes should account for as much individual permittee information as possible. A permittee that cannot qualify for an individual WQS variance cannot qualify for a multiple discharger WQS variance. EPA recommends that states and authorized tribes provide a list of the dischargers covered under the WQS variance on their Web sites or other publicly available sources of state or authorized tribal information, particularly when using multiple discharger WQS variances.

A second way is to adopt an administrative procedure that fulfills the WQS submittal and review requirements and specifies that if the state or authorized tribe follows the procedure, the WQS variance is legally binding under state or tribal law. A state or authorized tribe could submit such an administrative procedure for a WQS variance, as a rule, to EPA for review and approval under § 131.13. Once approved, the state or authorized tribe can follow this administrative procedure and develop a final document for each WQS variance. Because the state or tribal law specifies this WQS variance document is legally binding, there is no need for the state or authorized tribe to do a separate rulemaking for each individual WQS variance. Rather, the state or authorized tribe could submit each resulting WQS variance document, with an Attorney General or appropriate tribal legal authority certification, and EPA could take action under CWA section 303(c).

Some commenters questioned how this rule affects states and authorized tribes under the 1995 Great Lakes Water Quality Guidance (GLWQG) [53] because those requirements are different than the WQS variance requirements in the final rule. For waters in the Great Lakes basin, states and authorized tribes must meet the requirements of both 40 CFR parts 131 and 132. The practical effect of this requirement is that, where regulations in 40 CFR parts 131 and 132 overlap, the more stringent regulation applies. In some cases, the flexibilities and requirements in the national rule will not be applicable to waters in the Great Lakes basin. For example, the GLWQG limits any WQS variance to a maximum term of five years (with the ability to obtain a subsequent WQS variance). Therefore, any WQS variance on waters that are subject to the GLWQG cannot exceed five years even though the final rule in 40 CFR part 131 does not specify a maximum term. On the other hand, because GLWQG WQS variances cannot exceed five years, the requirements in the final rule that pertain to conducting reevaluations (for WQS variances greater than five years) are not applicable.

[53] See 60 FR 15366 (March 23, 1995); 40 CFR part 132.

Finally, some commenters questioned the level of ''scientific rigor'' required for a WQS variance as compared to a UAA required for changes to 101(a)(2) uses. Section 40 CFR 131.5(a)(4) provides that EPA's review under section 303(c) involves a determination of whether the state's or authorized tribe's ''standards which do not include the uses specified in section 101(a)(2) of the Act are based upon appropriate technical and scientific data and analyses. . . .'' Because WQS variances are time-limited designated uses and criteria, this requirement applies to WQS variances. States and authorized tribes must adopt WQS variances based on appropriate technical and scientific data and analyses. Therefore, the level of rigor required for a WQS variance is no different than for a designated use change. That said, the appropriate technical and scientific data required to support a designated use change and WQS variance can vary depending on the complexity of the specific circumstances. EPA recognizes that the data and analyses often needed to support adoption of a WQS variance could be less complex and require less time and resources compared to removing a designated use because many WQS variances evaluate only one parameter for a single permittee for a limited period of time. The level of effort a state or authorized tribe needs to devote to a WQS variance will in large part be determined by the complexity of the water quality problem the state or authorized tribe seeks to address.

F. Provisions Authorizing the Use of Schedules of Compliance for WQBELs in NPDES Permits

What does this rule provide and why?

In 1990, EPA concluded that before a permitting authority can include a compliance schedule for a WQBEL in an NPDES permit, the state or authorized tribe must affirmatively authorize its use in its WQS or implementing regulations.[54] EPA approval of the state's or authorized tribe's permit compliance schedule authorizing provision as a WQS ensures that any NPDES permit WQBEL with a compliance schedule derives from and complies with applicable WQS as required by § 122.44(d)(1)(vii)(A). Because the state's or authorized tribe's approved WQS authorize extended compliance, any delay in compliance with a WQBEL pursuant to an appropriately issued permit compliance schedule is consistent with the statutory implementation timetable in CWA section 301(b)(1)(C).

The use of legally-authorized permit compliance schedules by states and authorized tribes provides needed flexibility for many dischargers undergoing facility upgrades and operational changes designed to meet WQBELs in their NPDES permits. This flexibility will become increasingly important as states and authorized tribes adopt more stringent WQS, including numeric nutrient criteria, and address complex water quality problems presented by emerging challenges like climate change.

Some states have adopted compliance schedule authorizing provisions but have not submitted them to EPA for approval as WQS pursuant to CWA section 303(c). Other states have not yet adopted compliance schedule authorizing provisions. A permit could be subject to legal challenge where a state and authorized tribe decide to authorize permit flexibility using permit compliance schedules, but do not have a compliance schedule authorizing provision approved by EPA as a WQS.

Section 131.15 in this final rule requires that if a state or authorized tribe intends to authorize the use of compliance schedules for WQBELs in NPDES permits, it must first adopt a permit compliance schedule authorizing provision. The authorizing provision must be consistent with the CWA and is subject to EPA review and approval as a WQS. This rule adds § 131.5(a)(5) to explicitly specify that EPA has the authority to determine whether any provision authorizing the use of schedules of compliance for WQBELs in NPDES permits adopted by a state or authorized tribe is consistent with the requirements at § 131.15. This rule also includes a number of non-substantive editorial changes.

By expressly requiring that the state or authorized tribe adopt a permit compliance schedule authorizing provision, the first sentence of the final regulation at § 131.15 ensures that the state or authorized tribe has expressly made a determination that, under appropriate circumstances, it can be lawful to delay permit compliance. Formal adoption as a legally binding provision ensures public transparency and facilitates public involvement.

Some commenters expressed concern that the proposed regulatory language regarding state and authorized tribal adoption could be interpreted to refer to permit compliance schedules themselves, rather than their authorizing provisions. To address that concern, the final rule refers to ''the use of'' schedules of compliance. The phrase ''the use of'' indicates that the mere adoption of an authorizing provision, by itself, does not extend the date of compliance with respect to any specific permit's WQBEL; rather, its adoption allows the state or authorized tribe *to use* schedules of compliance, as appropriate, on a case-by-case basis in individual permits.

The second sentence of the final regulation at § 131.15 provides that states' and authorized tribes' authorizing provisions must be consistent with the CWA and are WQS subject to EPA review and approval. By incorporating the authorizing provision into the state's or authorized tribe's approved WQS, the state or authorized tribe ensures that a permitting authority can then legally issue compliance schedules for WQBELs in NPDES permits that are consistent with CWA section 301(b)(1)(C). Only the permit compliance schedule authorizing provisions are WQS subject to EPA approval; individual permit compliance schedules are not. The final rule provides flexibility for a state or authorized tribe to include the authorizing provision in the part of state or tribal regulations where WQS are typically codified, in the part of state or tribal regulations dealing with NPDES permits, or in other parts of the state's or authorized tribe's implementing regulations. Regardless of where the authorizing provision is codified, as long as the provision is legally binding, EPA will take action on it under CWA section 303(c). If a state or authorized tribe has already adopted an authorizing provision that is consistent with the CWA, it need not readopt the provision for purposes of satisfying the final rule. Instead, the state or authorized tribe can submit the provision to EPA with an Attorney General or appropriate tribal legal authority certification. Moreover, consistent with § 131.21(c), any permit compliance schedule authorizing provision that was adopted, effective, *and submitted* to EPA before May 30, 2000, is applicable for purposes of § 131.15.

This final rule does not change any permit compliance schedule requirements at § 122.47.

Other judicial and administrative mechanisms issued pursuant to other authorities, such as an enforcement order issued by a court, can delay the need for compliance with WQBELs. This rule does not address those other mechanisms.

What did EPA consider?

EPA considered finalizing § 131.15, as proposed. Given the comments

[54] *In the Matter of Star-Kist Caribe, Inc.* 3 EAD 172 (April 16, 1990).

indicating that ambiguity in the proposed language could lead to confusion over whether the requirements to adopt and submit for EPA approval applied directly to permit compliance schedules themselves, EPA did not select this option. Instead, EPA added clarifying language to address the commenters' concern and streamlined the text of the proposed rule without making substantive changes. EPA also considered foregoing the addition of § 131.15. Many commenters, however, supported adding § 131.15 as a useful clarification of the need and process for states and authorized tribes to adopt compliance schedule authorizing provisions.

What is EPA's position on certain public comments?

Some commenters said that the following proposed regulatory language—''authorize schedules of compliance *for water quality-based effluent limits (WQBELs)* in NPDES permits''—could have the effect of narrowing the universe of NPDES permits and permit requirements for which permitting authorities can include permit compliance schedules. The regulation does not narrow that universe, nor does it preclude other appropriate uses of permit compliance schedules as provided for in § 122.47. The new § 131.15 requirements only apply to the authorization of compliance schedules *for WQBELs* in NPDES permits. Such WQBELs are designed to meet WQS established by the state or authorized tribe and approved by EPA under CWA section 303(c).[55] Adding this new provision to the WQS regulation will ensure that the state or authorized tribe takes the necessary steps to ensure that any NPDES permit with a permit compliance schedule for a WQBEL is consistent with the state's or authorized tribe's applicable WQS. The requirement in § 131.15 does not preclude, or apply to, use of compliance schedules for permit limitations or conditions that are not WQBELs. A permitting authority can grant a permit compliance schedule for non-WQBEL NPDES permit limits or conditions without an EPA-approved authorizing provision, provided the permit compliance schedule is consistent with the CWA, EPA's permitting regulation, especially §§ 122.2 and 122.47, and any applicable state or tribal laws and regulations. Permitting authorities can include such permit compliance schedules without an EPA-approved permit compliance schedule authorizing provision because such limits and conditions are not themselves designed to implement the state's or authorized tribe's approved WQS.

G. Other Changes

What does this rule provide and why?

Regulatory provisions can only be effective if they are clear and accurate. Even spelling and grammar mistakes, and inconsistent terminology can cause confusion. This rule, therefore, corrects these types of mistakes and inconsistencies in the following 11 regulatory provisions: §§ 131.2, 131.3(h), 131.3(j), 131.5(a)(1), 131.5(a)(2), 131.10(j), 131.10(j)(2), 131.11(a)(2), 131.11(b), 131.12(a)(2), and 131.20(b). The rule finalizes eight of the provisions, as proposed. However, based on public comments, EPA revised how it is correcting §§ 131.5(a)(2), 131.12(a)(2), and 131.20(b). EPA notes that in correcting these minor pre-existing errors, it did not re-examine the substance of these regulatory provisions. Thus EPA did not reopen these regulatory provisions.

With regard to the revision at § 131.5(a)(2), the final rule adds a reference to § 131.11 and ''sound scientific rationale'' to make the link clear. Commenters expressed concern that ''sound scientific rationale'' was an ambiguous and subjective point of reference and may interfere with the ability of states and authorized tribes to use narrative criteria. By linking the two regulatory sections, this rule makes clear that this provision does not contradict the requirements and flexibilities provided in § 131.11.

This rule at § 131.12(a)(2) correctly cites to the CWA language and makes no other changes. EPA proposed revising ''assure'' to ''ensure,'' however, the final rule does not include this change. Commenters raised the question of whether the revision changed the meaning of the provision. Although both ''assure'' and ''ensure'' mean ''to make sure,'' EPA recognizes that the context surrounding the word is important. While ''ensure'' is used in § 131.10(b), in this context, the states and authorized tribes can ''make sure'' their WQS meet the regulatory requirements. However, § 131.12(a)(2), addresses water quality, not WQS. While states and authorized tribes have control over their WQS, they do not have the same control over the resulting water quality as it can be affected by many other factors. So use of the word ''ensure'' would not be appropriate in this provision.

This rule clarifies four points related to public hearings. First, it clarifies that 40 CFR part 25 is EPA's public participation regulation that sets the minimum requirements for public hearings and removes the nonexistent citation to ''EPA's water quality management regulation (40 CFR 130.3(b)(6)).'' Second, it clarifies that holding one public hearing may satisfy the legal CWA requirement although states and authorized tribes may hold multiple hearings. The purpose of this revision is to provide consistency with the language of CWA section 303(c)(1) and § 131.20(a), not to create a requirement that states and authorized tribes must hold multiple hearings when reviewing or revising WQS. Third, EPA's corresponding change in § 131.5(a)(6) clarifies that EPA's authority in acting on revised or new WQS includes determining whether the state or authorized tribe has followed the ''applicable'' legal procedures. Applicable legal procedures include those required by the CWA and EPA's implementing regulations. In particular, states and authorized tribes must comply with the requirement in § 131.20(b) to hold a public hearing in accordance with 40 CFR part 25 when reviewing or revising WQS. The purpose of the § 131.20(b) requirements is to implement the CWA and provide an opportunity for meaningful public input when states or authorized tribes develop WQS, which is an important step to ensure that adopted WQS reflect full consideration of the relevant issues raised by the public. Finally, § 131.20(b) and EPA's corresponding deletion of § 131.10(e) clarify that a public hearing is required when (1) reviewing WQS per § 131.20(a); (2) when revising WQS as a result of reviewing WQS per § 131.20(a); and (3) whenever revising WQS, regardless of whether the revision is a result of triennial review per § 131.20(a). EPA reviewed the use of the phrase ''an opportunity for a public hearing'' used in § 131.10(e) and found that such language contradicts the CWA and § 131.20(b). Therefore, EPA is deleting this provision as a conforming edit to its clarifications in § 131.20(b). As suggested by commenters, EPA replaced its proposed language of ''reviewing or revising'' to ''reviewing as well as when revising'' to make clear that public participation is required in all of these circumstances.

What is EPA's position on certain public comments?

A commenter requested that EPA further revise the regulation to allow states and authorized tribes to gather public input in formats other than public hearings (*e.g.*, public meetings, webinars). Although EPA acknowledges

[55] 40 CFR 122.44(d)(1); 122.44(d)(1)(vii)(A).

the challenges that states and authorized tribes may experience when planning and conducting a public hearing, the requirement to hold hearings for the purposes of reviewing, and as appropriate, modifying and adopting WQS comes directly from CWA section 303(c)(1). Further, meaningful involvement of the public and intergovernmental coordination with local, state, federal, and tribal entities with an interest in water quality issues is an important component of the WQS process. States and authorized tribes have discretion to use other outreach efforts in addition to fulfilling the requirement for a public hearing.

A ''public hearing'' may mean different things to different people. At a minimum, per § 131.20(b), states and authorized tribes are required to follow the provisions of state or tribal law and EPA's public participation regulations at 40 CFR part 25. EPA's public participation regulation, at 40 CFR 25.5, sets minimum requirements for states and authorized tribes to publicize a hearing at least 45 days prior to the date of the hearing; provide to the public reports, documents, and data relevant to the discussion at the public hearing at least 30 days before the hearing; hold the hearing at times and places that facilitate attendance by the public; schedule witnesses in advance to allow maximum participation and adequate time; and prepare a transcript, recording, or other complete record of the hearing proceedings. See 40 CFR 25.5 for the actual list of federal public hearing requirements. State and tribal law may include additional requirements for states and authorized tribes to meet when planning for and conducting a hearing. In addition to meeting the requirements of state and tribal law and 40 CFR part 25, states and authorized tribes may also choose to gather public input using other formats, such as public meetings and webinars.

III. Economic Impacts on State and Authorized Tribal WQS Programs

EPA evaluated the potential incremental administrative burden and cost that may be associated with the final rule, beyond the burden and cost of the WQS regulation already in place. EPA's estimate is higher than the estimate of the proposed rule for two reasons unrelated to any substantive change in requirements. First, EPA obtained more precise estimates of burden and costs. EPA received many comments suggesting that EPA underestimated the burden and cost of the proposed rule. States specifically requested to meet with EPA to provide additional information for EPA to consider. EPA engaged the states and incorporated the information provided into the final economic analysis. The higher estimate is also partly due to EPA using known data to extrapolate burden and costs to states, territories and authorized tribes where data were unavailable. EPA describes the method of extrapolation in detail in the full economic analysis available in the docket of the final rule. EPA's economic analysis focuses on the potential administrative burden and cost to all 50 states, the District of Columbia, five territories, the 40 authorized tribes with EPA-approved WQS, and to EPA. While this rule does not establish any requirements directly applicable to regulated point sources or nonpoint sources of pollution, EPA acknowledges that this rule may result in indirect costs to some regulated entities as a result of changes to WQS that states and authorized tribes adopt based on the final rule. EPA is unable to quantify indirect costs and benefits since it cannot anticipate precisely how the rule will be implemented by states and authorized tribes and because of a lack of data. States and authorized tribes always have the discretion to adopt new or revised WQS independent of this final rule that could result in costs to point sources and nonpoint sources. EPA's economic analysis and an explanation for how EPA derived the cost and burden estimates are documented in the *Economic Analysis for the Water Quality Standards Regulatory Revisions (Final Rule)* and can be found in the docket for this rule.

EPA assessed the potential incremental burden and cost of this final rule using the same basic methodology used to assess the potential incremental burden and cost of EPA's proposed rule, including: (1) Identifying the elements of the final rule that could potentially result in incremental burden and cost; (2) estimating the incremental number of labor hours states and authorized tribes may need to allocate in order to comply with those elements of the final rule; and (3) estimating the cost associated with those additional labor hours.

EPA identified four areas where differences between the proposed and final rules affected burden and cost estimates. First, when states and authorized tribes submit the results of triennial reviews to EPA, they must provide an explanation when not adopting new or revised water quality criteria for parameters for which EPA has published new or updated CWA section 304(a) criteria recommendations. Second, when developing or revising antidegradation implementation methods and when deciding which waters would receive Tier 2 antidegradation protection under a water body-by-water body approach, states and authorized tribes must provide an opportunity for public involvement. States and authorized tribes must also document and keep in the public record the factors they considered when making those decisions. Third, the final rule no longer includes a maximum WQS variance duration of 10 years and thus eliminates the burden and cost associated with renewing a WQS variance when the state or authorized tribe can justify a longer term. Fourth, the final rule requires states and authorized tribes to proactively reevaluate WQS variances that have a term longer than five years no less frequently than every five years and to submit the results of each reevaluation to EPA within 30 days of completion. EPA also revised certain economic assumptions based on additional information obtained independently by EPA and in response to stakeholder feedback.

The potential incremental burden and cost of the final rule include five categories: (1) One-time burden and cost associated with state and authorized tribal rulemaking activities when some states and authorized tribes may need to adopt new or revised provisions into their WQS (*e.g.*, review currently adopted water quality standards to determine if the new requirements necessitate revisions, such as modifying antidegradation policy, revising WQS variance procedures if the state or authorized tribe has chosen to adopt such a procedure, or adopting a permit compliance schedule authorizing provision); (2) recurring burden and cost associated with removing uses specified in CWA section 101(a)(2) because states and authorized tribes must identify the HAU; (3) recurring burden and cost associated with triennial reviews whereby states and authorized tribes must prepare and submit an explanation when not adopting new or revised water quality criteria for parameters for which EPA has published new or updated CWA section 304(a) criteria recommendations; (4) recurring burden and cost associated with antidegradation requirements, including providing the opportunity for public involvement when developing and subsequently revising antidegradation implementation methods; providing the opportunity for public involvement when deciding which waters will receive Tier 2 antidegradation protection when using a water body-by-water body approach; documenting and

keeping in the public record the factors the state or authorized tribe considered when deciding which waters will receive Tier 2 antidegradation protection; and performing/evaluating more extensive and a greater number of antidegradation reviews; and (5) recurring burden and cost associated with developing and documenting WQS variances for submission to EPA, and reevaluating WQS variances with a term longer than five years no less frequently than every five years. EPA did not estimate potential cost savings associated with a provision in the final rule that a UAA is not required when removing a non-101(a)(2) use because states and authorized tribes continue to have the discretion to conduct a UAA when removing such uses.

Estimates of the potential incremental burden and cost of this final rule are summarized in the following tables.

SUMMARY OF POTENTIAL INCREMENTAL BURDEN AND COST TO STATES AND AUTHORIZED TRIBES

Provision	One-time activities			Recurring activities	
	Burden (hours)	Cost (2013$ millions)	Annualized cost (2013$ millions/year) [1]	Burden (hours/year)	Cost (2013$ millions/year)
Rulemaking Activities	48,000–96,000	$2.35–$4.70	$0.16–$0.32	—	—
Designated Uses	—	—	—	2,250–4,500	$0.11–$0.22
Triennial Reviews	—	—	—	4,320–21,600	0.21–1.06
Antidegradation	6,450–12,900	0.32–0.63	0.02–0.04	48,015–143,400	2.37–7.02
WQS Variances	—	—	—	51,840–233,280	2.54–11.43
National Total	54,450–108,900	2.67–5.34	0.18–0.36	106,425–402,780	5.24–19.73

'—' = not applicable

Note: Individual annual cost estimates do not add to the total because of independent rounding.

[1] Although EPA expects one-time rulemaking activity costs to be incurred over an initial three-year period, it annualized costs at a three percent discount rate over 20 years for comparative purposes. See the *Economic Analysis for the Water Quality Standards Regulatory Revisions (Final Rule)* for the potential incremental burden and cost using a seven percent discount rate.

SUMMARY OF POTENTIAL INCREMENTAL BURDEN AND COST TO EPA [1]

One-time activities				Recurring activities		
Cost to the agency (2013$ million) [2]	Annualized cost to the agency (2013$ million per year) [3]	Burden		Cost to the agency (2013$ million per year) [6]	Burden	
		Hours [4]	FTEs [5]		Hours per year [4]	FTEs per year [5]
$0.53–$1.07	$0.04–$0.07	7,080–14,150	3.4–6.8	$1.05–$3.95	13,900–52,320	6.7–25.2

[1] Assuming that the incremental burden and costs to EPA are equal to 20 percent of the burden and costs to states and authorized tribes.

[2] $0.53 million ($2.67 million × 20 percent) to $1.07 million ($5.34 million × 20 percent)

[3] Although EPA expects these one-time costs to be incurred over an initial three-year period, the costs are annualized at three percent discount rate over 20 years for comparative purposes. See the *Economic Analysis for the Water Quality Standards Regulatory Revisions (Final Rule)* for the potential incremental burden and cost using a seven percent discount rate.

[4] Total costs to the Agency divided by hourly wage rate ($75.41 per hour).

[5] Burden hours to the Agency divided by hours worked by full-time equivalent (FTE) employees per year (2,080 hours per year).

[6] $1.05 million ($5.24 million × 20 percent) to $3.95 million ($19.73 million × 20 percent).

COMBINED SUMMARY OF POTENTIAL INCREMENTAL BURDEN AND COST TO STATES, AUTHORIZED TRIBES, AND EPA

Entities	One-time activities			Recurring activities	
	Burden (hours)	Cost (2013$ millions)	Annualized cost (2013$ million/year) [1]	Burden (hours/year)	Cost (2013$ millions/year)
States and Authorized Tribes	54,450–108,900	$2.67–$5.34	$0.18–$0.36	106,425–402,780	$5.24–$19.73
Agency	7,080–14,150	0.53–1.07	0.04–0.07	13,900–52,320	1.05–3.95
Total	61,530–122,050	3.20–6.40	0.22–0.43	120,325–455,100	6.29–23.68

Note: Individual annual cost estimates do not add to the total because of independent rounding.

[1] Although EPA expects states and authorized tribes to incur rulemaking costs over an initial three-year period, it annualized one-time costs at a three percent discount rate over 20 years for comparative purposes. See the *Economic Analysis for the Water Quality Standards Regulatory Revisions (Final Rule)* for the potential incremental burden and cost using a seven percent discount rate.

To estimate the total annual cost of this rule which includes both one-time cost and recurring cost, EPA annualized the one-time cost over a period of 20 years. Using a 20-year annualization period and a discount rate of three percent, EPA estimates the total annual cost for this final rule to range from $6.51 million per year ($0.22 million per year + $6.29 million per year) to $24.11 million per year ($0.43 million per year + $23.68 million per year).[56]

[56] See the *Economic Analysis for the Water Quality Standards Regulatory Revisions (Final Rule)* for the potential incremental burden and cost for this final rule using a seven percent discount rate.

EPA also evaluated the potential benefits associated with this rule. States and authorized tribes will benefit from these revisions because the WQS regulation will provide clear requirements to facilitate the ability of states and authorized tribes to effectively and legally utilize available regulatory tools when implementing and managing their WQS programs. Although associated with potential administrative burden and cost in some areas, this rule has the potential to partially offset these burdens by reducing regulatory uncertainty and increasing overall program efficiency. Use of these tools to improve establishment and implementation of state and authorized tribal WQS, as discussed throughout the preamble to this rule, provides incremental improvements in water quality and a variety of economic benefits associated with these improvements, including the availability of clean, safe, and affordable drinking water sources; water of adequate quality for agricultural and industrial use; and water quality that supports the commercial fishing industry and higher property values. Nonmarket benefits of this rule include greater recreational opportunities and the protection and improvement of public health. States, authorized tribes, stakeholders and the public will also benefit from the open public dialogue that results from the additional transparency and public participation requirements included in this rule. Because states and authorized tribes implement their own WQS programs, EPA could not reliably predict the control measures likely to be implemented and subsequent improvements to water quality, and thus could not quantify the resulting benefits.

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket. EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis, *Economic Analysis for the Water Quality Standards Regulatory Revisions (Final Rule)*, is summarized in section III of the preamble and is available in the docket.

B. Paperwork Reduction Act (PRA)

The information collection activities in this rule have been submitted for approval to OMB under the PRA. The Information Collection Request (ICR) document that EPA prepared has been assigned EPA ICR number 2449.02. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here. The information collection requirements are not enforceable until OMB approves them.

The core of the WQS regulation, established in 1983, requires EPA to collect certain information from states and authorized tribes and has an approved ICR (EPA ICR number 988.11; OMB Control number 2040–0049). This rule requires states and authorized tribes to submit certain additional information to EPA. This mandatory information collection ensures EPA has the necessary information to review WQS and approve or disapprove consistent with the rule. The goals of the rule can only be fulfilled by collecting this additional information. Due to the nature of this rule, EPA assumes that all administrative burden associated with this rule, summarized in section III, is associated with information collection.

Respondents/affected entities: The respondents affected by this collection activity include the 50 states, the District of Columbia, five territories, and 40 authorized tribes that have EPA-approved WQS. The respondents are in NAICS code 92411 ''Administration of Air and Water Resources and Solid Waste Management Programs,'' formerly SIC code #9511.

Respondent's obligation to respond: The collection is required pursuant to CWA section 303(c), as implemented by the revisions to 40 CFR part 131.

Estimated number of respondents: A total of 96 governmental entities are potentially affected by the rule.

Frequency of response: The CWA requires states and authorized tribes to review their WQS at least once every three years and submit the results to EPA. In practice, some states and authorized tribes choose to submit revised standards for portions of their waters more frequently.

Total estimated burden: EPA estimates a total annual burden of 124,575–439,080 hours and 3,176 to 5,096 responses per year. Burden is defined at 5 CFR 1320.3(b). A ''response'' is an action that a state or authorized tribe would need to take in order to meet the information collection request provided in the rule (*e.g.*, documentation supporting a WQS variance). See also the ''Information Collection Request for Water Quality Standards Regulatory Revisions (Final Rule)'' in the docket for this rule.

Total estimated cost: Total estimated annual incremental costs range from $6.13 million to $21.51 million.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. When OMB approves this ICR, the Agency will announce the approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities contained in this final rule.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. State and authorized tribal governments responsible for administering or overseeing water quality programs may be directly affected by this rulemaking, as states and authorized tribes may need to consider and implement new provisions, or revise existing provisions, in their WQS. Small entities, such as small businesses or small governmental jurisdictions, are not directly regulated by this rule. This rule will not impose any requirements on small entities.

D. Unfunded Mandates Reform Act (UMRA)

This rule does not contain a federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. EPA estimates total annual costs to states and authorized tribes to range from $5.24 million to $19.73 million per year. Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

This rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various

levels of government. The rule finalizes regulatory revisions to provide clarity and transparency in the WQS regulation that may require state and local officials to reevaluate or revise their WQS. However, the rule will not impose substantial direct compliance costs on state or local governments, nor will it preempt state law. Thus, Executive Order 13132 does not apply to this action.

Keeping with the spirit of Executive Order 13132 and consistent with EPA's policy to promote communications between EPA and state and local governments, EPA consulted with state and local officials early in the process and solicited their comments on the proposed action and on the development of this rule.

Between September 2013 and June 2014, EPA consulted with representatives from states and intergovernmental associations at their request, to hear their views on the proposed regulatory revisions and how commenters' suggested revisions would impact implementation of their WQS programs. Some participants expressed concern that the proposed changes may impose a resource burden on state and local governments, as well as infringe on states' flexibility in the areas included in the proposed rule. Some participants urged EPA to ensure that states with satisfactory regulations in these areas are not unduly burdened by the regulatory revisions.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action may have tribal implications. However, it will neither impose substantial direct compliance costs on tribal governments, nor preempt tribal law. Thus, Executive Order 13175 does not apply to this action. To date, 50 Indian tribes have been approved for treatment in a manner similar to a state (TAS) for CWA sections 303 and 401. Of the 50 tribes, 40 have EPA-approved WQS in their respective jurisdictions. All of these authorized tribes are impacted by this regulation. However, this rule might affect other tribes with waters adjacent to waters with federal, state, or authorized tribal WQS.

EPA consulted and coordinated with tribal officials consistent with EPA's Policy on Consultation and Coordination with Indian Tribes early in the process of developing this regulation to allow them to provide meaningful and timely input into its development. In August 2010, November 2013, and October 2014, EPA held tribes-only consultation and coordination sessions to hear their views and answer questions of all interested tribes on the targeted areas EPA considered for regulatory revision. Tribes expressed the need for additional guidance and assistance in implementing the proposed rulemaking, specifically for development of antidegradation implementation methods and determination of the highest attainable use. EPA considered the burden to states and authorized tribes in developing this rule and, when possible, has provided direction and flexibility that allows tribes to address higher priority aspects of their WQS programs. EPA also intends to release updated guidance in a new edition of the WQS Handbook. A summary of the consultation and coordination is available in the docket for this rule.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045, because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

EPA has determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations, because it does not adversely affect the level of protection provided to human health or the environment. This rule does not directly establish WQS for a state or authorized tribe and, therefore, does not directly affect a specific population or a particular geographic area(s).

K. Congressional Review Act (CRA)

This action is subject to the CRA, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 131

Environmental protection, Indians—lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

Dated: August 5, 2015.

Gina McCarthy,

Administrator.

For the reasons stated in the preamble, EPA amends 40 CFR part 131 as follows:

PART 131—WATER QUALITY STANDARDS

■ 1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

Subpart A—General Provisions

■ 2. In § 131.2, revise the first sentence to read as follows:

§ 131.2 Purpose.

A water quality standard defines the water quality goals of a water body, or portion thereof, by designating the use or uses to be made of the water and by setting criteria that protect the designated uses. * * *

* * * * *

■ 3. In § 131.3:

■ a. Revise paragraphs (h) and (j).

■ b. Add paragraphs (m), (n), (o), (p), and (q).

The revisions and additions read as follows:

§ 131.3 Definitions.

* * * * *

(h) *Water quality limited segment* means any segment where it is known that water quality does not meet applicable water quality standards, and/or is not expected to meet applicable water quality standards, even after the application of the technology-based effluent limitations required by sections 301(b) and 306 of the Act.

* * * * *

(j) *States* include: The 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, and Indian Tribes that EPA determines to be eligible for purposes of the water quality standards program.

* * * * *

(m) *Highest attainable use* is the modified aquatic life, wildlife, or recreation use that is both closest to the uses specified in section 101(a)(2) of the

Act and attainable, based on the evaluation of the factor(s) in § 131.10(g) that preclude(s) attainment of the use and any other information or analyses that were used to evaluate attainability. There is no required highest attainable use where the State demonstrates the relevant use specified in section 101(a)(2) of the Act and sub-categories of such a use are not attainable.

(n) *Practicable*, in the context of § 131.12(a)(2)(ii), means technologically possible, able to be put into practice, and economically viable.

(o) A *water quality standards variance* (WQS variance) is a time-limited designated use and criterion for a specific pollutant(s) or water quality parameter(s) that reflect the highest attainable condition during the term of the WQS variance.

(p) *Pollutant Minimization Program*, in the context of § 131.14, is a structured set of activities to improve processes and pollutant controls that will prevent and reduce pollutant loadings.

(q) *Non-101(a)(2) use* is any use unrelated to the protection and propagation of fish, shellfish, wildlife or recreation in or on the water.

■ 4. In § 131.5:

■ a. Revise paragraphs (a)(1) and (2).

■ b. Redesignate paragraphs (a)(3) through (5) as paragraphs (a)(6) through (8).

■ c. Add paragraphs (a)(3) through (5).

■ d. Revise newly designated paragraph (a)(6).

■ e. Revise paragraph (b).

The revisions and additions read as follows:

§ 131.5 EPA authority.

(a) * * *

(1) Whether the State has adopted designated water uses that are consistent with the requirements of the Clean Water Act;

(2) Whether the State has adopted criteria that protect the designated water uses based on sound scientific rationale consistent with § 131.11;

(3) Whether the State has adopted an antidegradation policy that is consistent with § 131.12, and whether any State adopted antidegradation implementation methods are consistent with § 131.12;

(4) Whether any State adopted WQS variance is consistent with § 131.14;

(5) Whether any State adopted provision authorizing the use of schedules of compliance for water quality-based effluent limits in NPDES permits is consistent with § 131.15;

(6) Whether the State has followed applicable legal procedures for revising or adopting standards;

* * * * *

(b) If EPA determines that the State's or Tribe's water quality standards are consistent with the factors listed in paragraphs (a)(1) through (8) of this section, EPA approves the standards. EPA must disapprove the State's or Tribe's water quality standards and promulgate Federal standards under section 303(c)(4), and for Great Lakes States or Great Lakes Tribes under section 118(c)(2)(C) of the Act, if State or Tribal adopted standards are not consistent with the factors listed in paragraphs (a)(1) through (8) of this section. EPA may also promulgate a new or revised standard when necessary to meet the requirements of the Act.

* * * * *

Subpart B—Establishment of Water Quality Standards

■ 5. In § 131.10:

■ a. Revise paragraphs (a), (g) introductory text, (j), and (k).

■ b. Remove and reserve paragraph (e).

The revisions read as follows:

§ 131.10 Designation of uses.

(a) Each State must specify appropriate water uses to be achieved and protected. The classification of the waters of the State must take into consideration the use and value of water for public water supplies, protection and propagation of fish, shellfish and wildlife, recreation in and on the water, agricultural, industrial, and other purposes including navigation. If adopting new or revised designated uses other than the uses specified in section 101(a)(2) of the Act, or removing designated uses, States must submit documentation justifying how their consideration of the use and value of water for those uses listed in this paragraph appropriately supports the State's action. A use attainability analysis may be used to satisfy this requirement. In no case shall a State adopt waste transport or waste assimilation as a designated use for any waters of the United States.

* * * * *

(e) [Reserved]

* * * * *

(g) States may designate a use, or remove a use that is *not* an existing use, if the State conducts a use attainability analysis as specified in paragraph (j) of this section that demonstrates attaining the use is not feasible because of one of the six factors in this paragraph. If a State adopts a new or revised water quality standard based on a required use attainability analysis, the State shall also adopt the highest attainable use, as defined in § 131.3(m).

* * * * *

(j) A State must conduct a use attainability analysis as described in § 131.3(g), and paragraph (g) of this section, whenever:

(1) The State designates for the first time, or has previously designated for a water body, uses that do not include the uses specified in section 101(a)(2) of the Act; or

(2) The State wishes to remove a designated use that is specified in section 101(a)(2) of the Act, to remove a sub-category of such a use, or to designate a sub-category of such a use that requires criteria less stringent than previously applicable.

(k) A State is not required to conduct a use attainability analysis whenever:

(1) The State designates for the first time, or has previously designated for a water body, uses that include the uses specified in section 101(a)(2) of the Act; or

(2) The State designates a sub-category of a use specified in section 101(a)(2) of the Act that requires criteria at least as stringent as previously applicable; or

(3) The State wishes to remove or revise a designated use that is a non-101(a)(2) use. In this instance, as required by paragraph (a) of this section, the State must submit documentation justifying how its consideration of the use and value of water for those uses listed in paragraph (a) appropriately supports the State's action, which may be satisfied through a use attainability analysis.

■ 6. In § 131.11, revise paragraphs (a)(2) and (b) introductory text to read as follows:

§ 131.11 Criteria.

(a) * * *

(2) *Toxic pollutants.* States must review water quality data and information on discharges to identify specific water bodies where toxic pollutants may be adversely affecting water quality or the attainment of the designated water use or where the levels of toxic pollutants are at a level to warrant concern and must adopt criteria for such toxic pollutants applicable to the water body sufficient to protect the designated use. Where a State adopts narrative criteria for toxic pollutants to protect designated uses, the State must provide information identifying the method by which the State intends to regulate point source discharges of toxic pollutants on water quality limited segments based on such narrative criteria. Such information may be included as part of the standards or may be included in documents generated by the State in response to the Water

Quality Planning and Management Regulations (40 CFR part 130).

(b) *Form of criteria:* In establishing criteria, States should:

* * * * *

■ 7. In § 131.12:

■ a. Revise the section heading and paragraphs (a) introductory text and (a)(2).

■ b. Add paragraph (b).

The revisions and additions read as follows:

§ 131.12 Antidegradation policy and implementation methods.

(a) The State shall develop and adopt a statewide antidegradation policy. The antidegradation policy shall, at a minimum, be consistent with the following:

* * * * *

(2) Where the quality of the waters exceeds levels necessary to support the protection and propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the State finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the State's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the State shall assure water quality adequate to protect existing uses fully. Further, the State shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control.

(i) The State may identify waters for the protections described in paragraph (a)(2) of this section on a parameter-by-parameter basis or on a water body-by-water body basis. Where the State identifies waters for antidegradation protection on a water body-by-water body basis, the State shall provide an opportunity for public involvement in any decisions about whether the protections described in paragraph (a)(2) of this section will be afforded to a water body, and the factors considered when making those decisions. Further, the State shall not exclude a water body from the protections described in paragraph (a)(2) of this section solely because water quality does not exceed levels necessary to support all of the uses specified in section 101(a)(2) of the Act.

(ii) Before allowing any lowering of high water quality, pursuant to paragraph (a)(2) of this section, the State shall find, after an analysis of alternatives, that such a lowering is necessary to accommodate important economic or social development in the area in which the waters are located. The analysis of alternatives shall evaluate a range of practicable alternatives that would prevent or lessen the degradation associated with the proposed activity. When the analysis of alternatives identifies one or more practicable alternatives, the State shall only find that a lowering is necessary if one such alternative is selected for implementation.

* * * * *

(b) The State shall develop methods for implementing the antidegradation policy that are, at a minimum, consistent with the State's policy and with paragraph (a) of this section. The State shall provide an opportunity for public involvement during the development and any subsequent revisions of the implementation methods, and shall make the methods available to the public.

■ 8. Add § 131.14 to read as follows:

§ 131.14 Water quality standards variances.

States may adopt WQS variances, as defined in § 131.3(o). Such a WQS variance is subject to the provisions of this section and public participation requirements at § 131.20(b). A WQS variance is a water quality standard subject to EPA review and approval or disapproval.

(a) *Applicability.* (1) A WQS variance may be adopted for a permittee(s) or water body/waterbody segment(s), but only applies to the permittee(s) or water body/waterbody segment(s) specified in the WQS variance.

(2) Where a State adopts a WQS variance, the State must retain, in its standards, the underlying designated use and criterion addressed by the WQS variance, unless the State adopts and EPA approves a revision to the underlying designated use and criterion consistent with §§ 131.10 and 131.11. All other applicable standards not specifically addressed by the WQS variance remain applicable.

(3) A WQS variance, once adopted by the State and approved by EPA, shall be the applicable standard for purposes of the Act under § 131.21(d) through (e), for the following limited purposes. An approved WQS variance applies for the purposes of developing NPDES permit limits and requirements under 301(b)(1)(C), where appropriate, consistent with paragraph (a)(1) of this section. States and other certifying entities may also use an approved WQS variance when issuing certifications under section 401 of the Act.

(4) A State may not adopt WQS variances if the designated use and criterion addressed by the WQS variance can be achieved by implementing technology-based effluent limits required under sections 301(b) and 306 of the Act.

(b) *Requirements for Submission to EPA.* (1) A WQS variance must include:

(i) Identification of the pollutant(s) or water quality parameter(s), and the water body/waterbody segment(s) to which the WQS variance applies. Discharger(s)-specific WQS variances must also identify the permittee(s) subject to the WQS variance.

(ii) The requirements that apply throughout the term of the WQS variance. The requirements shall represent the highest attainable condition of the water body or waterbody segment applicable throughout the term of the WQS variance based on the documentation required in (b)(2) of this section. The requirements shall not result in any lowering of the currently attained ambient water quality, unless a WQS variance is necessary for restoration activities, consistent with paragraph (b)(2)(i)(A)(*2*) of this section. The State must specify the highest attainable condition of the water body or waterbody segment as a quantifiable expression that is one of the following:

(A) For discharger(s)-specific WQS variances:

(*1*) The highest attainable interim criterion; or

(*2*) The interim effluent condition that reflects the greatest pollutant reduction achievable; or

(*3*) If no additional feasible pollutant control technology can be identified, the interim criterion or interim effluent condition that reflects the greatest pollutant reduction achievable with the pollutant control technologies installed at the time the State adopts the WQS variance, and the adoption and implementation of a Pollutant Minimization Program.

(B) For WQS variances applicable to a water body or waterbody segment:

(*1*) The highest attainable interim use and interim criterion; or

(*2*) If no additional feasible pollutant control technology can be identified, the interim use and interim criterion that reflect the greatest pollutant reduction achievable with the pollutant control technologies installed at the time the State adopts the WQS variance, and the adoption and implementation of a Pollutant Minimization Program.

(iii) A statement providing that the requirements of the WQS variance are

either the highest attainable condition identified at the time of the adoption of the WQS variance, or the highest attainable condition later identified during any reevaluation consistent with paragraph (b)(1)(v) of this section, whichever is more stringent.

(iv) The term of the WQS variance, expressed as an interval of time from the date of EPA approval or a specific date. The term of the WQS variance must only be as long as necessary to achieve the highest attainable condition and consistent with the demonstration provided in paragraph (b)(2) of this section. The State may adopt a subsequent WQS variance consistent with this section.

(v) For a WQS variance with a term greater than five years, a specified frequency to reevaluate the highest attainable condition using all existing and readily available information and a provision specifying how the State intends to obtain public input on the reevaluation. Such reevaluations must occur no less frequently than every five years after EPA approval of the WQS variance and the results of such reevaluation must be submitted to EPA within 30 days of completion of the reevaluation.

(vi) A provision that the WQS variance will no longer be the applicable water quality standard for purposes of the Act if the State does not conduct a reevaluation consistent with the frequency specified in the WQS variance or the results are not submitted to EPA as required by (b)(1)(v) of this section.

(2) The supporting documentation must include:

(i) Documentation demonstrating the need for a WQS variance.

(A) For a WQS variance to a use specified in section 101(a)(2) of the Act or a sub-category of such a use, the State must demonstrate that attaining the designated use and criterion is not feasible throughout the term of the WQS variance because:

(*1*) One of the factors listed in § 131.10(g) is met, or

(*2*) Actions necessary to facilitate lake, wetland, or stream restoration through dam removal or other significant reconfiguration activities preclude attainment of the designated use and criterion while the actions are being implemented.

(B) For a WQS variance to a non-101(a)(2) use, the State must submit documentation justifying how its consideration of the use and value of the water for those uses listed in § 131.10(a) appropriately supports the WQS variance and term. A demonstration consistent with paragraph (b)(2)(i)(A) of this section may be used to satisfy this requirement.

(ii) Documentation demonstrating that the term of the WQS variance is only as long as necessary to achieve the highest attainable condition. Such documentation must justify the term of the WQS variance by describing the pollutant control activities to achieve the highest attainable condition, including those activities identified through a Pollutant Minimization Program, which serve as milestones for the WQS variance.

(iii) In addition to paragraphs (b)(2)(i) and (ii) of this section, for a WQS variance that applies to a water body or waterbody segment:

(A) Identification and documentation of any cost-effective and reasonable best management practices for nonpoint source controls related to the pollutant(s) or water quality parameter(s) and water body or waterbody segment(s) specified in the WQS variance that could be implemented to make progress towards attaining the underlying designated use and criterion. A State must provide public notice and comment for any such documentation.

(B) Any subsequent WQS variance for a water body or waterbody segment must include documentation of whether and to what extent best management practices for nonpoint source controls were implemented to address the pollutant(s) or water quality parameter(s) subject to the WQS variance and the water quality progress achieved.

(c) *Implementing WQS variances in NPDES permits.* A WQS variance serves as the applicable water quality standard for implementing NPDES permitting requirements pursuant to § 122.44(d) of this chapter for the term of the WQS variance. Any limitations and requirements necessary to implement the WQS variance shall be included as enforceable conditions of the NPDES permit for the permittee(s) subject to the WQS variance.

■ 9. Add § 131.15 to read as follows:

§ 131.15 Authorizing the use of schedules of compliance for water quality-based effluent limits in NPDES permits.

If a State intends to authorize the use of schedules of compliance for water quality-based effluent limits in NPDES permits, the State must adopt a permit compliance schedule authorizing provision. Such authorizing provision is a water quality standard subject to EPA review and approval under section 303 of the Act and must be consistent with sections 502(17) and 301(b)(1)(C) of the Act.

Subpart C—Procedures for Review and Revision of Water Quality Standards

■ 10. In § 131.20, revise paragraphs (a) and (b) to read as follows:

§ 131.20 State review and revision of water quality standards.

(a) *State review.* The State shall from time to time, but at least once every 3 years, hold public hearings for the purpose of reviewing applicable water quality standards adopted pursuant to §§ 131.10 through 131.15 and Federally promulgated water quality standards and, as appropriate, modifying and adopting standards. The State shall also re-examine any waterbody segment with water quality standards that do not include the uses specified in section 101(a)(2) of the Act every 3 years to determine if any new information has become available. If such new information indicates that the uses specified in section 101(a)(2) of the Act are attainable, the State shall revise its standards accordingly. Procedures States establish for identifying and reviewing water bodies for review should be incorporated into their Continuing Planning Process. In addition, if a State does not adopt new or revised criteria for parameters for which EPA has published new or updated CWA section 304(a) criteria recommendations, then the State shall provide an explanation when it submits the results of its triennial review to the Regional Administrator consistent with CWA section 303(c)(1) and the requirements of paragraph (c) of this section.

(b) *Public participation.* The State shall hold one or more public hearings for the purpose of reviewing water quality standards as well as when revising water quality standards, in accordance with provisions of State law and EPA's public participation regulation (40 CFR part 25). The proposed water quality standards revision and supporting analyses shall be made available to the public prior to the hearing.

* * * * *

■ 11. In § 131.22, revise paragraph (b) to read as follows:

§ 131.22 EPA promulgation of water quality standards.

* * * * *

(b) The Administrator may also propose and promulgate a regulation, applicable to one or more navigable waters, setting forth a new or revised standard upon determining such a standard is necessary to meet the requirements of the Act. To constitute an Administrator's determination that a

new or revised standard is necessary to meet the requirements of the Act, such determination must:

(1) Be signed by the Administrator or his or her duly authorized delegate, and

(2) Contain a statement that the document constitutes an Administrator's determination under section 303(c)(4)(B) of the Act.

* * * * *

Subpart D—Federally Promulgated Water Quality Standards

■ 12. In § 131.34, revise paragraph (c) to read as follows:

§ 131.34 Kansas.

* * * * *

(c) *Water quality standard variances.* The Regional Administrator, EPA Region 7, is authorized to grant variances from the water quality standards in paragraphs (a) and (b) of this section where the requirements of § 131.14 are met.

■ 13. In § 131.40, revise paragraph (c) to read as follows:

§ 131.40 Puerto Rico.

* * * * *

(c) *Water quality standard variances.* The Regional Administrator, EPA Region 2, is authorized to grant variances from the water quality standards in paragraphs (a) and (b) of this section where the requirements of § 131.14 are met.

[FR Doc. 2015–19821 Filed 8–20–15; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL REGISTER

Vol. 80 Friday,

No. 162 August 21, 2015

Part V

Environmental Protection Agency

40 CFR Part 51

Data Requirements Rule for the 2010 1-Hour Sulfur Dioxide (SO_2) Primary National Ambient Air Quality Standard (NAAQS); Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[EPA–HQ–OAR–2013–0711; FRL–9928–18–OAR]

RIN 2060–AR19

Data Requirements Rule for the 2010 1-Hour Sulfur Dioxide (SO_2) Primary National Ambient Air Quality Standard (NAAQS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is promulgating a rule directing state and tribal air agencies (air agencies) to provide data to characterize current air quality in areas with large sources of sulfur dioxide (SO_2) emissions to identify maximum 1-hour SO_2 concentrations in ambient air. The final rule establishes minimum criteria for identifying the emissions sources and associated areas for which air agencies are required to characterize SO_2 air quality. Air agencies remain free to also characterize air quality in additional areas beyond those required to be characterized under the rule. The final rule also sets forth a process and timetables by which air agencies must characterize air quality through ambient monitoring and/or air quality modeling techniques and submit such data to the EPA. The EPA has issued separate non-binding draft technical assistance documents recommending how air agencies should conduct such monitoring or modeling. The air quality data developed by air agencies pursuant to this rule may be used by the EPA in future actions to evaluate areas' air quality under the 2010 1-hour SO_2 National Ambient Air Quality Standard (NAAQS), including area designations and redesignations, as appropriate.

DATES: This final rule is effective on September 21, 2015.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2013–0711. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.,* confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Docket ID No. EPA–HQ–OAR–2013–0711, EPA/DC, William Jefferson Clinton West Building, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744 and the telephone number for the Air and Radiation Docket Information Center is (202) 566–1742. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at: *http://www.epa.gov/epahome/dockets.htm*.

FOR FURTHER INFORMATION CONTACT: For further general information on this rulemaking, contact Dr. Larry D. Wallace, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, by phone at (919) 541–0906, or by email at *wallace.larry@epa.gov*; or Mr. Rich Damberg, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, by phone at (919) 541–5592, or by email at *damberg.rich@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information
A. Does this action apply to me?
B. Where can I get a copy of this document and other related information?
C. How is this document organized?
II. Background for Final Rulemaking
III. Summary of the Final Rule Requirements
IV. Responses to Significant Comments on the Proposed Rule
A. The Use of Monitoring and/or Modeling Data
B. Source Coverage and Emission Threshold Options
C. Data Requirements and Program Implementation Timeline
D. Technical Issues Relating to Modeling and Monitoring
E. Other Key Issues and Comments
V. Environmental Justice Considerations
VI. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
B. Paperwork Reduction Act (PRA)
C. Regulatory Flexibility Act (RFA)
D. Unfunded Mandates Reform Act (UMRA)
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act (CRA)
L. Judicial Review
Statutory Authority

I. General Information

A. Does this action apply to me?

Entities potentially affected directly by this final rulemaking include state, local and tribal governments. Entities potentially affected indirectly by this final rulemaking, depending on how state, local and tribal agencies choose to regulate such entities in the future, include owners and operators of sources of SO_2 emissions (such as coal-fired power plants, refineries, smelters, pulp and paper related facilities, waste incinerators, chemical manufacturers and facilities with industrial boilers for power generation) that contribute to ambient SO_2 concentrations, as well as people whose air quality is affected by these facilities.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this document will be posted at: *http://www.epa.gov/air/sulfurdioxide/implement.html*. Upon its publication in the **Federal Register**, only the published version may be considered the final official version of the notice, and will govern in the case of any discrepancies between the **Federal Register** published version and any other version.

C. How is this document organized?

The information presented in this document is organized as follows:

II. Background for Final Rulemaking

On May 13, 2014, the EPA proposed the Data Requirements Rule (DRR) for the 2010 1-hour SO_2 Primary NAAQS. The preamble to the proposal provided a discussion of the events that led to the EPA's proposal of a new regulation to direct state, tribal and local agencies [1] to better characterize ambient air SO_2 concentrations near large polluting sources. *See* 79 FR 27447, May 13, 2014. This discussion addressed the adoption of the 2010 SO_2 NAAQS and the suggested implementation approach described in the preamble of that rulemaking; the area designations process under section 107 of the Clean Air Act (CAA); the history of

[1] The final rule applies to air agencies in all states. The definition of ''state'' in section 302(d) of the Clean Air Act (CAA or Act) means a state, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa and includes the Commonwealth of the Northern Mariana Islands.

designations for prior SO_2 NAAQS, including the use of air quality modeling information; the Agency's subsequent issuance of an implementation white paper in May 2012 and input received from stakeholder groups; and the EPA's February 2013 SO_2 NAAQS implementation and designations strategy paper, developed in response to feedback received through this outreach process.[2] This final rulemaking notice does not repeat all of that discussion, but refers interested readers to the preamble of the proposed rule for this informative background.

The proposed rule noted that although the current SO_2 ambient monitoring network included more than 400 monitors nationwide, the scope of the network had certain limitations, and approximately two-thirds of the monitors are not located to characterize maximum 1-hour SO_2 concentration impacts from emissions sources. To more effectively assess potential public health impacts from exposure to high SO_2 concentrations, the proposed rule presented options for requiring air agencies to characterize air quality in the vicinity of large sources of SO_2 emissions that exceed specified annual emissions thresholds. The EPA's proposed preferred emissions threshold option specified that air agencies would be required to characterize air quality in the vicinity of sources that emit over 1,000 tons of SO_2 per year and are located in more highly populated areas (*i.e.,* Core-Based Statistical Areas (CBSA) with population of at least 1 million), and in the vicinity of sources that emit over 2,000 tons of SO_2 per year and are located outside metropolitan areas of at least 1 million population. The EPA also identified two other emission threshold options and requested public comment on these potential emission thresholds values, a CBSA population threshold of 1 million, the combination of emissions and population thresholds as a means of determining how SO_2 sources would be identified, and on any possible alternatives. Under the proposed approach, air agencies, or the EPA, also could require air quality characterization around other sources, if warranted. *See* 79 FR 27453, May 13, 2014.

Under the proposed rule, air agencies would determine for each emissions source exceeding the threshold whether air quality characterization for that source would be done either through air quality modeling analysis or by conducting ambient monitoring. Apart from the proposed rule, the EPA issued two draft technical assistance documents (TADs) on modeling and monitoring to assist air agencies with this analytical work. The proposed rule also described a process and timetable by which air agencies would be required to identify sources to be characterized, conduct the relevant analyses and submit such data to the EPA. *See* 79 FR 27456, May 13, 2014.

Specific technical considerations regarding air quality monitoring and modeling were also discussed in the proposed rule, along with options for ongoing verification of the air quality characterization in areas that are not otherwise designated as nonattainment. *See* 79 FR 27460, May 13, 2014. The proposal also discussed incentives for air agencies and sources to work together to establish federally enforceable limits on emissions expeditiously in order to avoid requirements for air quality characterization altogether. We refer readers to the proposed rule for the technical, policy and legal rationale that were presented in support of the proposal, and for a complete discussion of the issues for which the EPA requested public comment. Several supporting memoranda, analyses and data were included in the docket for the proposed action.

The 60-day public comment period for the proposed rule closed on July 14, 2014. In section IV of this preamble, we summarize each key issue from the proposal, briefly summarize major comments received and provide a response, and describe the final policy in the rule, including any changes made to the approaches presented in the proposal. A more detailed response to comments document can be found in the docket for this rulemaking.

III. Summary of the Final Rule Requirements

This section provides a brief summary of the requirements of the final rule. Further discussion of the basis for these requirements and responses to significant comments are provided in the next section. The EPA believes that the approach set forth in this rule directing air agencies to gather additional data to characterize ambient air in the vicinity of larger SO_2 sources is uniquely suited for implementation of the 1-hour SO_2 NAAQS, and the Agency does not anticipate it to be used for other NAAQS pollutants. The final rule establishes minimum requirements for air agencies to characterize 1-hour SO_2 air quality concentrations across the country, with an emphasis on doing so in the vicinity of sources that have the largest annual SO_2 emissions. Note that there are already minimum SO_2 ambient monitoring requirements in place that were established when the 1-hour SO_2 NAAQS was adopted. *See* 75 FR 35520, June 22, 2010. The requirements in the present rule supplement those monitoring requirements, which remain in place. As discussed in more detail in the next section, these requirements are intended to establish a flexible yet effective program for characterizing SO_2 air quality in priority areas across the country, given existing funding and resource constraints, and given the particular characteristics of SO_2 air pollution in the affected areas. This final rule also reflects the fact that numerous larger sources of SO_2 across the country have in recent years installed, and are expected to install in the near future, additional control measures that may substantially reduce SO_2 emissions in some cases.

Under this rule, each air agency is required to submit a list to the EPA by January 15, 2016, that identifies all sources within its jurisdiction that have SO_2 emissions that exceeded the 2,000 tons per year (tpy) annual threshold during the most recent year for which emissions data for that source are available, plus any additional sources and their associated areas identified by the air agency or by the EPA as also warranting air quality characterization. (The list is a permanent list of prioritized sources that excludes sources in areas designated as nonattainment before January 2016 and is not altered by designations after January 2016.) The rule requires air quality characterization of the area associated with each listed source, and provides two options for this characterization, namely the use of monitoring or modeling. The final rule also provides a third option, under which air agencies would establish a limit requiring emissions from a listed source to be below the 2,000 tpy threshold, which, with the concurrence of the EPA Regional Administrator, would result in that source and its associated area not being subject to requirements for air quality characterization. The EPA anticipates discussions with air agencies early in 2016 to resolve any questions as to what areas warrant air quality characterization. These discussions are intended to address whether any additional areas (*e.g.,* areas with clusters of sources) warrant air quality

[2] The May 2012 White Paper and high-level summaries of stakeholder meetings are available at: *http://www.epa.gov/oaqps001/sulfurdioxide/implement.html.* These documents and written comments received from stakeholders are also included in the docket for this rulemaking.

characterization, whether existing monitoring networks might serve to address air quality characterization requirements, and whether any new limits intended by the air agencies negate the need for air quality characterization.

For each source on the list, the air agency will be required to indicate by July 1, 2016, whether it will characterize air quality through ambient monitoring or through air quality modeling or, alternatively, whether it will be subjecting the pertinent source or sources to emission limit(s) that will keep the source(s) below this rule's 2,000 tpy threshold. The option identified by the air agency for each source and its associated area will determine the submittal and timing requirements for the air agency to provide the required information.

If the air agency chooses the first option, ambient monitoring for a source, the air agency must include information about the planned new monitor(s) in the annual monitoring plan that the air agency must submit to the EPA by July 1, 2016; and the air agency must also ensure that the new monitor(s) are operational by January 1, 2017. The required monitors shall be sited and operated either as State and Local Air Monitoring Stations [3] (SLAMS) or in a manner equivalent to SLAMS. In either case, monitors shall be subject to reporting and data certification requirements as prescribed in 40 CFR 58.15 and 58.16 (*e.g.,* quarterly reporting of monitoring data to the Air Quality System, and the annual certification of data by May 1 of the following year), and must satisfy applicable criteria in 40 CFR part 58, appendices A, C, and E.

If the air agency chooses the second option, air quality modeling for a source, it must submit a modeling protocol for each such source to the EPA by July 1, 2016, for review and consultation with the EPA Regional Office. The modeling analyses must then be submitted to the EPA by January 13, 2017.

If the air agency chooses the third option, to provide federally enforceable emissions limitations that limit emissions of an applicable source to less than 2,000 tpy, or to provide documentation that the applicable source has permanently shut down, the air agency must notify the EPA of its decision by July 1, 2016, and provide a description of the planned emission limitation, including identification of the level of the limitation being planned. Especially in areas with multiple sources, the limit(s) should be sufficiently low as to avert the need for air quality characterization that applies for other listed sources. Therefore, the rule requires the concurrence of the EPA as to whether the limit that the air agency intends will suffice in lieu of conducting air quality characterization. By January 13, 2017, the air agency must provide EPA with documentation demonstrating that the emission limits are federally enforceable, adopted, and require compliance by January 13, 2017, in order for areas containing such sources to avoid the need to characterize ambient SO_2 emissions under the rule. If EPA approval is required to make a limit federally enforceable, the submittal must be sent to the EPA early enough such that the EPA has enough time to complete a rulemaking to make the limit federally enforceable by the January 13, 2017, date.

Section IV.D of this preamble provides a discussion of selected technical considerations related to characterizing air quality, but the rule does not prescribe how an ambient monitoring network around an identified SO_2 source is to be designed, or how air quality modeling must be specifically done to meet the objectives of this rule. As stated in the proposal, the EPA has developed TADs that provide approaches on ambient monitoring and air quality modeling when planning and executing air quality characterization activities, and recommends that air agencies refer to these documents to support their efforts. For example, the TAD for ambient monitoring suggests potential options and recommendations on different analyses and approaches that could be considered to help the air agency site source-oriented SO_2 monitors in locations of expected maximum 1-hour concentrations. The TAD for air quality modeling explains that refined dispersion models are able to characterize SO_2 air quality impacts from the modeled sources across the domain of interest on an hourly basis with a high degree of spatial resolution. It suggests that in order to characterize recent air quality levels around a source, it would be acceptable to use actual hourly emissions data, actual meteorological data and actual stack height information as technical inputs to the modeling analysis. However, it is important to note that, except to require that monitoring be sited and operated in a manner equivalent to SLAMS and to provide that modeling may be based on actual or allowable emissions, this rule does not promulgate any specific requirements with regard to these analytical approaches, and air agencies are expected to use their best professional judgment, consulting as appropriate with the EPA, in conducting these analyses. Air agencies should also contact their respective EPA Regional Offices regarding any additional issues beyond those addressed in the TADs.

The final rule also includes provisions specifying how characterization requirements for listed sources continue into the future (*i.e.,* ongoing data requirements). For areas where air quality is to be characterized through ambient monitoring, the rule requires the monitoring to be conducted for the calendar years of 2017 through 2019, in order to calculate a valid design value for each area. The rule requires that air agencies (or other parties conducting the monitoring) continue the operation of all existing and new monitors used to meet the requirements of this rule. However, it also provides for the possibility that an air agency may obtain EPA approval to terminate operation of a monitor that was established to meet the requirements of this rule if the air quality values at the monitor are low enough to meet specific criteria. Following commencement of operation of a new monitor, the air agency may seek EPA approval to terminate operation of the monitor pursuant to § 51.1203(c)(3) of this rule, if the monitored design value for the first 3-year period or second 3-year period is no greater than 50 percent of the 1-hour SO_2 NAAQS. After the fourth year following commencement of operation of a new monitor, the air agency may be able to seek approval to shut down the monitor if it meets the criteria specified in existing regulations at 40 CFR 58.14.

For areas that were characterized using air quality modeling, the ongoing data requirement applies only where the modeling was based on actual emissions and where the area has not subsequently received a nonattainment designation. In such cases, the air agency will be required to submit an annual report to the EPA providing updated emissions information and recommending to the EPA whether further modeling is warranted to assess any expected changes in recent air quality. For example, it may be appropriate for the air agency to conduct updated modeling for an area if there have been increases in short term emissions rates, an increase in annual emissions, or changes in facility operations. Where warranted, the air agency shall conduct

[3] The SLAMS network is an air quality surveillance system that consists of a network of monitoring stations designated as SLAMS which measure ambient concentrations of those pollutants for which standards have been established in 40 CFR part 50.

updated modeling to characterize air quality in light of the identified emissions changes and present the results in its annual report to the EPA. Analogous to the monitor shutdown provisions noted earlier, the requirement for the annual emissions assessments for an area originally characterized by modeling may be terminated if the air agency provides a modeling analysis demonstrating that actual emissions in the previous year for SO_2 sources in the area results in a modeled design value that does not exceed 50 percent of the NAAQS at any receptor within the modeling domain. While the annual assessment requirement under this rule would be terminated in such cases, any other EPA requirements to provide data (*e.g.,* for the Air Emission Reporting Rule (AERR)) would not be affected.

The EPA received more than 80 comments on the proposed rule. Taking into consideration the range of comments received, the EPA made a number of revisions that are reflected in the final rule, including the following:

- The source emissions threshold approach was changed to a single 2,000 ton annual SO_2 emissions level, so the final rule does not include thresholds that vary depending on the population of the area.
- Air agencies still need to identify in January 2016 a list of sources in their jurisdiction for which air quality is to be characterized, but they now have until July 2016 to indicate whether, for each source, they plan to use modeling or monitoring to characterize air quality, or to adopt an enforceable emissions limit. (The rule clarifies that this list would not include any source located in an area already designated as nonattainment for the 2010 SO_2 NAAQS.) The approach in the proposal would have required the air agency to indicate its planned approach for each source in January 2016.
- The final rule also includes a set of monitor shutdown provisions that is a hybrid of the options included in the proposed rule and the existing monitor shutdown provisions in 40 CFR part 58. A monitor required under this rule would be eligible for shutdown if it has a design value less than 50 percent of the SO_2 standard during one of the first two 3-year periods of operation. After this point in time, any potential shutdown would need to meet the basic shutdown provisions that apply for SLAMS monitors as described in 40 CFR 58.14.
- The proposal took comment on three potential approaches for ongoing requirements for air agencies to provide modeling or emissions data for areas that were originally characterized with modeling based on actual emissions data. As noted earlier, the approach in the final rule requires the air agency to provide emissions data to the EPA annually for all sources not designated as nonattainment, and to recommend to the EPA whether an emissions change was substantial enough to warrant updated air quality modeling.
- A number of commenters suggested that an air agency should be able to avoid the air quality characterization requirement for a source if it adopted a federally enforceable requirement limiting annual emissions at the source to less than 2,000 tpy. The final rule now includes such a provision. This type of limit would need to be adopted and in effect by January 2017.

IV. Responses to Significant Comments on the Proposed Rule

A. The Use of Monitoring and/or Modeling Data

1. Legal Authority To Require States To Submit Data Pursuant to This Rule

a. Summary of Proposal

In the proposed rule, the EPA explained that the requirements for the air agency to submit the SO_2 monitoring and modeling data described in § 51.1203 of the proposed rule are appropriate steps needed to understand SO_2 air quality throughout the country, and are consistent with section 110(a)(2)(B), section 110(a)(2)(K) and section 301(a)(1) of the CAA. *See* 79 FR 27457, May 13, 2014.

b. Brief Summary of Comments

Some state commenters asserted that the DRR modifies the CAA and imposes new monitoring and modeling obligations on air agencies. One commenter suggested that requiring states to develop monitoring or modeling data in accordance with this proposal modifies the statutory mandate to designate all areas by June 2013 because the EPA intends to use these data for designations. One industry commenter stated it is not appropriate to replace the CAA's statutory directive for designations with extra-statutory provisions like those proposed in the DRR.

Several state and industry commenters stated that the proposed requirements and schedules conflict with requirements that apply to the EPA to timely complete designations under section 107 of the CAA. These commenters stated that the CAA required the EPA to make area designations under the new SO_2 standard no later than June 3, 2013, and that the EPA failed to comply with that mandatory obligation. Therefore, the commenters claimed, the DRR proposal's discussion of a schedule for issuing designations by December 2020 is beyond the EPA's authority. One state commenter cited *EME Homer City Generation LP* v. *Envt'l Prot. Agency,* 696 F. 3d 7, 27 (D.C. Cir. 2012) and stated that the DRR cannot stand as proposed because it fails to follow the mandatory timelines for promulgating area designations, and, therefore, exceeds the EPA's statutory authority.

c. EPA Response

The comments that assert that the EPA has not designated areas under the 2010 SO_2 NAAQS in a timely manner are beyond the scope of this rulemaking, and are not germane to the issue of the EPA's statutory authority to direct air agencies to conduct monitoring or modeling to further characterize ambient air concentrations of SO_2. Through this rulemaking, the EPA is not establishing or modifying any area designation requirements provided for in section 107 of the CAA, nor does any aspect of this final rule conflict with any provision of section 107 that directs states and the EPA to take timely action to issue designations. The purpose and effect of this rulemaking is to require air agencies to characterize air quality in priority areas throughout the country where existing ambient monitors may not be adequately characterizing peak 1-hour SO_2 ambient air concentrations. The air quality data obtained as a result of this rulemaking then may be used in future analytical actions by the EPA, including designations of any undesignated areas or redesignations of already designated areas. It is true that in the proposed rule preamble we discussed how the timing of the implementation of this rule would fit with our intended schedule for completing area designations, but the proposal did not itself purport to establish a binding schedule for completing designations.

The EPA notes that litigation was filed against the EPA to compel the Agency to complete designations under CAA section 107, and on March 2, 2015, the court in one of those cases issued a ruling that places the EPA on a binding schedule to complete area designations for the 2010 1-hour SO_2 NAAQS. *See, Sierra Club, et al.* v. *McCarthy,* Case No. 13–cv–03953–SI (N.D. Cal., March 2, 2015) (Order Granting Joint Motion To Approve And Enter Consent Decree And Denying Other Motions As Moot; and Consent Decree). Copies of the court's order and the March 2015 consent decree setting forth the EPA's schedule

for completing designations have been placed in the docket for this rulemaking. Under the schedule ordered by the court, the EPA is required to complete the designations in no more than three future rounds.

First, by July 2, 2016 (16 months from the date of the court's order), the EPA must sign a notice for publication in the **Federal Register** that promulgates designations for remaining undesignated areas that: (a) Based on air quality monitoring in the three full calendar years preceding that date have monitored violations of the NAAQS; or (b) contain any stationary source that has not by March 2, 2015, been ''announced for retirement'' and that, according to data in the EPA's Air Markets Database, either (1) emitted more than 16,000 tons of SO_2 in 2012, or (2) emitted more than 2,600 tons of SO_2 and had an annual average emission rate of 0.45 lbs. SO_2/Mmbtu or higher in 2012. (The March 2015 consent decree defines ''announced for retirement'' as meaning ''any stationary source in the United States with a coal-fired unit that as of January 1, 2010, had a capacity of over five (5) megawatts (MW) and that has announced it will cease burning coal at that unit through a company public announcement, public utilities commission filing, consent decree, public legal settlement, final state or federal permit filing, or other similar means of communication.'')

Second, by December 31, 2017, the EPA must sign such a notice promulgating designations for remaining undesignated areas in which, by January 1, 2017, states have not installed and begun operating a new SO_2 monitoring network meeting EPA's specifications referenced in this rulemaking. Finally, by December 31, 2020, the EPA must sign a notice promulgating designations for all remaining undesignated areas.

The EPA notes that the schedule imposed by the court will allow at least the latter two stages of designations to be informed and benefited by the additional information that is timely obtained pursuant to this final rule, as appropriate. However, we also note that the round of designations that is required to be completed by July 2, 2016, will likely be conducted before state air agencies and the EPA will have been able to implement this final rule, and will instead rely upon data and information that is separately developed or obtained during the designations process. Nevertheless, as explained later in this document, depending on how those areas become designated in 2016, the rule may still result in additional information that could inform future assessments of attainment status for such areas.

The EPA continues to believe that the requirements of this rule for air agencies to submit a list of sources where further air quality characterization is needed, and the other data submittal requirements found in § 51.1203 of this rule, are appropriate steps needed to better understand SO_2 air quality throughout the country, and are consistent with section 110(a)(2)(B), section 110(a)(2)(K), and section 301(a)(1) of the CAA. The commenters did not challenge this view. Section 110(a)(2)(B) indicates that State Implementation Plans (SIPs) are to ''provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to (i) monitor, compile and analyze data on ambient air quality and (ii) upon request, make such data available to the Administrator.'' Section 110(a)(2)(K) states that SIPs shall ''provide for (i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a NAAQS, and (ii) the submission, upon request, of data related to such air quality modeling to the Administrator.'' Section 301(a)(1) provides the EPA with general authority to establish regulations as necessary to carry out the agency's functions, which in this case includes ensuring the attainment of the SO_2 NAAQS throughout each state. This section states that ''The Administrator is authorized to prescribe such regulations as are necessary to carry out his functions under this chapter.''

The EPA often establishes and revises monitoring requirements for implementing NAAQS. Those requirements will not necessarily always generate new information in time to inform timely area designations under CAA section 107. *See, e.g.,* 75 FR 81126, 81130, December 27, 2010. The validity of such rules does not depend upon whether information generated pursuant to those requirements will be gathered in time to support designations that are timely under section 107. Here, the commenters have raised no objection to the central premise of the rule, which is that additional information that better characterizes air quality near larger sources of SO_2 is warranted and is authorized to be required under sections 110 and 301 of the Act. Irrespective of when the EPA uses this information—for example, irrespective of whether the EPA promulgates initial designations of ''unclassifiable'' (and then uses the information collected pursuant to this data requirements rule in later redesignations), or whether the EPA promulgates the remaining designations after the information required here becomes available—the EPA believes that this rule is authorized and is warranted. Therefore, in this final rulemaking, the commenters have provided no basis for the EPA to not require air agencies to submit such SO_2 monitoring and modeling data to the EPA, as proposed. The final rule is fully consistent with the Agency's broad authority under section 110 and 301, as well as with the EPA's authority under CAA section 114(a)(1) to direct any person to provide information as is reasonably required to improve characterization of ambient air quality near larger sources of SO_2.

2. Legal Authority To Base Air Quality Evaluations on Modeling Data

a. Summary of Proposal

In the proposal, the EPA stated that existing air quality modeling tools are technically sound and historically have been used to characterize SO_2 air quality when monitoring data were not available; therefore, the EPA considers these modeling tools appropriate for assessing air quality impacts from SO_2 emissions. The EPA stated that historical use of modeling to characterize SO_2 air quality concentrations has been affirmed as technically valid and lawful under the CAA by reviewing courts. *See* 79 FR 27448, May 13, 2014.

b. Brief Summary of Comments

Some industry group commenters stated that the DRR provisions allowing for modeling to characterize ambient SO_2 concentrations go beyond what is necessary to comply with the CAA, arguing that 40 CFR 50.17 provides that monitoring is the sole basis for determining attainment. Commenters stated that the precise wording of 40 CFR 50.17 establishes ambient air monitoring as the only basis for determining if the SO_2 NAAQS is being met because it specifies that:

(a) The level of the national primary 1-hour annual ambient air quality standard for oxides of sulfur is 75 parts per billion (ppb, which is 1 part in 1,000,000,000), measured in the ambient air as SO_2.

(b) The 1-hour primary standard is met at an ambient air quality monitoring site when the 3-year average of the annual (99th percentile) of the daily maximum 1-hour average

concentrations is less than or equal to 75 ppb, as determined in accordance with appendix T of this part.

(c) The level of the standard shall be measured by a reference method based on appendix A or A–1 of this part, or by a Federal Equivalent Method (FEM) designated in accordance with part 53 of this chapter.

One public interest group commented that the provisions in the proposed DRR for conducting modeling are consistent with the EPA's historic use of air dispersion modeling for multiple NAAQS implementation purposes. This public interest group stated that dispersion modeling has a lengthy history as an appropriate tool for use in SO_2 designations and other actions, and provided several references to the EPA's documents and to court rulings to demonstrate that historic use.

In contrast, without disputing the fact that the EPA has often relied upon modeling to inform decisions implementing the SO_2 NAAQS, several state and industry commenters stated that monitoring, not modeling, has historically been used for designation of areas as attainment or nonattainment under this and other NAAQS. Several industry commenters supported the EPA's use of notice-and-comment rulemaking through the DRR to address certain major issues, including the use of monitoring and/or modeling to characterize air quality and make remaining area designations.

c. EPA Response

This final rule does not make any decisions or determinations regarding whether any area is in fact meeting or not meeting the NAAQS based on either monitoring or modeling information. Those decisions will be made in separate future actions, or have already been made for some areas in prior actions. *See e.g.,* 78 FR 47191, August 5, 2013. Therefore, this final rule does not take final action on the issue of whether it is permissible to implement the commenter's previous quoted provisions of 40 CFR 50.17(a)–(c) based on a combination of both monitoring and modeling information where both are available, or exclusively on modeling information where appropriate modeling information is available and monitoring is not. The commenters' objections appear to focus on how future-gathered information resulting from the rule may or can be used in subsequent NAAQS implementation actions, but the focus of this rule is on the initial gathering of the information itself. In future designation, redesignation, or other implementation actions, commenters may raise their objections to the validity of information that the EPA relies upon in those specific actions, but such objections are beyond the scope of this final rule.

The commenters appear to be raising objections that were also raised after the EPA's promulgation of the 2010 SO_2 NAAQS, in response to the EPA's final rule preamble discussion explaining the Agency's then-intended implementation approach under the NAAQS. In their petitions for judicial review of the NAAQS, several states claimed that the EPA's discussion of the intended use of modeling in NAAQS implementation contravened the regulatory text of § 50.17. However, noting that the petitioners' claims addressed potential final implementation actions that had not yet in fact occurred, the U.S. Court of Appeals for the D.C. Circuit dismissed the petitioners' claims without addressing their merits, or lack thereof. *See National Environmental Development Association's Clean Air Project* v. *EPA,* 686 F.3d 803 (D.C. Cir. 2012). Likewise here, the EPA is not yet taking any action to apply modeling regarding any decision of whether an area is or is not meeting the NAAQS.

In any event, we note that although 40 CFR 50.17(a)–(c) very clearly sets forth the criteria for determining whether the NAAQS is met at a monitoring site, it does not by its terms restrict how such decisions may be made more broadly in areas impacted by SO_2 sources, including areas where there are no monitoring sites or where monitors are not sited at the point of maximum ambient concentration. Indeed, it is the relative scarcity of such monitors that has caused the EPA to undertake this rulemaking to enable states and the Agency to better understand just what the ambient air impacts are from larger sources of SO_2, which may not be captured by the current limited monitoring network. It is true that past area designations processes for most NAAQS (such as for ozone) having violations caused and contributed to by multiple sources over a broad region have relied primarily on air quality monitoring data to identify areas that violate the standard. However, it is important to note, as the EPA explained in the final 2010 SO_2 NAAQS preamble, that there is a long history of also using dispersion modeling information to inform area designations for the SO_2 NAAQS. *See, e.g.,* 75 FR 35551, June 22, 2010.

The EPA and the air quality management community have recognized over many years that peak concentrations of SO_2 are commonly caused by one or a few major point sources in an area, and that peak concentrations are typically observed relatively close to the source. Many factors influence the observed SO_2 concentrations around emissions sources, including the sulfur content of fuel that is combusted, the sulfur content of material being heated as part of an industrial process, the rate of SO_2 emissions per hour, stack height, topography, meteorology, monitor location and source operating schedule. But because ambient SO_2 concentrations are not the result of complex atmospheric chemical reactions (unlike ozone or $PM_{2.5}$), they can be modeled accurately using well-understood air quality modeling tools, especially in areas where one or only a few sources exist. In the 1970's, when the original SO_2 NAAQS were established, there were significantly more SO_2 monitors in operation nationally than today. Even then, the EPA and air agencies acknowledged the utility of modeling in order to inform area designations under the SO_2 NAAQS. *See e.g.,* 43 FR 45993, October 5, 1978.

3. The Use of Monitoring and/or Modeling for Making Decisions About Air Quality

a. Summary of Proposal

In the proposed rule, the EPA explained that the current ambient SO_2 monitoring network, on the whole, is not appropriately positioned, or of adequate size, for purposes of the 2010 SO_2 standard to characterize the air quality around many of the nation's larger SO_2 sources in operation today. The EPA stated that, because ambient SO_2 concentrations are not the result of complex chemical reactions (unlike ozone or $PM_{2.5}$), they can be modeled accurately using well understood air quality modeling tools, especially in areas where one or only a few sources exist. However, the EPA noted that some areas may not be conducive to modeling, and for such areas the EPA encouraged air agencies to consider using enhanced monitoring to characterize air quality. *See* 79 FR 27448, May 13, 2014.

b. Brief Summary of Comments

Several state and industry commenters supported the provision in the proposed rule allowing air agencies to have the option to use modeling and/or monitoring to characterize SO_2 ambient air concentrations, as it provides appropriate flexibility for both the states and affected sources. Several commenters supported the EPA's observation that modeling may not be appropriate for all SO_2 evaluation scenarios, and supported the ability of

states to choose to evaluate NAAQS attainment through either dispersion modeling or ambient monitoring. However, several state and industry commenters cautioned that monitoring data should be the primary basis for such decisions, especially designating nonattainment areas. Several commenters claimed that, as modeling is frequently affected by factors such as emissions inputs, meteorological data and local geography, it is not as accurate or reliable as real-time, multiple-year monitoring. Other commenters claimed that modeling is advantageous because it characterizes air quality in all directions around a source with appropriate accuracy and can be done with less expense than ambient monitoring, which only characterizes air quality at a single location. Some industry commenters suggested the text of proposed § 51.1201 be revised to state that monitoring is the EPA's preferred analytical approach under the rule.

c. EPA Response

The EPA agrees with commenters who stressed the need to give air agencies the option to characterize SO_2 ambient air quality through either enhanced monitoring or modeling, and the EPA is maintaining that approach in this final rule. The EPA believes that the commenters have not presented any persuasive reasons for changing the basic positions previously discussed in the preamble to the final rule of the 2010 SO_2 NAAQS rulemaking, the February 2013 Strategy Paper, or in the proposed rule for why both air quality modeling and ambient monitoring are appropriate tools for characterizing ambient air quality for purposes of informing future decisions to implement the SO_2 NAAQS. However, as explained earlier, in this final rule the EPA is not taking final action to make any determinations regarding any area's status with respect to attaining or not attaining the NAAQS, but is only prescribing criteria and a process for how and when air agencies are to gather and provide to the EPA additional needed information. How the information is used in subsequent actions evaluating the attainment status of specific areas will depend upon the information that air agencies collect in the future and what it shows about areas' ambient air quality.

B. Source Coverage and Emission Threshold Options

1. Summary of Proposal

In the proposal, the EPA recognized that the characterization of air quality in areas around more than 20,000 SO_2 sources nationally would not be feasible. The proposal stated that the key objective to be achieved by using SO_2 source emission thresholds would be to focus the limited available resources at the state, tribal, local and federal levels toward characterizing air quality in areas having the largest SO_2 emitting sources due to the fact that larger sources can be expected to be the most likely potential contributors to violations of the SO_2 NAAQS. The EPA stated in the proposed rule that, just as NAAQS ambient monitoring networks are designed to measure air quality in areas meeting specific criteria where the public is likely to be exposed and violations may be likely to occur, the SO_2 annual emission threshold options in the rule are designed to meet a similar objective. *See* 79 FR 27453, May 13, 2014.

In considering how to develop effective options for identifying the minimum set of sources around which states would be required to characterize ambient air quality, we considered three important issues and requested comment on each:

—What would be an appropriate emissions metric for identifying sources?
—Should the threshold options require characterization of smaller sources in areas with higher populations?
—What would be an appropriate threshold for identifying sources near which air quality is to be characterized?

The notice of proposed rulemaking also addressed a number of additional elements of the implementation of these thresholds. In the discussion below, the EPA summarizes these additional proposed features, summarizes comments on these proposed features, and describes the EPA's responses. Note that this section is structured so that all the issues related to emissions thresholds are presented together before proceeding to the comment summaries on these issues, and then to the EPA's responses and final decision.

a. Emissions Metric: What would be an appropriate emissions metric for identifying sources?

The proposal presented a discussion about what emissions-related metric would be most appropriate for this rule. The proposal noted that for the 1-hour SO_2 NAAQS, the ideal metric for identifying sources near which air quality is to be characterized would be a 1-hour SO_2 emissions rate. However, the EPA observed that while 1-hour SO_2 emission rate data are available for most electricity generating units (EGUs) because they operate continuous emission monitors, many non-EGUs do not operate continuous emission monitors on all emission points and produce 1-hour data. For this reason, the proposal stated that the emissions threshold options presented in this rulemaking should be expressed in terms of annual emissions of SO_2 because annual emissions information is readily available for all large SO_2 sources.

The EPA requested comment on the use of annual emissions (*i.e.,* tons of SO_2 per year) as the metric to be used for an emissions and population-based threshold approach, or, alternatively, for a solely emissions-based threshold approach, to identify SO_2 sources around which further ambient air quality characterization with respect to the 1-hour SO_2 NAAQS might be required. The EPA also requested comment on any potential alternative factors that should be considered for defining emissions thresholds, along with any information about the availability of data related to any alternative factor for all SO_2 sources nationally, the time and resources needed to develop a database for this alternative factor, any associated technical analysis and rationale for using these other factors in defining source thresholds. *See* 79 FR 27454, May 13, 2014.

b. Should the threshold options require air quality characterization near smaller sources in areas with higher populations?

In the proposed rule, the proposed emissions threshold option and the other two options on which the EPA requested comment each had a ''two-pronged'' form. Each potential option was expressed with a higher emissions threshold for identifying sources located outside of CBSAs with a population equal to or greater than 1 million persons, and a lower emissions threshold for identifying sources located within such CBSAs. The reasoning given for this proposed approach was that a lower threshold for urban sources could help increase public health protection because there are more people in an area that could be impacted by relatively smaller sources. The EPA requested comment on its proposed use of the 1 million person CBSA population threshold for representing the population exposure component of the source threshold options in this rule. The EPA also requested comment on whether to include a population exposure-based threshold at all; and on whether alternative, or additional, criteria would

be appropriate to further focus resources on characterizing air quality in areas with a higher likelihood of population exposure. *See* 79 FR 27455, May 13, 2014.

c. What is an appropriate threshold level or levels for identifying sources near which air quality is to be characterized?

The EPA proposed one preferred option and took comments on two additional options. Option 1 (proposed preferred option) would require ambient air quality characterization around any source with annual emissions greater than 1,000 tpy and which is located within a CBSA having 1,000,000 or more persons, and around sources with emissions greater than 2,000 tpy located outside CBSAs having 1,000,000 or more persons. Option 2 would require ambient air quality characterization around sources with emissions greater than 2,000 tpy that are located within any CBSA having 1,000,000 or more persons, and around sources with emissions greater than 5,000 tpy located outside CBSAs having 1,000,000 or more persons. Option 3 would require ambient air quality characterization around sources with emissions greater than 3,000 tpy that are located within any CBSA having 1,000,000 or more persons, and around sources with emissions greater than 10,000 tpy located outside CBSAs having 1,000,000 or more persons.

The EPA requested comment on the preferred option and the other two options described in the proposal. The EPA also requested comment on any possible alternatives that might be appropriate for consideration. The EPA requested comment on the scope of sources for which we would require data. In addition, the EPA also requested any information identifying sources that would be identified by these options but that have confirmed documentation to show that they will shut down in the next several years.

d. Discretion for Air Agencies and the EPA To Address Additional Sources

The EPA noted in the proposed rule that, in addition to meeting the requirements to provide information regarding areas with sources over the future promulgated thresholds, there may still be situations where an air agency would need to characterize air quality for other sources below the thresholds; specifically, where the air agency, or the EPA Regional Administrator, determines that they may have the potential to violate the NAAQS. Application of air quality characterization requirements was noted to be possibly warranted, for example, where multiple smaller sources located in close proximity may collectively exceed the emissions thresholds and/or cause or contribute to NAAQS exceedances. *See* 79 FR 27455, May 13, 2014.

2. Summary of Comments

This section provides a brief summary of comments received on each of the four source threshold issues identified previously, as well as additional features of the EPA's proposed implementation of thresholds.

a. Comments on an Appropriate Emissions Metric

Most commenters that addressed the emissions metric issue supported using annual SO_2 emissions (in tpy) as the appropriate metric for defining source thresholds. Several commenters stated that it is most appropriate to evaluate annual emissions since these data are widely reported to the EPA and are readily available. Some industry commenters stated that using an annual emissions based threshold approach for identifying areas to be evaluated would serve to make more manageable the demands on state, tribal, local and federal resources. Several other commenters stated that the use of additional factors such as stack height, 1-hour SO_2 emission rate, proximity to sensitive populations, and topography would make the source identification process unnecessarily difficult and time consuming. On the other hand, a few regulatory agency commenters urged the establishment of supplemental criteria based on short-term spikes in emissions.

b. Comments on Whether the Options Should Require Characterization Near Smaller Sources in Areas With Higher Populations

A number of state and industry commenters supported the application of a lower emission threshold in urban areas. Some commenters stated that population centers represent locations of higher potential public exposure and, therefore, characterization of air quality in these areas would be more representative of the public's SO_2 exposure risk. Several state and industry commenters stated that a threshold approach based purely on emissions could inappropriately focus limited resources on areas with limited to no public exposure. Some state commenters noted that, as a precedent, a population threshold has been used to establish the minimum monitoring requirements for the SO_2 NAAQS as well as the NAAQS for nitrogen dioxide, carbon monoxide, and particulate matter.

Some commenters stated that many sources located within an existing CBSA are located on the edge of the boundary in less populated areas and urged the EPA to consider more refined census data based on population density. One industry commenter suggested, for example, that the EPA could use population density data around the affected facilities out to a radius of 10 kilometers (km) and, if average population density from the 2010 census in this area exceeds a certain threshold (*e.g.,* 100 persons/square km), then the lower emissions criteria would be used. Some tribal commenters, some environmental group commenters, and some state commenters recommended against applying different thresholds in less populated areas, in order to assure that all areas are equally protected against violations of the air quality standard.

c. Comments on Source Threshold Options

One public interest group and several states urged the EPA to adopt the proposed Option 1 level of 1,000 tpy, but apply it uniformly, regardless of population in order to ensure a basic level of health protection to people who live around the sources. Some commenters stated that because modeling has shown that sources with emissions below 2,000 tpy have the potential to cause or contribute to modeled NAAQS violations, an emissions threshold of 1,000 tpy is more appropriate to ensure that air quality characterizations are accurately capturing potential NAAQS violations.

Several state and industry commenters supported Option 2 stating it balances limited agency resources for the implementation of this rule while still allowing important SO_2 emission source areas to be evaluated. Some industry commenters stated Option 2 appears to be the best option because the difference between the number of sources captured by Options 1 and 2 is substantial while the difference in overall emissions covered by the two options is small.

Numerous state and industry commenters supported Option 3, stating it would apply reasonable thresholds without burdening states with unnecessary modeling or monitoring. One industry commenter stated that this option would allow states to focus their limited resources on the areas with the largest 211 sources of SO_2 emissions.

One industry commenter stated that if the EPA decides that either Option 1 or 2 is preferable, then the source

threshold needs to be revised to take into account the following additional factors: The distance a source is located from population centers in general and sensitive populations in particular; stack heights; topography and meteorological factors unique to the source(s); and economic conditions that will affect a source's expected SO_2 emissions. This commenter disagreed with the proposal's statement explaining why the Agency does not believe it necessary for air agencies to consider such factors, stating that the lack of a nationwide database with respect to such factors is irrelevant since the modeling is to characterize localized ambient air quality.

d. Comments on Discretion To Address Additional Areas

Several state and tribal commenters requested clarification of criteria the EPA would use to determine additional areas to be characterized beyond those with sources emitting more than the applicable threshold. A few commenters offered specific recommendations, for example to characterize areas of 10 km or 25 km diameters in which total emissions exceed the threshold but those of no single source exceeding the threshold. A few commenters recommended that the EPA should not have the discretion to subject additional areas to characterization unless total emissions in the areas exceed the applicable threshold. Some commenters recommended that the rule specify criteria to be used to identify multi-source areas that would need to be characterized. Conversely, some commenters recommended that the EPA not codify any specific criteria, recommending instead that the EPA provide guidance on how it envisions addressing areas with multiple sources and rely on the professional judgment of air agency personnel in consultation with the EPA to identify specific additional areas that warrant being characterized. Also, one state commenter recommended that any area ''that, based on the state's knowledge, has the potential to exceed the NAAQS'' should become subject to requirements for air quality characterization. Finally, a few industry commenters and a few state commenters urged that the EPA not have the discretion to subject additional areas to DRR requirements.

3. EPA Response

The EPA considered the many and varied comments received on the source threshold options presented in the proposal. After considering the comments received and as explained below, the EPA has decided to establish a requirement for air agencies to identify all sources with annual SO_2 emissions that exceed 2,000 tpy (using emissions data from the most recent calendar year for which such data are available) and characterize air quality around such sources according to the timeline in section IV.C of this preamble. The following subsections also address the other comments relating to applicability of the requirements for air quality characterization described previously.

a. Emissions Metric

The EPA agrees with the many commenters who expressed support for using an annual emissions metric because annual emissions data are most readily available for all large SO_2 sources, whereas 1-hour emissions rate information is not readily available for all SO_2 sources. Since the tpy emissions metric is a common denominator in the emissions inventory and reporting universe, the EPA believes that the use of this metric is most appropriate to be required under a rule that applies broadly to areas with sources that do not already measure 1-hour emissions rates. Using tpy will provide air agencies and the regulated community a common, easily verifiable, straightforward approach for identifying sources around which air agencies are required to characterize air quality. This approach will rely on existing emission inventory collection systems that are already in place. An approach based on tons of emissions per year also should reduce unforeseen or otherwise uneven application of the requirements for air quality characterization that could arise if different metrics are used for different SO_2 source sectors to identify areas for which air agencies are required to characterize air quality.

The EPA acknowledges that some state commenters suggested inclusion of a 1-hour emissions rate-based criterion for identifying certain sources with infrequent, episodic SO_2 emissions at atypically high rates that could impact nearby populations. The EPA notes that the emissions threshold included in the final rule establishes only minimum requirements for identifying sources. The EPA agrees with state commenters who recommended that air agencies should also characterize areas that, based on their knowledge of sources and areas, may be at risk of violating the standard. Thus, under this rule air agencies could also require characterization of air quality near sources prone to episodic emissions with relatively high rates or amounts, as appropriate. However, because short-term emissions data are not available for all SO_2 sources, the EPA did not include in this rule a minimum requirement for identifying source areas needing air quality characterization based on this metric.

b. Characterization Near Smaller Sources in Areas With Higher Populations

The EPA considered the comments received on the issue of whether a lower emissions threshold should be included for areas with more dense populations (*e.g.,* CBSAs greater than 1 million population). A number of commenters appeared to interpret the inclusion of a lower threshold for areas with higher population as being less protective of the public in less populated areas. The EPA wants to clarify that this was not the intention behind the population-inclusive options included in the proposed rule. The SO_2 NAAQS, and all NAAQS, are intended to provide equal protection for citizens throughout the country. The proposed use of both population and emissions thresholds as a means to require air quality characterization was simply one approach to focus limited federal and state modeling and monitoring resources into characterizing locations where a greater coincidence of people and SO_2 emissions occur, and thus a potentially greater potential for exposure is presented. After reviewing the comments on this issue, however, the EPA has decided not to move forward with the proposed preferred approach, and instead to apply requirements for air quality characterization based on emissions levels uniformly across the country for both more urbanized and less urbanized populations so as to focus primarily on the size of the sources.

It should be noted here that any monitoring that occurs pursuant to this rulemaking is potentially in addition to, or can possibly help to satisfy, required SO_2 monitoring stemming from 40 CFR part 58, appendix D, section 4.4. Those monitors required in 40 CFR part 58, appendix D, section 4.4 are determined using a unique metric that accounts for the coincidental occurrences of SO_2 emissions and population, namely the Population Weighted Emissions Index (PWEI). This rulemaking does not supplant or otherwise modify those existing requirements.

c. Emissions Threshold

Regarding the comments EPA received expressing preferences on the proposed emission threshold options, the EPA notes the wide range of views. A few commenters recommended alternate thresholds in the range from 1,000 tpy to 10,000 tpy, or

recommended pairs of thresholds within this range. Some commenters provided modeling analyses as an indication that sources larger than 12,000 tpy did not cause a violation of the standard, while other commenters recommended a single emissions threshold of 1,000 tpy and provided modeling analyses of different sources as an indication that sources less than 2,000 tpy caused modeled violations. These comments demonstrate that ambient SO_2 impacts can be variable, and are dependent on many factors other than annual emissions (such as meteorology, stack height, local topography and plant operations). These factors can only be assessed through analytical approaches, such as ambient monitoring or air quality modeling, which take many of these related factors into account simultaneously. These comments demonstrate why air quality characterization of the area around these sources is needed to protect public health in the first place.

The EPA believes that, for the purposes of establishing a minimum threshold that prioritizes the resources that will be devoted to characterizing air quality near SO_2 sources nationally, the 2,000 tpy source emissions threshold strikes a reasonable balance between the need to characterize air quality near sources that have a higher likelihood of contributing to a NAAQS violation and the analytical burden on air agencies. This threshold is on the lower end of the range of thresholds recommended by commenters because sources on the lower end of the range have the potential to cause or contribute to violations of the NAAQS. As compared to the preferred option in the proposal (*i.e.,* 1,000 tpy sources in CBSAs over 1 million people; 2,000 tpy sources not in CBSAs over 1 million people), the 2,000 tpy threshold would mean that, in the aggregate, air agencies would need to address air quality near about 35 fewer sources (or 7 percent fewer). Nevertheless, the total emissions addressed would still account for 89 percent of the SO_2 emissions nationally (based on 2011 emissions), very close to the 90 percent level that has been considered to be reasonable by many stakeholders in the past.[4] National SO_2 emissions have declined by a significant amount from 2011 to 2013 (around 1.5 million tons, or more than 20 percent), for various reasons. The EPA assessed the number of sources meeting a 2,000 tpy threshold based on 2013 emissions data now available for EGUs and 2011 emissions data for non-EGUs. Compared to the assessment in the proposal, which assessed the number of sources meeting the proposed threshold (1,000 tpy in urban areas/2,000 tpy elsewhere) based solely on 2011 data, the EPA now estimates that approximately 70 fewer sources (about 15 percent) will need nearby air quality to be characterized than was estimated in the proposal. Based on the updated data, the EPA estimates that already-designated sources plus sources currently exceeding the final threshold in this rule still would account for 86 percent of national emissions. Under this rule, each air agency will be required to identify all sources with annual SO_2 emissions that exceed 2,000 tpy (using emissions data from the most recent calendar year for which such data are available) and characterize air quality around such sources according to the timeline in section IV.C of this preamble.

Of course, if the trend in reduction of SO_2 emissions continues at individual sources, there will also be a corresponding reduction in national emissions, and both kinds of reductions are desirable for improving public health, even if that results in fewer source areas becoming subject to the emissions characterization requirements in the final rule. Conversely, if the trend reverses and source emissions increase, more sources and areas will be required to be characterized under the rule. Thus, the exact number of sources and areas that will exceed the promulgated threshold when air agencies begin characterizing areas under the rule cannot be precisely known at this time, nor can their future percentage share of the national inventory be precisely estimated. Nevertheless, the EPA believes that the promulgated threshold strikes a reasonable balance based on the information the Agency currently has regarding recent historical SO_2 emissions inventory levels. An analysis of potential source threshold options and associated source coverage, emissions coverage, and analytical costs is included in an EPA memorandum to the docket for this rule.[5]

d. Discretion To Address Additional Areas

Section 114(a)(1) of the CAA already provides the EPA authority and discretion to require emissions sources to install, use and maintain monitoring equipment and provide other information as the Agency may reasonably require, even in the absence of this DRR. In addition, the EPA had several reasons for proposing as part of this rule to reinforce state and the EPA discretion to also require air quality characterization around sources with emissions below the proposed thresholds. The purpose of proposing the use of emission levels as the criterion for determining applicability of the air quality characterization requirement is that emissions provide a simple means of identifying the sources that are most likely to cause or contribute to violations of the SO_2 NAAQS. Nevertheless, the EPA recognizes that a variety of factors other than emission levels can influence the likelihood of NAAQS violations. As one example, source characteristics such as stack height and plume buoyancy can significantly affect source impacts. As another example, clusters of multiple smaller sources that are in close proximity can cause as much impact as a single larger source. Finally, the EPA recognizes that a variety of other reasons may exist that may warrant further characterizing air quality in particular areas, which supports maintaining state and EPA Regional Administrator discretion to require air quality characterization in the area. The EPA continues to believe that states and the EPA should retain this authority and that it would be unreasonable to restrict implicitly, via this rule, the inherent authority that air agencies already have to require sources of air pollution to measure their emissions and characterize their impacts.

For these purposes, the EPA continues to believe that the rule should make clear that states and the EPA retain the discretion to subject additional areas to the requirements for air quality characterization beyond areas with a single source exceeding the emissions threshold. The use of a simple emission threshold in the rule provides a convenient means of administering the application of the requirements for air quality characterization for the majority of cases. However, the impacts of a given level of emissions vary substantially, such that many areas with a source or sources that do not exceed the emission threshold might be known to have a high risk of contributing to NAAQS violations, potentially resulting in a higher risk of NAAQS violations than other areas exceeding the emission threshold. As a result, a rule that sets forth minimum requirements based on

[4] The May 2012 White Paper and high-level summaries of stakeholder meetings are available at: *http://www.epa.gov/oaqps001/sulfurdioxide/implement.html.* These documents and written comments received from stakeholders are also included in the docket for this rulemaking.

[5] *See* also: ''Analysis of Source Threshold Options for the Final SO_2 Data Requirements Rule,'' memorandum to docket EPA–HQ–OAR–2013–0711, July 16, 2015.

an emissions threshold cannot reasonably be used to support an assumption that no further characterization near smaller sources is warranted, or to preclude authority that air agencies already have to investigate the impacts of such sources. Therefore, while this rule requires the air quality characterization near the above-threshold sources, the EPA and air agencies will also need to consult regarding the need for the characterization of air quality near sources below the threshold as well.

Among cases in which no single source meets the applicable emission threshold, no simple indicator is available to indicate which of these cases warrants air quality characterization. For areas with a single source, the areas could warrant air quality characterization if the stack height is low, if the plume rise is minimal, if terrain or meteorology is conducive to high impacts, and/or if emissions are just slightly below the threshold. For areas with multiple sources, concentrations are influenced not only by these stack, terrain and meteorological factors but also by the level of emissions at each source, the distances between them and the wind directions in the nearby area. The EPA appreciates the comments urging the establishment of specific criteria in the rule for identifying additional areas that warrant air quality characterization, but the EPA finds that these areas are better identified on a case-by-case basis reflecting a judgment considering the range of factors that influence the likelihood of NAAQS violations. That is, the EPA agrees with the state commenter urging that the rule provide for discretionary coverage of additional areas, such that additional areas that in the air agency's (and the EPA's) judgment have significant potential for violating the NAAQS can be made subject to requirements for air quality characterization on case-by-case bases.

Consequently, the EPA is retaining the discretion for air agencies and the EPA to require additional areas to be characterized beyond those with a source exceeding the emission threshold. However, the EPA is not revising the rule to establish specific criteria for identifying such areas; the EPA is instead relying on case-by-case evaluation of the various relevant factors to determine which additional areas warrant air quality characterization.

For areas with multiple sources, the EPA recognizes that a number of such areas may have no single source that exceeds the threshold discussed earlier and yet may have concentrations similar to other areas with a single source exceeding the threshold. Commonly, such areas would have multiple sources clustered in relatively close proximity and would have total emissions at or above the threshold. The EPA envisions the air agencies and the EPA evaluating multiple source areas on a case-by-case basis to determine whether the areas warrant the same priority as areas where a single source has emissions above the threshold. Generally, the EPA strongly recommends that areas with multiple sources, where the combined impact would be expected to be as much as the impact of a typical single source emitting at least 2,000 tpy, should be carefully considered for air quality characterization, and we expect the EPA Regional Administrators to focus on such areas in exercising their discretion. As stated previously, a rule that sets forth minimum requirements based on an emissions threshold cannot also be reasonably used to support an assumption that no further characterization near smaller sources may be required. Therefore, in addition to requiring air quality characterization near sources above the emission threshold, the rule also preserves the discretion of the EPA and air agencies to require air quality characterization in additional areas, which will necessitate consultation on a case-by-case basis regarding the need for characterization of additional areas beyond those containing a source exceeding the threshold in this rule.

Regarding the comments recommending specific criteria for subjecting multiple source areas to the requirements for air quality characterization, the EPA believes that too many factors influence the combined impact for the EPA to establish a single set of criteria for determining whether each area warrants becoming subject to the requirements for air quality characterization. Nevertheless, for the EPA and state agencies considering using their discretion to require characterization of additional areas, the EPA believes that the recommendations of these commenters provide good suggestions for where to begin making such decisions, to be followed by a case-by-case judgment as to the expected degree of combined impacts.

In numerous cases, areas include multiple operations that previously were all part of a single source that now for business reasons have subdivided their ownership, such that the operations that previously were a single source must now be considered multiple sources. For example, in many cases, where previously the area had a single integrated iron and steel mill, the iron- and steel-making operations now have separate ownership from the coke-making operations, such that the former single source has now become two sources. In these cases, an additional equity concern arises, that otherwise comparable facilities should not be treated differently based on a business decision that has no effect on air quality. If the combined emissions of these now separately-owned operations exceed 2,000 tpy, the impact would commonly be similar to the impacts of single facilities emitting over 2,000 tpy, and such groups of separately owned operations would thus warrant air quality characterization.

Regarding the commenters who recommended that the EPA stipulate that an area with multiple sources emitting less than the threshold should not be required to characterize air quality under the rule unless the combined emissions exceed the threshold, the EPA does not agree with this approach. Even for single source areas, the EPA is preserving the discretion air agencies and the EPA already have to require air quality characterization where the source emits less than the threshold but where concern about potential NAAQS violations warrants further air quality characterization. By the same logic, the combined impacts of multiple sources may warrant further characterization even if the combined emissions are less than the threshold.

C. Data Requirements and Program Implementation Timeline

1. Overall Timeline

a. Summary of Proposal

In the proposed rule, the EPA proposed an implementation timeline addressing feedback and concerns raised in previous stakeholder meetings, which the EPA considered to provide air agencies with sufficient flexibility and time to pursue either improved monitoring or modeling to characterize air quality. The EPA designed the schedule to allow air agencies to account for SO_2 reductions that will occur over the next several years as a result of implementation of national and state level programs and facility decisions for complying with such requirements (such as the Mercury and Air Toxics Standards (MATS)).[6] The

[6] In 2012 the EPA promulgated the Mercury and Air Toxics Standards under Section 112 of the CAA, 42 U.S.C. 7412, that set emission limits for several hazardous air pollutants. See 77 FR 9304 (Feb. 16, 2012). Installing the technology necessary to reduce emissions directly regulated by the MATS rule has already reduced the emissions of SO_2. Id.

EPA solicited comments on the feasibility of the implementation of the proposed timeline. *See* 79 FR 27456, May 13, 2014. The notice of proposed rulemaking also included a discussion of when the EPA envisioned the information could potentially be used in designation actions.

b. Brief Summary of Comments

Several state and industry commenters agreed that the EPA's proposed timeline was reasonable for acquiring data by either modeling or monitoring, and for evaluating the submitted data. Many also agreed that it would be a reasonable schedule for supporting the issuance of designations and submittal of any SIPs, provided future schedules for those actions accommodate the schedule for implementing the rule. However, a larger number of state and industry commenters asserted that the time allotted for installation of monitors was not sufficient. One state commenter stated that the feasibility of the schedule will depend upon the threshold option selected by the EPA. Another state commenter supported the timeline that the EPA proposed as long as the EPA finalizes the rule by late 2014 and added that, if promulgation is delayed, the timeline should be adjusted by as many weeks or months as the delay in finalizing the rule. Some state and industry commenters recommended an extension of at least 1 year on all the proposed actions listed in the implementation timeline. Other commenters felt that the proposed timeline was flawed for multiple reasons and is, therefore, not achievable.

c. EPA Response

The EPA recognizes the logistical and financial challenges that were identified by commenters with respect to the timeline. In response, the final rule contains changes to provide additional time for air agencies to determine whether to use modeling or monitoring to characterize air quality near their affected sources, discussed later in this section. However, the final rule retains the proposed deadlines for commencing monitoring or providing modeling. The Agency acknowledges that these deadlines do not provide as much time as some commenters would prefer; however, the EPA believes that these deadlines can be achieved with the appropriate planning, coordination, and program implementation by air agencies. The EPA notes that if air agencies conclude that the timeline and resource burdens associated with installing and conducting improved monitoring are not feasible for particular areas, they may instead choose the modeling approach, which is generally less expensive and can be performed more expeditiously than monitoring, to characterize air quality. Alternatively, in some cases the source owner and the air agency may be able to establish by January 2017 a federally enforceable requirement limiting emissions to less than 2,000 tpy, with the result that further modeling or monitoring in that area would not be required under the rule unless air agencies or EPA Regional Administrators conclude it is otherwise warranted. Because the purpose of this rule is to obtain improved air quality information in an efficient manner in order that these data may be used in future actions (such as area designations, redesignations, or other actions designed to ensure attainment of the 2010 SO_2 NAAQS) to protect the public from the short-term health effects associated with exposure to SO_2 concentrations that exceed the NAAQS, the EPA believes it would not be appropriate to further extend the timelines for air quality characterization in the rule.

The EPA believes that any further delay in air quality characterization around sources identified as a result of this rulemaking would delay the implementation of the SO_2 NAAQS and, therefore, would impede public health protection in areas that in the future show violations of the standard based on the data to be gathered under the rule. The EPA also believes that any significant delays in monitors becoming operational past the date of January 1, 2017, will certainly delay the potential for monitoring data to be used to inform actions that depend upon ambient concentration assessments, possibly past calendar year 2021. Finally, the EPA notes that under the terms of the March 2015 consent decree, in order to avoid the EPA being required to designate an area by December 31, 2017, an air agency will need to have installed and begun operating the new SO_2 monitoring system no later than January 1, 2017.

The Agency believes that it is very important to maintain the proposed timetable for conducting modeling and installing monitoring sites because of the need for these new data to be available to support future determinations concerning the attainment status of areas. The EPA encourages each air agency to engage in early dialogue with the appropriate EPA Regional Office and with the identified applicable facilities in order to meet the requirements of the rule. In particular, in light of the reality of the sometimes complex process of identifying potential monitoring locations, securing funding, and installing an appropriate number of new sites, if an air agency is considering the monitoring approach for one or more areas, early coordination should improve the air agency's potential for success in meeting the timing and requirements of the rule.

The final rule retains the January 15, 2016, date for submittal of a list of sources, because the EPA expects that this information is relatively straightforward to obtain, and it is beneficial for planning purposes to have this list available as soon as possible. However, as mentioned previously, in light of comments, the EPA is promulgating a schedule that provides an additional six months for the air agency to specify how it plans to address the area around each listed source. The EPA is promulgating a schedule in which July 1, 2016, is the deadline for selecting among the monitoring approach, the modeling approach, or establishing source emission requirements. If the air agency selects the monitoring approach for a source area, it must also include in the annual monitoring plan (also due by July 1, 2016) information about any new monitoring sites it will establish by January 1, 2017. If the air agency selects the modeling approach for a source area, it must also submit a modeling protocol at that time. If the air agency chooses the option of establishing an enforceable source limit or limits as an alternative to air quality characterization, it must also at that time provide a description of the planned emission limitation, including such information as emission rate, averaging time, and expected legal mechanism for making the limitation federally enforceable. To suffice as an alternative to the characterization requirement, the emission requirements or limits would need to be adopted by the air agency, made federally enforceable, and require compliance by January 13. 2017. Further discussion of the rationale for these revisions to the timetable is provided in the relevant subsections that follow. Table 1 shows

at 9305. On April 15, 2014, the D.C. Circuit denied 26 consolidated petitions for review of the MATS rule brought by state, industry, and environmental petitioners in *White Stallion Energy Ctr.* v. *EPA,* No. 12–1100 (and consolidated cases) (D.C. Cir.). The Supreme Court has reversed and remanded the D.C. Circuit's decision for further proceedings. *Michigan* v. *EPA,* Nos. 14–46, 14–47, 14–49, 2015 WL 2473453 (June 29, 2015). However, the MATS rule remains in effect at this time.

the final rule timetable, including this revision.

TABLE 1—TIMELINE FOR DRR IMPLEMENTATION

Date	Action
From promulgation of this rule to January 15, 2016.	Air agency and the EPA Regional Office consult on list of SO_2 sources; air agency submits its list of sources to EPA by January 15, 2016.
July 1, 2016	Air agency specifies for each source whether it will characterize air quality with modeling, characterize air quality with monitoring, or establish a federally enforceable requirement limiting annual emissions of the source to less than 2,000 tpy. For source areas to be modeled, the air agency submits a modeling protocol. For source areas to be monitored, the air agency submits information about any new monitoring sites it will establish by January 1, 2017. For areas where enforceable emission limits will be established as an alternative to air quality characterization, the air agency submits a description of the planned emission limit.
January 1, 2017	Air agency ensures that SO_2 monitors to satisfy the Data Requirements Rule are installed and operational.
January 13, 2017	For any source identified for modeling pursuant to the July 1, 2016, milestone, air agency submits modeling analyses. For any source identified for emission limit approach, air agency submits documentation showing that limits requiring annual emissions to be less than 2,000 tpy are effective and federally enforceable.
May 2020	For any source area identified for monitoring approach, air agency certifies 2019 monitoring data, enabling official design values for the 2017–2019 time period to be calculated.

In addition, while the proposed rule discussed how the timing of the implementation of this rule would fit with the anticipated schedule for completing area designations, the proposed rule did not itself purport to establish a binding schedule for completing designations. Table 2 provides information concerning the schedule for taking action to designate areas in the future in accordance with the March 2015 consent decree, but is intended for informational purposes only. In this rulemaking, we are not addressing comments received on the proposed rule concerning the designation process because those issues would be beyond the intended scope of this rulemaking.

TABLE 2—ANTICIPATED SCHEDULE FOR FUTURE ROUNDS OF SO_2 DESIGNATIONS

July 2016	Date by which the EPA must issue final designations for sources meeting specific criteria in the March 2015 consent decree.
August 2017	Expected date by which the EPA would notify states of intended designations based on air quality data obtained pursuant to the first round of the data requirements rule.
December 2017	Date by which the EPA must issue final designations for a majority of the country (pursuant to March 2015 consent decree), except for areas with new monitoring networks commencing operation by January 1, 2017.
August 2019	Anticipated due date for state attainment plans for areas designated nonattainment in 2017.
May 2020	Certification of 2019 monitoring data is required by this date.
August 2020	Expected date by which the EPA would notify states of intended designations for the remainder of the country.
December 2020	Date by which the EPA must issue final designations for the remainder of the country (pursuant to March 2015 consent decree).
August 2022	Anticipated due date for state attainment plans for areas designated nonattainment in 2020.

2. Issues Related to Submittal of List of SO_2 Sources Where Air Quality Is To Be Characterized, and Election of Modeling or Monitoring

a. Submittal of List of Sources Where Air Quality Is To Be Characterized

i Summary of Proposal

In § 51.1203(a), the EPA proposed to require each air agency to submit to its respective EPA Regional Administrator by January 15, 2016, a list identifying the specific sources in the state around which SO_2 air quality is to be characterized. The EPA stated that this proposed requirement for the air agency to submit a list of source areas identified for further air quality characterization, and the other data submittal requirements found in § 51.1203 of the proposed rule, are appropriate steps necessary to characterize SO_2 air quality throughout the country, and are consistent with sections 110(a)(2)(B), 110(a)(2)(K) and 301(a)(1) of the CAA. In the docket, the EPA provided a preliminary list of sources that appeared to meet the EPA's proposed thresholds (based on 2011 emissions data), and the EPA solicited comments on this list. *See* 79 FR 27446, 27461, May 13, 2014.

ii. Brief Summary of Comments

Some state and industry commenters opposed the requirement that, by January 15, 2016, air agencies must submit a list of sources. Some commenters also stated that submitting a list of sources is unnecessary for various reasons such as data are already made publicly available on an annual basis through the national emissions inventory; that it does not make sense to establish a list that is expected to change; and that air agencies and the EPA can work cooperatively without a binding requirement. Commenters also recommended that any listing of sources, and any identification of the selected air quality characterization approach for specific source areas, should wait until the January 2017 analysis for individual sources or areas is to be completed. One state commenter

indicated that they did not find merit in the citations that the EPA provided in the proposal regarding the authority for requiring this list submittal. This commenter stated that the CAA section 110(a)(2) citations address the requirements for SIP submittals by states for implementation, maintenance and enforcement of the standard. Several state commenters also suggested updates or revisions to the EPA's preliminary list of sources potentially subject to this rule.

iii. EPA Response

The EPA does not agree with commenters who claim that submittal of an initial list of sources near which air quality is to be characterized is not needed in January 2016. The EPA believes that it is important to receive the list of source areas to be characterized under the rule by January 15, 2016, because it will provide timely clarity for both EPA and the air agency about which sources and associated areas are to be characterized for air quality under this rule. In EPA's judgment, such timely clarity is essential to the success of the characterization efforts that follow the source identification step. The list will identify the sources in the state that exceed the 2,000 tpy emissions threshold based on the most recently available emissions data, as well as any other source or sources identified by the air agency or the EPA Regional Administrator as warranting air quality characterization. Development of this initial list will be important for air agencies as they prepare to generate timely air quality information that may be used to inform future designation, redesignation, or other decisions concerning attainment of the 2010 SO_2 NAAQS.

Retaining this deadline will provide the early opportunity for the air agency and the EPA to discuss and resolve questions about whether air quality characterization should be required for a particular area if, for example, emissions are low in some years and high in others, if an area has a cluster of smaller sources, or if source-specific or other factors may warrant the need for air quality characterization. As a further example, there may also be situations for which the state and the EPA need to reach agreement on what constitutes the most recent year of emissions data for specific EGU and non-EGU sources. The list requirement and deadline will ensure resolution of such questions in time to enable further characterization requirements to be met.

Thus, the EPA is retaining the January 2016 deadline, as proposed, for submittal of the list of sources in order to initiate an orderly process to obtain additional information on ambient SO_2 concentrations, and ensure these data are available to support actions taken for the implementation of the 2010 SO_2 NAAQS. While the Agency has previously acknowledged that some of the deadlines in this rule do not provide as much time as some commenters would prefer, the EPA believes that the schedule for providing the list of sources is a relatively straightforward exercise that can be accomplished within the required time frame.

The EPA strongly encourages each air agency to consult with its respective EPA Regional Office to identify sources exceeding the emission threshold in the final rule, and to identify any other areas near sources that do not exceed the emission threshold but which would be appropriate for further air quality characterization. It will be important for air agencies and the EPA to carry out this consultation process as early as possible and to reach agreement on the list of sources to characterize under the rule as quickly and efficiently as possible. It is also important to note that, due to the overlap between the criteria for inclusion of sources in this final rule and those in the March 2015 consent decree, all of the sources identified in the March 2015 consent decree should also be included on the January 2016 list of sources required for characterization under this rule. The consent decree requires the designation in July 2016 of areas associated with an initial list of sources meeting specific criteria. Depending on the specifics of those designation actions, information developed to support those actions may serve to meet some or all of the requirements of this data requirements rule. (*See* section IV.E, Other Key Issues and Comments, for more discussion of these issues.)

Regarding comments about EPA's authority to require submittal of a source list, the EPA believes that the requirements of this rule for air agencies to submit a list of source areas identified for further air quality characterization, and the other data submittal requirements found in § 51.1203 of this rule are appropriate steps needed to better understand SO_2 air quality throughout the country, and that including such requirements is consistent with sections 110(a)(2)(B), 110(a)(2)(K), and 301(a)(1) of the CAA.

Section 110(a)(2)(B) of the CAA indicates that state SIPs are to ''provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to (i) monitor, compile and analyze data on ambient air quality and (ii) upon request, make such data available to the Administrator.'' Section 110(a)(2)(K) of the CAA states that SIPs shall ''provide for (i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a NAAQS and (ii) the submission, upon request, of data related to such air quality modeling to the Administrator.'' Although both of these provisions direct what air agencies are required to include in SIPs, they clearly support the authority of the EPA to prescribe requirements that the information that SIPs are to ensure can be provided is collected in the first instance.

In addition, CAA section 301(a)(1) provides the EPA with general authority to establish regulations as necessary to carry out the agency's functions, which in this case includes ensuring that additional information is collected and provided so that air agencies and the EPA can ensure attainment and maintenance of the SO_2 NAAQS throughout each state. Finally, the EPA notes that CAA section 114(a)(1) also provides broad authority for the EPA, for the purposes of developing any implementation plan under section 110 or carrying out any provision of the CAA, to require monitoring and provision of other information the Agency may reasonably require (such as modeling information).

The EPA appreciates the comments on the preliminary list of sources that appeared likely to be subject to this rule as proposed. The EPA acknowledges that, for various reasons, such a list of sources could change up until the time that the list is required to be submitted. Accordingly, such a list is not being promulgated as part of this rule. The EPA plans on continuing consultations with air agencies regarding the source areas that the final rule will require to be characterized.

b. Choice Monitoring or Modeling

i. Summary of Proposal

In § 51.1203(b), the EPA proposed to require each air agency to state whether it will characterize air quality through improved ambient air quality monitoring or through air quality modeling techniques by January 15, 2016. The EPA also proposed in § 51.1203(b) that in an area with multiple subject sources, the air agency (or air agencies if a multi-state area) shall use the same technique (monitoring or modeling) to characterize air quality for all sources in the area. For

situations where multiple sources are located in proximity across state boundaries, the EPA recommended that the relevant air agencies work together to determine a common analytical approach for assessing air quality in that area. *See* 79 FR 27460, May 13, 2014.

ii. Brief Summary of Comments

Several state and industry commenters stated that the EPA should provide a more reasonable schedule for air agencies to elect the monitoring option under the proposed rule. Some commenters suggested that air agencies should have until January 1, 2017, to make this determination because they could benefit from using initial modeling results to inform this decision, such flexibility would reduce burdens on state regulators, and it could lead to more accurate determinations, while not impacting the EPA's expected attainment dates for such areas should the areas become designated nonattainment.

iii. EPA Response

In response to these comments, the EPA is providing additional time for making the election of modeling or monitoring (or, as discussed later, for making the election of an alternative approach that enforceably limits an applicable source's emissions). Accordingly, the deadline for this election will be July 1, 2016. The EPA recognizes that evaluating the relative merits of modeling and monitoring for any particular area, including identification of funding sources for any new monitoring that might be under consideration, warrants more time than was provided under the proposed rule. Consistent with this revision, the EPA is also revising the deadline for air agencies using modeling to submit modeling protocols for the applicable areas. Thus, under the final rule, by July 1, 2016, the air agency must submit its selection of whether each area will be characterized through modeling or monitoring and, depending on that selection, either must submit a modeling protocol or must include information in the Annual Monitoring Network Plan that specifies the monitoring to be conducted to address the requirements of this rule. The EPA believes that this revised deadline still provides for timely planning for air quality characterization to occur (through modeling) or begin (through monitoring) at the beginning of 2017. Conversely, the EPA does not agree that any later deadline for selecting the means of addressing air quality characterization requirements would provide the time and flexibility to address in a timely way any issues that arise after the selection is made. The result would be that a later deadline for this selection could jeopardize timely receipt of information characterizing air quality.

Notwithstanding this revision, the Agency encourages air agencies to start their investigation of this issue as soon as practicable. The EPA strongly encourages each air agency to consult with its respective EPA Regional Office to identify sources exceeding the emission threshold in the final rule and any other sources that do not exceed the emission threshold but near which further air quality characterization would be warranted. Similarly, the EPA strongly encourages air agencies to hold early discussions regarding the manner in which modeling or monitoring might be used. As one example, if the air agency believes that the existing monitoring network suffices to characterize air quality, early discussions with the EPA would be essential for assuring that the intended selection of monitoring is based on appropriate assumptions regarding the network's ability to characterize air quality near the applicable source(s) without further network adjustments.

c. Use of Most Recent Publicly Available Data

i. Summary of Proposal

In § 51.1202, the EPA proposed that the air agency should identify applicable sources of SO_2 based on the most recent publicly available annual SO_2 emissions data for such sources. The EPA specified in proposed § 51.1200, that ''annual SO_2 emissions data'' means the quality-assured annual SO_2 emissions data for a stationary source as reported to the EPA in accordance with any existing regulatory requirement (such as requirements to report continuous emissions monitoring data for EGUs subject to the acid rain program). The EPA stated that, by January 15, 2016, data for 2014 would be available for EGU sources and 2013 data would be available for non-EGU sources. By considering the most recent emissions data, the EPA noted that air agencies and the EPA will be able to take into account any recent emissions increases or decreases that would cause a source to be subject to the requirements in this proposed rule. The EPA included in the docket to the proposed rule a preliminary list of sources that appeared to meet the criteria described in the EPA's proposed source threshold approach and requested that air agencies provide in their comments on this proposed rule any relevant updated information that would support the addition or removal of a source from that preliminary list. *See,* 79 FR 27457, May 13, 2014.

ii. Brief Summary of Comments

Several state and industry commenters generally supported the approach that the basis for the emissions to be compared to the threshold would be the latest available 1-year of SO_2 emissions data. One industry commenter stated that using the most recent year of data ensures that any recent emissions reductions that have occurred will be properly taken into consideration.

One public interest group commenter stated that using the most recent year as a snapshot may fail to capture sources that simply have a low year, but normally emit at higher levels, and recommended that the EPA require that facilities only be excluded under the threshold if, in prior years, the facilities had similar low total emissions below the limit. A number of states provided information suggesting specific modifications to the EPA's preliminary list of sources.

One commenter stated that the rule should not take an ''all in'' or ''all out'' approach based on a simple analysis of 1 year's emissions or even a 3-year average of emissions alone. The commenter stated that the EPA seems to allow, or consider, the potential addition of non-threshold-meeting sources but does not appear to recognize that there may be instances where the air agencies knowledge and judgment warrants exclusion of threshold triggering sources. They suggested that air agencies should be able to take into consideration operational changes during the 3-year period to determine if a different methodology is appropriate for determining if a source should be a part of the analysis.

iii. EPA Response

The EPA continues to believe that the most appropriate generally applicable basis for determining applicability of the air quality characterization requirements is the most recent available year of emissions data for a stationary source as reported to the EPA in accordance with any existing regulatory requirement. As we have previously explained, SO_2 emissions are trending downward, due to numerous national and regional requirements that have recently been adopted and are taking effect. The Agency believes it is reasonable to account for this trend by basing applicability for this data requirements rule on the most recent available year of emissions.

By January 15, 2016, the EPA would expect that 2014 data will be available for all EGU sources, and 2015 data may be available for many EGUs in accordance with the requirements of the Acid Rain program and other emission trading programs that require data certification soon after the end of the year. These sources report hourly emissions data to the EPA on a quarterly basis. Emissions data for large SO_2 sources also would be available from annual reporting required for the AERR. Every 3 years (*i.e.,* 2011, 2014, 2017 and so on), air agencies must submit to EPA emissions data for SO_2 sources with the potential to emit more than 100 tpy. In other years, the AERR requires states to report emissions data for SO_2 sources with the potential to emit more than 2,500 tpy. These annual reports under the AERR are due 12 months after the end of the emissions year. Thus, the EPA would expect that in January 2016, states would have emissions data for calendar year 2014 available for non-EGU sources over 100 tpy potential to emit. Emissions reporting requirements for the Acid Rain and AERR programs would be expected to cover the vast majority, if not all, of the sources subject to the SO_2 DRR.

By considering the most recent emissions data, the air agency and the EPA will be able to take into account any recent emissions increases or decreases that would cause a source to be subject to the requirements in this rule or not. Although identifying sources based on the most recent year of emissions is a reasonable basis for prioritizing limited modeling and monitoring resources for characterizing current air quality, the EPA recognizes the concern of some commenters that there may be sources that in the most recent year have emissions that are lower than normal and are not representative of normal operations. In these cases, *i.e.,* where recent emissions are below 2,000 tpy but no controls have been installed and past representative emission levels are typically above 2,000 tpy, the state and the EPA should consider using their discretion to require additional air quality characterization near such sources.

The EPA also recognizes the concern about sources for which the most recent year's emissions are unrepresentatively high, *i.e.,* that some sources may have recent year emissions above 2,000 tpy but normally emit below that level. Given the trends in emissions, the EPA believes that situation will be relatively rare. Moreover, the existence of such sources does not negate the general conclusion that recent emissions data are an appropriate means for targeting limited modeling and monitoring resources for characterizing current air quality.

The EPA believes that a rule that prioritizes resources based on the most recent year's data is more appropriate for a broader range of circumstances. The EPA notes, however, that after a source is initially identified, the air quality characterization requirements require air agencies to provide at least 3 years of monitoring or modeling data. The availability of such data will provide the opportunity to give appropriate consideration to representative emissions when using such data, as appropriate to the specific use.

d. Shutdowns and Limitations on Emissions Levels by January 13, 2017

i. Summary of Proposal

The EPA noted in the proposed rule that there may be sources in the power industry and other sectors that are in operation as of January 15, 2016, but may be scheduled to shut down (*e.g.,* due to a consent decree or other legal requirement), or may choose to shut down, prior to January 2017 (when the air agency should have ambient monitors operational and air quality modeling completed). The EPA proposed that any applicable source that intends to shut down but is still in operation on January 15, 2016, should be included on the air agency's list for SO_2 air quality characterization. However, if by January 13, 2017, the air agency can provide the EPA with a legal agreement confirming that the listed source has permanently and enforceably shut down, then under the proposal the air agency would have no further obligation regarding air quality characterization for this source pursuant to this rulemaking. *See* 79 FR 27458, May 13, 2014.

ii. Brief Summary of Comments

One state commenter recommended that the EPA revise the rule to exempt from the list those sources that take an enforceable emission limitation below the 2,000 tpy emissions threshold before January 13, 2017, even if reductions and applicability of the limitation are only realized within a reasonable time after January 13, 2017. Several commenters stated that there is no basis to distinguish between situations in which a source may provide documentation it will shut down, and cases where an enforceable limit is established, because in each case the source would no longer meet the criteria for characterization under the rule. Another commenter stated that sources should be able to take federally enforceable limits on a tpy basis prior to the January 13, 2017, date for air agencies to submit their modeling analysis to avoid characterization under the rule. Another state commenter stated that requiring sources to implement controls prior to submittal of future required SIPs would encourage sources to make emission reductions while allowing sufficient time to implement these actions.

Some state and industry commenters recommended that sources should have until the applicable attainment date for a designated nonattainment area to complete any enforceable actions that achieve attainment, provided those actions are committed to by January 13, 2017. Commenters stated that there is insufficient time for sources to take all the actions needed to implement these controls (including conducting modeling, determining the required reductions and control strategies, procuring capital funds, obtaining permits and installing equipment) under the proposed rule. Commenters stated that allowing sources to implement controls after January 13, 2017, but before future attainment dates supports the EPA's desired outcome of achieving emission reductions as quickly as possible; in contrast, under the EPA's proposal, sources unable to have enforceable limits in place by the January 13, 2017, deadline have little incentive to take any action prior to the anticipated designation deadline of 2020.

iii. EPA Response

The EPA is finalizing the proposed approach to allow a state with a source that is in operation as of January 15, 2016, but that provides documentation that the source will shut down permanently prior to January 13, 2017 pursuant to a federally enforceable mechanism (*e.g.,* source-specific SIP revision or minor NSR permit revision submitted to the EPA by January 13, 2017), to avoid being subject to the requirement to characterize air quality in the vicinity of the source.

As a result of comments received on the proposed rule, the EPA is clarifying how this exclusion would work relative to the requirement for development and submittal in January 2016 of the list of sources near which air quality is to be characterized. The EPA appreciates that there might be a source whose most recent year of actual emissions exceeds the threshold for inclusion on the list, but for which the state has already adopted, or will soon adopt, enforceable requirements to shut down by January 2017. Such a source may have significant emissions during the most

recent available year, or may even still be in operation on January 15, 2016. The EPA has determined that the clearest way to implement the exclusion from the air quality characterization requirement is to require that the air agency initially identify such a source on its list for SO_2 air quality characterization because emissions in the previous year, which serve as the basis for listing under this rule, exceeded the emissions threshold. However, the final rule now includes language in § 51.1203(b) allowing the air agency to indicate by July 1, 2016, that it will provide the EPA with a federally enforceable requirement confirming that the source will be permanently and enforceably shut down by January 13, 2017. For a source for which the air agency provides documentation of a federally enforceable requirement that the source will shut down, the air agency will have no further obligation regarding air quality characterization pursuant to this rulemaking. This approach accomplishes the intent of the proposal by implementing the approach in a more clear and straightforward manner.

Commenters on the proposed rule also suggested that, in a similar manner, an air agency should not be subject to the air quality characterization obligation for any source that is initially on the list of sources due in January 15, 2016 (based on most recent actual emissions), but that becomes subject to a federally enforceable requirement to limit annual SO_2 emissions to below the 2,000 tpy emissions threshold. The EPA finds merit in those comments that suggest that the rule allow for similar treatment for sources that become subject to a federally enforceable emission limit as is allowed for sources that provide documentation that they will shut down. The EPA has revised the final rule accordingly, and provides further discussion below. However, EPA does not agree with commenters who suggest that sources should have until the applicable designation date, or attainment date for an area that is designated nonattainment, to implement controls that were committed to prior to January 13, 2017. Relying on commitments for emission reductions to occur after 2017 would not be consistent with the main focus of this rule, which is to provide current, updated information on priority SO_2 sources to the EPA beginning in early 2017 that will inform future area designations (now required in December 2017 and December 2020 per the March 2015 consent decree).

As indicated above, a source would be listed for air quality characterization if its most recent emissions were above the 2,000 tpy threshold. However, the final rule also allows the air agency to meet the requirements of this rule by submitting a federally enforceable emissions limitation (*e.g.,* source-specific SIP revision or minor NSR permit revision) to the EPA by January 13, 2017, that requires the affected source to reduce allowable emissions at the source to an annual rate below the 2,000 tpy threshold level by January 13, 2017. By July 1, 2016, the air agency would be required to identify the sources on the list for which it would be using such an approach as an alternative to modeling or monitoring. For such a source identified on the list, if the affected air agency has adopted and the source has become subject to federally enforceable control measures lowering emissions below 2,000 tpy by January 13, 2017, the air agency will generally not be required to further characterize the impacts from the source's emissions solely due to its size as of January 15, 2016.

Although air agencies may follow this option as an alternative to characterizing areas with sources that limit their emissions to below the 2,000 tpy size threshold, the EPA believes that air agencies and the EPA must apply judgment as to whether there are still reasons to characterize these areas due to other factors. As discussed above, some areas where all sources emit less than 2,000 tpy may nevertheless warrant air quality characterization, for example because the area has a cluster of sources with intermediate emission levels or because the characteristics of a source or the area warrant it. Thus, some areas with all sources limited to below 2,000 tpy may still warrant air quality characterization. Therefore, the EPA urges air agencies to consult early with the EPA regarding areas that are under consideration for being addressed in this manner, in order to develop a common understanding as to whether emission limits under consideration would suffice as an alternative to air quality characterization for the area.

The EPA believes that allowance for this alternative emission limit approach is not only consistent with the intent of this rule to prioritize resources to focus on the largest sources of SO_2, but it also has the additional benefit of providing an incentive for early emission reductions to occur which will improve air quality in these areas in an expeditious manner. However, we do acknowledge the distinction between a formerly large source with no future emissions and a source with reduced but continuing emissions. The Agency does not believe it would be appropriate to provide that the latter source can be excluded from evaluation in all cases. It may be that a source with emissions newly limited to below the applicability threshold—particularly one with limits established just below the threshold—may warrant further characterization, just as a source with actual emissions below the threshold may warrant characterization in some instances. For example, air quality characterization would continue to be warranted in areas with other sources over the applicability threshold, and in areas where no single source has emissions over the threshold but the combined emissions of multiple sources warrant air quality characterization. In evaluating such cases, the air agency should account for all source emissions contributing to ambient concentrations in the area, including those remaining emissions from the source that has just reduced its levels to below the applicability threshold. For this reason, the rule does not automatically exempt sources with emissions limited to less than 2,000 tpy from air quality characterization requirements; the rule instead provides that the air agency or the EPA may judge that the area should continue to be required to characterize air quality notwithstanding the new emission limits. Air agencies are thus advised to consult with their EPA Regional Office before pursuing this alternative to air quality characterization for a particular source area.

3. Issues Related to Submittal of Modeling Protocols

a. Summary of Proposal

For source areas that an air agency identifies are to be evaluated through air quality modeling, the EPA proposed in § 51.1203(d) that an air agency must also provide a modeling protocol to the EPA Regional Administrator for review by January 15, 2016. In the proposal, the EPA stated that the EPA Regional Offices would review the submitted information and consult with the air agency as expeditiously as practicable, either approving the submitted information in a similar manner to approval of annual monitoring plan updates, or having further discussion with the air agency if adjustments to modeling protocols are warranted. *See* 79 FR 27458, May 13, 2014.

b. Brief Summary of Comments

Several commenters stated that 1 year is not enough time to complete modeling demonstrations. These commenters stated that depending on the scope of the modeling required, it would take 2 to 4 years to complete the

entire process. The modeling time estimate will increase if refined modeling is required to site monitors and if the EPA expects the states to submit modeling protocols and not conduct any refined modeling to support monitor placement decisions until the EPA approves the protocols.

Several state and industry commenters objected to the EPA oversight of the modeling protocols. Commenters were concerned that the EPA could not review the plans in a timely manner and could cause delays in the process. One state commenter stated that, if this oversight and approval is finalized in this rule, they have serious concerns about whether 2 years from promulgation of the final rule is a reasonable amount of time for air agencies to prepare the necessary data inputs and conduct such modeling for all subject sources. One state commenter suggested that the EPA should clarify that air agencies could provide to the EPA a modeling protocol framework for review and approval, and that source-specific review of protocols should be left up to the respective state agency, consistent with past practices in PSD SIP approved states as well as past practices supporting Best Available Retrofit Technology (BART).

Some state and industry commenters recommended that the EPA oversight/approval of model protocols should be eliminated and air agencies should be able to determine the best approach, using the normal course of discussion and cooperation with their respective EPA Regional modeling contacts, and document that approach with the final submittal to the EPA. One industry commenter stated that it is arbitrary and capricious to require EPA approval of state monitoring and modeling plans when the EPA's technical resources are too stretched to provide this oversight in a timely manner.

c. EPA Response

The EPA recognizes the concerns of the commenters about the time and resources needed to develop effective modeling protocols. To clarify, the final rule does not require EPA approval of modeling protocols before air agencies may begin conducting modeling, but does direct air agencies to submit to the EPA modeling protocols by July 1, 2016. As with the modeling itself, directing submission of protocols is within the EPA's authority to prescribe modeling for the purpose of predicting the effect on ambient air quality of emissions under CAA section 110(a)(2)(K), and to prescribe such regulations as are necessary for the EPA to carry out its functions under CAA section 301(a)(1). It is reasonable for the EPA to establish a process that provides an opportunity for preliminary EPA assistance to air agencies to ensure that their subsequent modeling is conducted in a manner that results in information that can reliably inform subsequent EPA actions determining air quality status under the SO_2 NAAQS. As explained below, the submission of modeling protocols will increase the likelihood that subsequent air agency modeling is sufficient for this purpose, and thus will clearly assist the EPA in carrying out its functions of determining air quality status.

As noted above, the EPA is allowing air agencies approximately six additional months to determine whether to characterize air quality through modeling or monitoring in order to accommodate the concerns about time needed to make this determination, without delaying the date by which information for characterizing air quality becomes available. Consistent with this revision, the EPA is delaying the deadline for states to submit modeling protocols for sources for which they choose to characterize air quality through modeling, to match the July 1, 2016, deadline for selecting an air quality characterization approach. The EPA believes that it is important and valuable for the EPA Regional Offices to work closely with air agencies to ensure that modeling protocols are adequate to ensure that the modeling for sources accurately characterizes air quality near sources. Requiring modeling protocols will help to keep air agencies from getting too far into the modeling process in a manner that may not be appropriate, which could occur absent such preliminary consultation with the EPA and, if it occurred, could result in the air agency needing to re-conduct modeling after submission to the EPA. The EPA does not intend to formally approve these protocols, nor does the EPA believe that a one-size-fits-all timeline, process, or presumption regarding approval or disapproval of these protocols is warranted. Nevertheless, the EPA believes that submittal of protocols will facilitate identification, and resolution of modeling issues, and will thereby help to avoid a later situation in which the EPA would not be able to rely upon the air agency's modeling in subsequent actions determining air quality status. Review of modeling protocols by the EPA will help ensure that the air agency's modeling will be appropriate for use in making future determinations regarding areas' attainment status, such as designations or redesignations. If an air agency's modeling protocol is not submitted in advance of the subsequent modeling, the chances are greater that the EPA may not have critical air quality information when it is needed (for example, when the EPA intends to make area designations). Therefore, the EPA believes that a requirement for the air agency to provide modeling protocols for relevant sources to the EPA Regional Administrator by July 1, 2016 is a reasonable requirement. The modeling protocol should include information about issues such as emissions input data, modeling domain, receptor grid, meteorological data and how to account for background concentrations.

As was the case for the development of the list of sources and characterization approaches, the Agency acknowledges that the schedule for state submittal and the EPA review of modeling protocols is expeditious. The EPA nevertheless believes that the schedule can be achieved with appropriate planning, coordination, and program implementation by air agencies, and believes that it is necessary to establish expeditious timelines to ensure timely availability of the air quality information. The EPA Regional Office staff will be available to consult with air agency officials to refine the modeling protocols for relevant sources. The EPA Regional Offices will review the submitted information and consult with the air agency expeditiously to discuss any recommended adjustments to the protocol.

4. Issues Related To Submittal of Annual Monitoring Network Plans That Include SO_2 Monitoring Network Modifications To Satisfy the DRR

a. Summary of Proposal

In areas where air quality will be characterized through ambient monitoring to satisfy this rulemaking, the EPA proposed monitoring requirements in § 51.1203(c), including the requirement that air agencies submit relevant information about these monitoring sites to the EPA Regional Administrator by July 1, 2016, as part of their annual monitoring network plan, in accordance with the EPA's monitoring requirements specified in 40 CFR part 58. In the proposal, the EPA encouraged air agencies to work with the EPA Regional Offices in the development of an appropriate network plan which would include the rationale for why the proposed number of sites and their individual locations are appropriate. The EPA stated in the proposal that optional considerations for siting these monitors are discussed

in the draft Monitoring TAD.[7] *See* 79 FR 27458, May 13, 2014.

b. Brief Summary of Comments

Several state and industry commenters asserted that it is unreasonable for the EPA to assume monitoring plans can be submitted by the proposed July 1, 2016, deadline. Some commenters stated that it may not be determined that monitoring would be appropriate in certain areas until after a lengthy round of initial modeling is complete. Other commenters stated that siting monitors is a lengthy process which involves, among other steps, working with the sources and the EPA to determine where monitors should be located, obtaining access to sites, identifying funding, and procuring and installing equipment. Furthermore, one commenter stated that, for sources that choose to operate monitoring equipment, additional time will be needed to (1) develop documentation between air agencies and sources to ensure that sites are adequately maintained and that data are reported in a timely and complete manner, and (2) to put in place a quality assurance program consistent with the EPA requirements for the entire monitoring network.

c. EPA Response

The EPA is finalizing the requirement that any plans to conduct monitoring to satisfy requirements of this rule (by air agencies, industry, or other parties) shall be reflected in the state's Annual Monitoring Network Plan due by July 1, 2016. The Agency believes that monitoring resources can be appropriately put in place by the January 1, 2017, deadline to satisfy this rule, particularly if air agencies begin planning as soon as possible. The EPA has encouraged air agencies to begin the monitor planning process early, particularly for the largest sources. As stated previously, the EPA believes that while the schedule for meeting the requirements of this rule is expeditious, the schedule can be achieved with the appropriate planning, coordination, and program implementation by affected air agencies. The EPA strongly encourages air agencies to start their investigation of this issue as soon as practicable. The EPA also encourages each air agency to consult with its respective EPA Regional Office to identify sources exceeding the emission threshold in the final rule and any other sources that do not exceed the emission threshold but which would warrant the characterization of nearby air quality. In addition, as stated previously, the EPA believes that it is necessary to establish expeditious timelines to ensure timely availability of air quality information. With this in mind, and in light of the many logistical concerns raised by commenters and recognized by the EPA, the Agency is encouraging air agencies to engage with their respective EPA Regional Offices well in advance of the time by which the Annual Monitoring Network Plan is due. To this end, states should share their draft SO_2 network design plan for SO_2 monitoring intended to satisfy this rule with the EPA and the public in advance of the complete Annual Monitoring Network Plan.

The reality of the sometimes complex process of identifying a location, securing funding and installing a new monitoring site, necessitates such an approach. The Agency believes that early interaction between air agencies and the EPA Regional Offices and industry will likely improve the potential for success in installing an appropriate number of monitors in appropriate locations around SO_2 emitting facilities identified for characterization in this rulemaking.

5. Issues Related to Deadline for Operation of SO_2 Monitors

a. Summary of Proposal

The EPA proposed in § 51.1203(c)(1) that air agencies that have chosen to characterize air quality through ambient monitoring must have any relocated and/or new monitors operational by January 1, 2017. In the preamble, the EPA explained that, under this approach, it is anticipated that the first 3 calendar years of data would be collected from 2017 through 2019, allowing the first design value for each monitor to be calculated by May 2020. This would allow these new monitoring data to be used to inform air agency and the EPA determinations of areas' attainment status in actions that occur in 2020, which could include designations and redesignations. *See* 79 FR 27458, May 13, 2014.

b. Brief Summary of Comments

One industry commenter stated that the proposed rule reflected a reasonable timeframe for air agencies to collect the data, either through monitoring or modeling, that are needed to characterize air quality in areas and determine whether the 1-hour SO_2 NAAQS is being met. One state commenter also asserted that the feasibility of this time period will be dependent upon the threshold option selected by the EPA and, thus, the number of affected sources.

However, more than 10 state and industry commenters asserted that the short time period between the dates when the monitoring plans need to be submitted and the monitors are required to be operational is inadequate. One industry commenter stated that it is technically infeasible to implement the proposed rule by 2017 and, thus, the EPA's proposal is arbitrary and capricious.

Several state and industry commenters recommended an extension of at least 1 year for air agencies to begin actual monitoring. One state commenter suggested that the EPA should allow monitoring to begin operation between May 1, 2017, and July 1, 2017, which would be consistent with its suggested approach allowing air agencies to notify the EPA of selection of the monitoring option up to January 1, 2017. This commenter recognized that this approach would likely require delaying the attainment date, if designations are not made until after 3 calendar years of the new monitoring data are obtained and certified. This commenter also noted that, if the EPA's approval of an SO_2 monitoring plan under this proposal does not occur until late 2016, air agencies with winter weather concerns would simply not have sufficient time to set up a monitoring network by January 1, 2017. Another state commenter noted that other recent rules establishing new monitoring requirements (such as NAAQS revisions for NO_2, SO_2 and $PM_{2.5}$) have not required such rapid deployment of monitors, but have each allowed at least 1.5 years from submittal of the network plan to operation of the monitor.

c. EPA Response

The EPA recognizes that the logistical and financial burdens of installing an ambient air monitoring station can vary in difficulty and the resources required. However, as noted earlier with regard to the overarching timetables effected by this rule, the Agency believes that, as with other parts of the implementation schedule, while the schedule for operating monitors is expeditious, it can be achieved with appropriate planning, coordination, and program implementation by the air agency which will allow monitoring resources to be in place by the deadline. The EPA believes that any further delay in air quality characterization around sources identified as a result of this rulemaking will delay implementation of the standard and public health protection in areas where there may be a violation of

[7] The SO_2 NAAQS Designations Source-Oriented Monitoring Technical Assistance Document can be found at *http://www.epa.gov/airquality/sulfurdioxide/pdfs/SO2MonitoringTAD.pdf.*

the standard. The Agency believes that it is most prudent to maintain the proposed timetable for monitoring network installation because of the need for use of these new data in a relatively timely manner for use in making attainment status decisions concerning SO_2 areas in the country. Therefore, the EPA is finalizing the date by which monitors being used to satisfy this rulemaking must be operational to be January 1, 2017.

As noted previously, if a state chooses to monitor to satisfy the requirements of this rule, planning for the installation of new monitors must occur early on, soon after this rule is promulgated. With this in mind, and in light of the many logistical concerns raised by commenters and recognized by the EPA, the Agency is encouraging air agencies to engage with their respective EPA Regions well in advance of the time by which the Annual Monitoring Network Plan and network operations are due. The EPA is encouraging air agencies to engage with their respective EPA Regional Offices, and possibly the industrial sources needing nearby air quality characterization, to plan an adequate network design as early as possible after this rule is promulgated. The reality of the sometimes complex process of identifying a location, securing funding and installing a new monitoring site, necessitates such an approach. The Agency believes that early interaction between air agencies and the EPA Regional Office and industry will likely improve the potential for success in installing an appropriate number of monitors in appropriate locations around SO_2 emitting facilities identified in this rulemaking as needing nearby air quality to be characterized. The EPA also notes that if air agencies conclude that the timeline and resource burdens associated with installing and conducting improved monitors are not feasible for particular areas, they may instead choose the less resource-demanding and more expeditious method of modeling to characterize SO_2 emissions impacts in such areas.

6. Issues Related To Submittal of Modeling Analyses to the EPA

a. Summary of Proposal

The EPA proposed in § 51.1203(d)(3) that air agencies that choose modeling to characterize ambient air quality be required to submit modeling analyses to the EPA Regional Office by January 13, 2017. In the proposal, the EPA recommended that these modeling analyses should be conducted in accordance with the recommendations in the EPA's Modeling TAD [8] or as otherwise agreed upon with the EPA Regional Office on a case-by-case basis. The EPA stated that the EPA Regional Office and the air agency should engage actively in consultation to understand the inputs, assumptions and findings associated with each air quality modeling analysis; the air agency should submit thorough documentation of its modeling analysis; and the air agency should provide the EPA with supplemental information about the analysis upon request.

The proposal also indicated that where areas have not already been designated under the 2010 SO_2 NAAQS, air agencies could submit updated designation recommendations, if appropriate, as informed by their modeling analyses. The proposal noted that in developing any updated designation recommendations, the air agency should follow the EPA's most recent SO_2 designation guidance.[9] See 79 FR 27458, May 13, 2014.

b. Brief Summary of Comments

One state commenter disagreed with the requirement that comprehensive modeling analyses and related supporting information need to be submitted to the EPA. This commenter asserted that the modeling analyses will be conducted by the facility owners and reviewed by the state air agency, and the air agency should be able to forward just a summary of the analyses to the EPA with sufficient information for the EPA to evaluate.

c. EPA Response

The EPA is finalizing its proposed approach of requiring that air agencies choosing modeling to characterize ambient air quality be required to submit modeling analyses to the EPA Regional Office. Irrespective of whether the state or a third party conducts the modeling, it is the state's responsibility under the CAA to submit the information that this rule requires. The EPA anticipates that any state submittal of third-party modeling would reflect a review as to whether it believes that the modeling satisfies applicable requirements. Moreover, the EPA anticipates that the submittal would provide adequate information for the EPA to review the adequacy of the analysis as well.

D. Technical Issues Relating to Modeling and Monitoring

1. Technical Assistance Documents (TADs)

This section of the preamble presents a discussion of the threshold-based air quality characterization approach to implement the SO_2 NAAQS in areas that contain sources with larger SO_2 emissions, in order to address areas where there may be higher potential for NAAQS violations that adversely affect public health. This section discusses the different recommended approaches air agencies may use to provide the necessary air quality information to the EPA for areas around those identified sources.

a. Summary of Proposal

In the preamble of the proposed rulemaking, the EPA noted that the Agency has produced draft, non-binding Monitoring and Modeling TADs that discuss options, suggested approaches and methods on how monitoring or modeling efforts to characterize air quality around an identified source might be conducted. The EPA stated that these documents can be used to assist air agencies in the implementation of this rulemaking. *See* 79 FR 27460, May 13, 2014.

b. Brief Summary of Comments

One industry commenter stated that the proposed rule references and relies upon guidance provided in the Modeling and Monitoring TADs and in EPA's Guideline on Air Quality Models; therefore, the commenter asserted that the documents are subject to review and comment for the proposed rule. One state commenter asserted that it is challenging to prepare meaningful comments on the proposal since much of it is contingent upon the use of the TADs.

Some state and industry commenters urged the EPA to be clearer in the final preamble that the TADs are guidance and, therefore, are not binding. One state commenter urged the EPA to explicitly state in the final rule that air agencies retain the ability to use alternative methods to those outlined in the TADs. One industry commenter stated that the EPA's reliance on technical guidance documents that have not been subject to public notice and comment undermines protections guaranteed by the Administrative

[8] The Draft SO_2 NAAQS Designations Modeling Technical Assistance Document can be found at *http://www.epa.gov/airquality/sulfurdioxide/pdfs/SO2ModelingTAD.pdf.*

[9] The EPA issued initial guidance on the SO_2 area designations process on March 24, 2011. *See http://www.epa.gov/air/sulfurdioxide/pdfs/20110411SO2designationsguidance.pdf.* Note: The EPA issued updated SO_2 designations guidance. *See* ''Updated Guidance for Area Designations for the 2010 Primary Sulfur Dioxide National Ambient Air Quality Standard'', March 20, 2015. Available at: *http://www.epa.gov/airquality/sulfurdioxide/pdfs/20150320SO2designations.pdf.*

Procedure Act. One state commenter stated that because the rule ''requires'' the use of ''. . . separate non-binding draft technical assistance documents . . .'' and creates significant regulatory uncertainty for air agencies, they oppose the proposal.

c. EPA Response

The EPA reiterates that the TADs provide recommendations but are not binding or enforceable and create no obligations on any person. Although the draft TADs are referenced as recommended approaches in the preamble to the proposal and in this final rulemaking, they are not required to be adhered to by any air agency required to characterize air quality around an SO_2 source identified in this rulemaking. The EPA developed the TADs to aid air agencies seeking advice in the air quality characterization process required by this rulemaking. The Agency has indicated that the TADs are meant to be used as possible tools to aid air agencies. This rulemaking does not codify the TADs, and none of the comments on the proposed rule regarding the TADs resulted in changes to the rule itself. The TADs are considered to be living documents that the EPA may update as necessary over time. The Agency believes that a modeling protocol or monitoring network design that follows or references the recommended approaches in the TADs is likely to be adequate, and will better ensure the success and a timely fulfilment of the requirements of this rulemaking. However, air agencies remain free under the final rule to suggest alternative approaches to those suggested in the TADs. Whether an agency chooses to follow a TAD or suggest an alternative approach does not affect the fact that for every approach chosen, the air agency will need to submit their rationale and approach to the EPA for review on a case-by-case basis.

The EPA disagrees with the commenters who claimed that the proposal's reference to the TADs violates the rulemaking requirements of the Administrative Procedure Act. The Agency did not propose, and is not promulgating language that the TADs are required to be followed, and is not changing their status as non-binding technical assistance documents. In response to the request that the TADs be subjected to notice and comment, in fact the first drafts of the TADs were circulated for review and comment by stakeholders, and revised versions of the TADs were developed in response to those comments.

2. Monitoring and Network Design Issues

a. Summary of Proposal

The EPA proposed that air agencies that select the monitoring approach to characterize air quality in an area would have the option to identify appropriate existing monitoring sites, relocate monitors as appropriate or install new monitors, and have them operational by January 1, 2017, in order to provide data for use in the anticipated designations process in calendar year 2020. The EPA proposed to require that any relocated or new monitors be operated either as SLAMS, or in a manner equivalent to those monitors operated elsewhere in the SLAMS network; they do not, however, have to be designated as SLAMS monitors. In the proposal, the EPA stated that the monitors should use Federal Reference Methods (FRMs) or FEMs and meet the requirements of 40 CFR part 58, appendices A, C, and E. Further, the EPA stated that the resulting data should be reported to the Air Quality System (AQS) and would be subject to the same annual data reporting and certification requirements listed in 40 CFR 58.15 and 58.16 as required for SLAMS data. *See* 79 FR 27461, May 13, 2014.

b. Brief Summary of Comments

Some commenters suggested that the rule should allow a third party, such as a facility owner, to cover the expenses of siting and operating new monitors in coordination with the air agency. One public interest group commenter stated that there are numerous considerations that make it unlikely that monitors could be sited at ideal modeled locations, including access to the location, power hookups, local pollutant effects and safety from vandalism. Several commenters expressed concern that the lack of clear criteria for designing an SO_2 source-oriented monitoring network puts air agencies in the unreasonable position of designing a monitoring network without knowing whether it will be approved by the EPA.

Some commenters stated that guidance is needed on the number of monitors required. Commenters stated this issue should not be left up to negotiations with the EPA Regional Office; rather, a procedure should be outlined that will provide consistency for all regional offices and air agencies. Some state and industry commenters suggested that one monitor may be sufficient and recommended the final rule include a discussion of the adequacy of one monitor in certain situations. One industry commenter stated that, because large gradients in design concentrations for SO_2 are likely not present to the extent that the EPA may expect, the use of a single monitor to demonstrate NAAQS attainment is sufficient in many cases.

c. EPA Response

The EPA believes that there are no limitations as to who might operate a monitor or monitors being used to satisfy the requirements of this rulemaking. It can be a state, local or tribal government, industry, other third parties or a mix thereof. Whatever the case, the monitor or monitors should be included as a part of the state's monitoring plan. The critical issue is that the monitor or monitors must be either a SLAMS monitor or SLAMS-like monitor, where the latter might be an industrial or other third party-operated monitor. In either case, the monitor or monitors must be an FRM or an FEM monitor, and must adhere to requirements in 40 CFR part 58, appendices A, C, and E, and adhere to data reporting requirements also contained in 40 CFR part 58. This does require states to provide oversight to any non-SLAMS sites for which they are claiming to satisfy this rulemaking, as the states have the final responsibility to ensure the quality of submitted data that satisfies the intent of this rulemaking.

With respect to concerns over a lack of clear criteria for designing an SO_2 source-oriented monitoring network, the likelihood to appropriately place one or more monitors, and the issue of what number of monitors might be required around a source, there is no one-size-fits-all answer to this question. The EPA indicated in the preamble to the proposal, and in the draft Monitoring TAD, that the relative location and number of monitors that might be sufficient to characterize the air quality around a source is a case-by-case determination. In general, the main objective is to monitor at, or as near as possible to, the location(s) where ambient SO_2 concentration maxima are expected to occur. Site selection for any monitoring network is subject to logistical hurdles including site access, identification or installation of appropriate infrastructure, telecommunications access, and safety, and state, local, and tribal air agencies are well versed in the variety of logistics that can be involved in the installation of an ambient air monitoring station. These issues undoubtedly can play into what any ambient air monitoring network ultimately looks like. However, as is the case with all required ambient air monitoring, responsible air agencies are expected to establish a clear rationale for the number and placement

of the monitors it is using to satisfy the requirements of the rule. In this process, there is flexibility for the state to use professional judgment in determining what is appropriate for their individual situations, but they are expected to perform due diligence in attempting to locate monitors in the most ideal locations possible. Further, the air agency's recommended number of monitors and preliminary rationale should be discussed with the EPA Regional Offices well in advance of the development of an Annual Monitoring Network Plan. As discussed in the Monitoring TAD, the development of a network design and its rationale can be informed by a number of types of analyses which can include the use of air quality modeling, exploratory monitoring, or analysis of existing data. In any scenario, the state would need to have a technically credible rationale that supports the monitoring network design approach that has been chosen to satisfy requirements in this rulemaking.

As stated previously, the TADs provide recommendations for air agencies, but are not binding or enforceable, and they create no obligations on any entity. Although the draft TADs are referenced as providing recommended approaches in the preamble to the proposal and in this final rulemaking, there is no specific provision in this rule that requires the air agency to adhere to the TADs. The TADs have been provided in order to potentially aid air agencies seeking advice in the air quality characterization process required by this rulemaking.

3. Areas Failing to Having New Monitors Operational by January 1, 2017

a. Summary of Proposal

Where an air agency has chosen the monitoring approach and submitted a list identifying the sources near which air quality is to be monitored, the proposed rule addressed the situation where it becomes evident that sufficient and appropriate monitoring will not be operational in a timely manner. The EPA proposed that the area around the source in question would be functionally ''moved'' to the modeling pathway, where air quality data characterized by the state under this rule could inform potential future designations that would be intended to occur by December 2017. The EPA requested comment on this approach, and on any alternative approaches that could most effectively address a situation where an air agency is acting in good faith to deploy monitors on time but experiences a delay which may be outside of its control, as well as a situation where an air agency does not act in good faith to deploy monitors on time. *See* 79 FR 27461, May 13, 2014.

b. Brief Summary of Comments

One public interest group commenter stated that the 2017 modeling pathway discussed in the proposal offers a swifter, cheaper, and more accurate way of assessing air quality, and so did not believe that states that missed deadlines along the monitoring pathway should be allowed to further delay designations. Other commenters stated that the fact that modeling is less expensive than monitoring is not a substitute for what they believe is the superior accuracy of actual monitored data; and that they believe the lower costs of modeling do not offset the regulatory costs and other burdens on sources and communities that could result from nonattainment designations based on modeling.

One public interest group commenter stated that because the monitoring approach already could lead to designations occurring a full decade after the NAAQS was promulgated, it should be regarded as an absolute edge-of-the-envelope approach, meaning that failure to meet monitoring deadlines should result in areas being treated under the modeling pathway as a default. This commenter stated that setting such a policy in any final rule would properly incentivize actors to transmit information to the EPA in a timely manner.

A number of state and industry commenters did not agree that a would-be monitored area should be automatically designated at the same time as areas for which the modeling option was chosen in the event of any delay in monitoring. Commenters also stated that the proposed penalty for unanticipated monitoring site delays is excessive and there are too many uncertainties which argue against such automatic actions; especially in cases where the air agency has exercised all due diligence to ensure that the monitors are operational by the deadline in the rule.

c. EPA Response

The EPA is clarifying the relationship between this rule and the schedule for promulgating designations under CAA section 107. This rule does not establish any deadlines for designations or prescribe the manner in which future designations would occur. Therefore, it has never been the role of this rule, even as proposed, to promulgate schedules for designations of areas based on whether air agencies timely implement the rule. However, the proposed milestones for implementation of the rule were devised in consideration of the Agency's preferred and anticipated schedule for completing area designations.

While this rule does not promulgate designation schedules, separate litigation activities have affected the schedule. On March 2, 2015, the U.S. District Court for the Northern District of California issued an order directing the EPA to complete designations pursuant to the schedule discussed earlier in this document. Affected air agencies considering the monitoring option under this rule should be aware of this schedule. Under the terms of the consent decree entered by the court, in order for the EPA to not be required to designate an area by December 31, 2017, air agencies choosing the monitoring option under this rule will need to install and begin operating those monitors by January 1, 2017. This is the date that the rule requires. However, while the rule does not provide designations schedules, and thus does not address how designation schedules would be affected by an air agency missing this deadline, the March 2015 consent decree does. If the monitor is not operational by January 1, 2017, the EPA will not be able to use the future monitoring information to be generated by those monitors in the initial designation for the area, because the court's order allows those designations to occur as late as 2020 only if the monitor is timely installed and operated. Where the January 1, 2017, deadline is not met, the designations must occur by December 31, 2017, and will have to depend upon other information available at that time.

The EPA's proposal addresses circumstances in which an air agency chooses to characterize through monitoring but fails to have monitors become operational on time. The proposal suggests that in these circumstances, the agency (or, for that matter, the EPA) would be required to conduct modeling under this rule and be relieved of further obligations to conduct monitoring, albeit late. The EPA's intent in its notice of proposed rulemaking was to explain that in these circumstances, where an air agency chooses to characterize air quality with new monitors but failed to have the new monitors operational by the January 1, 2017, deadline, the EPA envisioned designating such areas in conjunction with areas being characterized by modeling. That is, the EPA did not envision delaying the designation for such areas to the envisioned 2020 date when the Agency anticipates promulgating designations for areas characterizing air quality through a new

monitoring network. The EPA must now comply with a court-ordered designation schedule, in which the court expressly requires that areas that have not begun operation of a new monitoring network by January 1, 2017, must be designated by December 2017.

Nevertheless, the EPA wishes to clarify that an air agency that chooses monitoring as its means to meet the air quality characterization requirements, and commits in its July 2016 Annual Monitoring Network Plan to conduct such monitoring, remains obligated to fulfill the original requirement to monitor and to provide the resulting air quality characterization around a given SO_2 source, even if operation of new monitors commences after the January 1, 2017, deadline. If a state fails to meet the January 1, 2017, deadline, the state must still meet the monitoring requirements for the area pursuant to 40 CFR part 58, or the EPA may disapprove the state's monitoring plan for the following year, unless, of course, the monitoring plan is revised accordingly. Although, as discussed previously, the EPA will not be able to rely upon the future monitoring data to issue the designation on the court-ordered schedule, the future monitoring data may be useful for other purposes such as tracking progress and making later attainment status determinations needed for redesignations.

4. Monitor Shut Down

a. Summary of Proposal

In the preamble, the EPA proposed that a monitor that has been deployed under the monitoring option pursuant to this rule, and is located in an area that is subsequently designated attainment, may be eligible for shut down provided that the monitor meets certain criteria. The EPA proposed in § 51.1203(c)(3) that any SO_2 monitor identified in an approved state annual monitoring network plan to satisfy the rule requirements may be eligible for shut down if the following criteria are met: (1) The monitor is not also satisfying other minimum SO_2 monitoring requirements listed in 40 CFR part 58, appendix D; (2) the monitor is not otherwise required to meet requirements in a SIP or permit; and (3) the monitor has recorded a 3-year design value (DV) that is no greater than 50 percent of the 1-hour SO_2 NAAQS. The EPA also proposed that any SO_2 monitor eligible for shutting down would need to be approved by the EPA Regional Administrator before monitoring operations could cease. As an alternative, the EPA also proposed an option in which the same criteria noted earlier would need to be met, except that the monitor would be eligible to cease operations if it recorded a design value (DV) in the 3-year period that is no greater than 80 percent of the 1-hour SO_2 NAAQS. The EPA requested comment on the two proposed options for DV criteria for SO_2 monitor shutdown, as well as other potential values within the 50–80 percent range. The EPA requested that commenters provide specific technical rationale supporting any approach they recommend. *See* 79 FR 27462, May 13, 2014.

b. Brief Summary of Comments

Some state and industry commenters agreed with the proposal that monitors placed pursuant to the monitoring option and located in areas that are designated as attainment should be eligible for shut down. Commenters also stated that providing state agencies with the flexibility to shut down unneeded monitors allows agencies to allocate their limited resources more appropriately. One industry commenter stated that, if the sources are properly controlled and/or limited by permit, the risk of significant increases in DVs over time is relatively low absent new sources entering the affected area. Several state and industry commenters supported the proposal, with one state commenter indicating that the use of the 50 percent threshold would be safe to use because the area would require a significant increase in future SO_2 emission to cause an exceedance of the 1-hour SO_2 NAAQS.

Some state commenters recommended that the threshold of 50 percent be dropped in the final rule since 40 CFR 58.14 already contains provisions for shutting down a monitor at 80 percent of the NAAQS. Commenters stated that there does not seem to be a reason to make the criteria more stringent than the existing criteria in 40 CFR part 58 and, if the EPA wishes to change those criteria, a revision to 40 CFR 58.14(c)(1) should be considered and made available for comment. Industry commenters stated that the requirement for annual reporting of changes in SO_2 emissions with the possibility that further monitoring could be required, argues against the more stringent 50 percent option.

Over 25 commenters supported the use of the 80 percent threshold. Commenters stated that 80 percent of the NAAQS is a strong enough criterion for shut down of an SO_2 monitor and the 80 percent criterion is consistent with criteria for shutting down most regulatory monitors. One public interest group commenter stated that new monitors should not be shut down since (1) short-term monitor readings may not be consistent with long-term attainment and (2) the SO_2 monitor network needs to be rebuilt. In addition, this commenter recommended that monitors not be removed if the concentrations they are recording are trending upward, indicative of potential future problems.

c. EPA Response

The EPA is finalizing the rule to allow any SO_2 monitor identified by an air agency in its approved Annual Monitoring Network Plan as having the purpose of satisfying § 51.1203 which is not in an SO_2 nonattainment area, and is not also being used to satisfy other ambient SO_2 minimum monitoring requirements listed in 40 CFR part 58, appendix D, section 4.4, and is not otherwise required as part of a SIP, permit, attainment plan or maintenance plan, to be eligible for shut down if it produces a DV of no greater than 50 percent of the 1-hour SO_2 NAAQS in the first or second 3-year periods of its operation. The EPA has chosen to adopt this shutdown allowance so that those monitors that record DVs that are well below the NAAQS after 3 or 4 years of operation would no longer be required to operate under the unique provisions of this rule, if they are otherwise not required under other requirements. This potential ability to shut down monitors would relieve any resource burden under this rule on air agencies where NAAQS violations have not and likely will not occur. This particular provision will not require estimates of future concentrations as do existing shutdown provisions in 40 CFR 58.14.

More specifically, this monitor shutdown provision works by assessing how two DVs (*i.e,* one calculated from monitor data collected in years 1 through 3, and one from years 2 through 4) would compare to the 50 percent of the NAAQS shutdown criterion. If a monitor produces a DV from data collected in years 1 through 3 that is no greater than 50 percent of the NAAQS, it is eligible for shutdown if it is not otherwise required to operate. If the DV is above the 50 percent threshold, the monitor must continue operation. If that monitor produces a DV no greater than 50 percent of the NAAQS from data in years 2 through 4, it is eligible for shutdown if not otherwise required to operate. If, instead, the DV is again above the 50 percent threshold, the air agency must continue to operate the monitor. From that point forward (*i.e.,* for data collection year 2021 and beyond), the applicable monitor shutdown provisions are those that exist in 40 CFR 58.14, which include

probabilistic estimations of future concentrations and other circumstantial situations that might allow for monitor shutdown.

The Agency would like to note language of particular relevance from 40 CFR part 58 regarding eligibility for shutdown based on recorded data and calculated design values that exists in § 58.14(c)(1). This particular provision allows monitoring discontinuation with the Regional Administrator approval for: ''Any $PM_{2.5}$, O_3, CO, PM_{10}, SO_2, Pb, or NO_2 SLAMS monitor which has shown attainment during the previous 5 years, that has a probability of less than 10 percent of exceeding 80 percent of the applicable NAAQS during the next 3 years based on the levels, trends, and variability observed in the past, and which is not specifically required by an attainment plan or maintenance plan. In a nonattainment or maintenance area, if the most recent attainment or maintenance plan adopted by the state, and approved by the EPA, contains a contingency measure to be triggered by an air quality concentration and the monitor to be discontinued is the only SLAMS monitor operating in the nonattainment or maintenance area, the monitor may not be discontinued.''

In any circumstance regarding monitor shutdown, whether pursuant to this final rule or 40 CFR part 58, the air agency must receive the EPA Regional Administrator approval of a request to cease operation of the monitor as part of its action on the annual monitoring plan under 40 CFR 58.10 prior to the shutdown of any qualifying monitor. Therefore, under the final rule, there are two sequential routes for possibly shutting down a monitor. If a monitor shows DVs greater than 50 percent of the NAAQS after the first two 3-year periods of its operation and cannot be approved for shut down under the first sequential route, the monitoring will continue. However, after 5 years of operation it can be considered for shutdown if it meets the criteria that the EPA's rules at 40 CFR 58.14(c)(1) apply, with the EPA Regional Administrator's approval. These monitors might also be subject to shut down eligibility as set forth in § 58.14(c)(2), (3), (5), and (6).

5. Annual Reporting Following Monitor Shutdown

a. Summary of Proposal

For any area for which the EPA has approved an air agency's request for an SO_2 monitor to cease operations, the EPA proposed that the air agency be required to assess SO_2 emissions changes annually, beginning in the year after the monitor ceases operation. (The proposal contained a similar requirement for modeled areas, discussed later in this section.) For areas around these sources in which total SO_2 emissions increase over the emissions for the previous year, the EPA proposed that the air agency would be required to submit to the EPA an assessment of the cause of the increase and provide an initial determination of whether the air quality around that source should be further re-assessed. The EPA proposed that the air agency could choose to reinstate the operation of the air monitor or complete air quality modeling for the source area to verify that the area continues to attain the standard. In the proposal, the EPA stated that, if modeling or monitoring information required to be submitted by the air agency to the EPA pursuant to § 51.1205 indicates that an area is not attaining the 2010 SO_2 NAAQS, the EPA may take appropriate action, including but not limited to disapproving the monitoring plan, requiring adoption of enforceable emission limits to ensure continued attainment of the 2010 SO_2 NAAQS, redesignation of the area to nonattainment, or issuance of a SIP Call.

The EPA proposed two options for how the air agency would submit this report and how the EPA would review and act on it. Under the first option, the EPA proposed that the air agency would submit a report to the EPA annually as an appendix to the air agency's annual monitoring plan; the annual monitoring plan is required to be submitted to the EPA Regional Administrator by July 1st each year. In the proposal, the EPA stated that the inclusion of this verification report as an appendix to the annual monitoring plan would ensure that the report would be subject to public review and comments that are to be provided for the monitoring plan pursuant to regulations at 40 CFR 58.10.

Under the second option, the annual report of emissions data for sources for which the state ceased the operation of nearby monitors would be submitted to the EPA in the form of a separate, independent annual submittal from the state to the EPA Regional Administrator due by the same July 1st date each year. This independent submittal would follow the general guidelines set forth in 40 CFR 58.10 regarding opportunities for public review and comment as described in Option 1, but the report would only include the annual assessments associated with sources in areas that were designated unclassifiable/attainment and for which the EPA granted approval to cease monitoring. The EPA invited comment on any suggested alternatives to these procedural options. *See* 79 FR 27462, May 13, 2014.

b. Brief Summary of Comments

Several state and industry commenters stated that the proposed annual reporting requirement appears to be unduly burdensome. Some industry commenters opposed the annual reporting requirement, stating that SO_2 emissions from sources are already available to the EPA and the need for ongoing data requirements has not been demonstrated. One state commenter suggested that, if the monitors that were removed were providing data under 50 percent of the standard, there is no reason to perform such analyses since an increase in emissions that would result in such a drastic increase in monitored design values would surely be associated with changes to operations that would necessitate air permitting, which evaluates projects for NAAQS compliance.

One group of state commenters stated that the EPA's proposed July 1st submittal date is unrealistic because states will not have the required quality-assured emissions monitoring data processed by July 1st. Some state and industry commenters recommended a less burdensome process in which this verification would take place every 3 to 5 years instead of annually, pointing out that the EPA publishes the NEI data every 3 years, the EPA reviews the NAAQS every 5 years, and there is a 5-year ambient monitoring assessment plan required by 40 CFR 58.10.

Commenters requested clarification regarding the determination of an emissions increase. One state commenter stated that it is unclear whether an emission increase should be based on an increase greater than the 3 year average of emissions during the initial monitoring analysis, an increase above the highest single year of emissions during the initial monitoring analysis, or some other metric. Some commenters recommended the comparison be based on some compliant level of emissions from the year(s) where the monitor demonstrated attainment with the standard, since the ''increase'' or ''decrease'' in emissions of SO_2 may have resulted in total SO_2 emissions levels well below the annual emission rates during the years when monitoring data showed compliance.

One tribal and several state commenters supported the option of including the annual emissions analysis with the annual monitoring plan. One commenter stated that the analysis of emissions is closely related to network planning, and this procedure would provide a single document for public

inspection and EPA review and approval. Another commenter stated that the annual monitoring plan may not be the best tool or location to place modeled data, emission reports, ongoing data requirements, and requests to cease modeling. Other state commenters recommended that the monitoring plan verification report be considered a separate element for ease of processing and for public review.

c. EPA Response

The EPA has decided not to finalize the proposed requirement that any state with an area for which the EPA has approved the air agency's request for an SO_2 monitor to cease operations must still assess SO_2 emissions changes annually, beginning in the year after the monitor ceases operation. The EPA made this decision based upon comments on the proposed rule, and in recognition that a cessation of monitoring will not occur unless a monitor has measured SO_2 concentrations well below the NAAQS for a given time period and an EPA Regional Administrator has allowed the shut-down. The Agency is persuaded by commenters that monitor shutdown provisions, along with generally applicable emissions reporting requirements, are of sufficient strength that subsequent additional annual observation and reporting of SO_2 source emissions profiles by states specifically due to this rulemaking is unnecessary. Further, there are means by which monitoring can be reinitiated in the future if the unlikely scenario occurs where SO_2 emissions rise significantly in an area, or other data indicate possible NAAQS violations in an area after a monitor has been shut-down, mainly through the EPA Regional Administrator authority granted in 40 CFR part 58, appendix D, section 4.4.3.

6. Modeling Issues

a. AERMOD

i. Summary of Proposal

In the proposal, the EPA stated that the Agency anticipates that in implementing the rule air agencies would likely use AERMOD to conduct modeling, as AERMOD is the EPA's preferred near-field dispersion model and has been demonstrated to be a reliable predictor of SO_2 air quality given appropriate input data. The EPA explained in the proposed rule that, as part of its development, AERMOD was evaluated using 17 field studies, several of which involved short-term measurements of SO_2, robust site-specific meteorology and accurate measurements of emissions. The EPA stated in the proposal that the Agency is confident that AERMOD can provide accurate predictions of actual SO_2 concentrations given representative meteorology and accurate emissions inputs. *See* 79 FR 27463, May 13, 2014.

ii. Brief Summary of Comments

One industry commenter stated that, for certain conventional SO_2 emission scenarios, such as tall stacks at coal fired EGUs, AERMOD can be at least reasonably predictive. One public interest group commenter stated that AERMOD modeling performs particularly well in evaluating emission sources with one or a handful of large emission points. This public interest group commenter cited a declaration of Roger W. Brode (EPA) filed in the EPA's successful defense of the 2010 SO_2 NAAQS in which he stated that AERMOD is capable of accurately predicting whether the revised primary SO_2 NAAQS is attained and whether individual sources cause or contribute to a violation of the SO_2 NAAQS. This commenter also stated that AERMOD has been tested and performs very well during conditions of low wind speeds, citing comments of Camille Sears.

A number of commenters expressed concern with the use of AERMOD. Some commenters stated that AERMOD was intentionally designed to over-predict SO_2 concentrations. Several commenters referenced studies that indicate AERMOD over-predicts, including studies by the Electric Power Research Institute (EPRI), AECOM and some air agencies. Commenters identified a number of issues that they believe need to be addressed because they lead to over-predicting SO_2 concentrations, including buoyant line sources, building downwash, conservative assumptions in terms of model input, modeling of multiple sources, periods of low wind speed, steep terrain and lack of representative meteorological data. Commenters stated that the individual aspects of AERMOD and the EPA's guidance that contribute to over-prediction of the SO_2 concentrations in the context of the 1-hour NAAQS are multiplicative.

iii. EPA Response

In this final rule, the EPA is not promulgating a requirement that air agencies use AERMOD in all cases, but is retaining the existing flexibility otherwise provided by the EPA's rules for agencies to support the use of the best model for a particular case. The EPA's latest recommendations for making this assessment are contained in the Modeling TAD. In most cases, the EPA believes that AERMOD will likely be the model of choice by air agencies to address the requirements of this rule, unless the application involves a different recommended model, such as the Buoyant Line and Point Source Dispersion Model (BLP). Models recommended for particular applications are listed in appendix A of the EPA's Guideline on Air Quality Models.[10] Section 3.2 of the EPA's Guideline on Air Quality Models outlines the procedures for use of alternative models for those cases where an alternative model may be more appropriate than a preferred model. In addition, the Modeling TAD also discusses past use of alternative models for particular applications.[11] The EPA recommends consultation with the appropriate reviewing authority or EPA Regional Office to determine if the use of an alternative model is valid for that application.

In addition, as stated previously, the TADs are documents that provide recommendations but are not binding or enforceable and create no obligations on any person. Although the draft TADs are referenced as recommended approaches in the preamble to the proposal and in this rulemaking, they are not required to be adhered to by any state who is required to characterize air quality around an SO_2 source identified in this rulemaking. The TADs have been provided in order to potentially aid air agencies seeking advice in the air quality characterization process required by this rulemaking.

With regards to concerns regarding model conservatism, EPA recently proposed updates to AERMOD to address concerns regarding buoyant line sources, building downwash, and low wind speed issues. *See* 80 FR 45340 July 29, 2015. With regards to comments about model inputs that lead to over-estimates, as part of its development, AERMOD has been shown to perform well against observed concentrations when actual emissions have been used. The modeling of actual emissions for multiple sources is not anticipated to cause over-predictions. The modeling TAD also discusses that the number of sources explicitly modeled in an

[10] Revision to the Guideline on Air Quality Models: Enhancements to the AERMOD Dispersion Modeling System and Incorporation of Approaches to Address Ozone and Fine Particulate Matter'' can be found at *http://www.epa.gov/ttn/scram/11thmodconf.htm.*

[11] It is the EPA's intention to update the Modeling and Monitoring TADs as necessary to reflect any change in policy or to make clarifications that are necessary. Therefore, any comments on the TADs themselves that have been submitted in response to the proposed rule will be addressed as a part of any updates made to the TADs in the future, rather than in this final rule.

application is expected to be low and that in many cases, a number of sources in a modeling domain can be represented by background concentrations instead of being explicitly modeled, thus reducing potential overestimates in modeling.

b. Emissions Data

i. Summary of Proposal

The EPA proposed that modeling analyses be based on either actual 1-hour SO_2 emissions from the most recent 3 years or federally enforceable allowable emissions. The EPA referred readers to the Modeling TAD for a more detailed discussion of a range of recommended options for determining actual emissions. While actual emissions would be the preferred choice to use for emissions inputs, air agencies have the option of using a more conservative approach by inputting a source's most recent 3 years of allowable, or ''potential to emit,'' emissions. Additional information and recommendations on this approach are discussed in the Modeling TAD. *See* 79 FR 27446, 27464, May 13, 2014.

ii. Brief Summary of Comments

More than 30 state and industry commenters supported statements in the EPA's proposal that allow the use of actual emissions as an input in the air quality modeling in order to most effectively serve as a surrogate for comprehensive ambient monitoring results. Several commenters suggested that the use of allowable emissions as an input to air quality modeling analyses would result in modeled air quality values that were higher than air quality levels that would be expected to be observed by a properly sited ambient monitor. Commenters stated that using actual emissions is even more important when conducting a cumulative impact analysis (assessing potential impacts from two or more sources) since the model's tendency to overestimate ambient air impacts is compounded when numerous sources are all modeled at peak emissions at all times.

Several state and industry commenters supported the EPA's proposal to base the modeling analyses on actual emissions over a 3-year period. One commenter noted that, in situations where multiple sources are being modeled, the most recent 3 years of actual emissions data may not be the same for all sources, particularly if there is a mix of EGUs and non-EGUs. One state commenter suggested that, if justification can be provided for an alternative dataset, it too may be considered for modeling. One state commenter recommended the rule clarify that states must use the most recent 3 years of emissions data that are available at the time that a modeling protocol for that area is submitted to the EPA, and that revised modeling should not be required if more recent emissions data become available.

iii. EPA Response

When using actual emissions, the EPA believes the most recent 3 years of time varying emissions (*e.g.,* emissions that vary hourly, seasonally, monthly, daily, etc.) should be modeled since the air quality modeling is being used as a surrogate for monitoring. The Modeling TAD gives recommendations on inputting hourly emissions into AERMOD for those sources with hourly continuous emissions monitoring (CEM) data and also gives recommendations on inputting time varying emissions (*e.g.* seasonally, monthly, etc.) when no hourly emissions are available and only annual emissions and data such as production logs or fuel usage are available. However, the final rule does not restrict the ability of air agencies to use more conservative allowable emissions in conducting their modeling. In the event that a particular source does not have the most recent 3 years actual of emissions, it may be possible to use the most recently available emissions or develop the most recent 3 years of emissions using recommendations in the Modeling TAD. The reviewing authority should work with the appropriate EPA Regional Office on the use of such emissions. For an application that contains a mix of sources whose emissions data are not concurrent with each other, it is possible to model all of these sources together following recommendations in the Modeling TAD. Once a modeling protocol or modeling analyses have been submitted, there is no requirement to revise the protocol or modeling respectively if more recent emissions have become available since the submission, and in the best professional judgment of the reviewing authority, those emission changes do not warrant a revision to the protocol or modeling analyses.

c. Accounting for Recent Emission Reductions in Modeling Analyses

i. Summary of Proposal

In the proposal, the EPA noted that, in some cases, air quality modeling conducted in advance of January 2017 may indicate a violation of the 1-hour SO_2 standard and, to address such situations, the air agency may wish to consult with the source(s) and take action to adopt enforceable emissions limitations as necessary prior to January 2017 to potentially avoid a nonattainment designation. The EPA proposed that, as long as these controls are implemented and enforceable as of January 2017, it would be appropriate for the new lower allowable emissions to be used in the modeling analysis in place of the higher actual emissions. The EPA proposed that, if the air agency is able to demonstrate attainment with the new controls or emission limits, the governor of the state has the opportunity to modify its designation recommendation accordingly, if that designation has not yet been issued. *See* 79 FR 27464, May 13, 2014.

ii. Brief Summary of Comments

A number of commenters supported the inclusion of language providing the option for states to model more recent emission rates based on enforceable limits implemented in advance of the January 2017 modeling deadline. Commenters stated that this approach is a reasonable option which would provide industry with an incentive to achieve timely emission reductions to meet the regulatory requirements while potentially relieving air agencies from the requirements that a nonattainment designation entails, if such a designation has not yet been issued. One industry commenter requested that the method for reducing emissions not be limited to installing controls.

Some state commenters requested that the EPA develop methodologies for air agencies to work with sources whose 2015 emissions are above the threshold to establish permanent and enforceable emission limitations that show attainment with the SO_2 standards prior to a designation of such sources' areas. One state commenter stated that there must be a process that allows for the air agencies' discretion under extenuating circumstances in order to account for significant changes at a facility that occurred during the most recent 3 years.

iii. EPA Response

After review of the comments, the EPA continues to believe that it is appropriate for the air agency to consult with the affected source(s) and take action to adopt enforceable emissions limitations as necessary prior to January 2017. As long as the emissions limitations are in place and enforceable by January 2017, the new allowable emission limit may be input into the model instead of the actual emissions of the most recent 3 years.

The EPA expects that a number of emissions sources may be candidates for this optional approach. Many EGUs

were subject to compliance deadlines for the MATS in April 2015 (or in some cases are subject to April 2016 deadlines), and the EPA expects that many will become subject to title V permits that require compliance with MATS SO_2 emission limits as the means of demonstrating compliance with the MATS requirements related to acid gas emissions. These EGUs may be able to adopt control technologies and enforceable emission limits to reduce emissions of SO_2, as well as mercury. Similarly, industrial boiler operators will have the incentive to adopt SO_2 emission limits as part of their strategy for complying with the Industrial Boiler Maximum Achievable Control Technology Standard. 78 FR 7162, January 31, 2013.

Therefore, the EPA believes that as long as these emissions reductions are implemented and enforceable by to January 2017, it would be appropriate for the new lower allowable emissions to be used in a modeling analysis in place of the higher actual emissions. The air quality impacts from such a source would be characterized by the new enforceable allowable limit and could be used as a basis for future determinations regarding areas' attainment status.

d. Stack Height

i. Summary of Proposal

The EPA described its view in the proposed rule that actual stack height is appropriate to use in conjunction with actual emissions in a modeling approach to characterize current air quality. The EPA also described its view that, if an air agency chooses to use allowable emissions, then it should use good engineering practice (GEP) stack height when the actual stack height exceeds the GEP height because the GEP height is used when calculating the allowable emission rates. The EPA noted that additional recommendations on the use of actual stack height can be found in the Modeling TAD. *See* 79 FR 27464, May 13, 2014.

ii. Brief Summary of Comments

A number of state and industry commenters supported the EPA's views on the use of actual stack height in conjunction with actual emissions. However, several state and industry commenters did not agree that GEP stack height should be used if a state chooses to use allowable emissions. Commenters stated the EPA should allow sources to model using actual stack height regardless of whether they are modeling actual emissions or allowable emissions since the purpose of the rule is to estimate, as accurately as possible, conditions that would be measured at a monitor. Commenters also stated that GEP stack height is not always a factor in establishing the emissions limit, where such limits are not established under an implementation plan subject to the restrictions of CAA section 123; for example, in the context of emission limits that are established based on emission standards under CAA section 112, such as the MATS rule. One commenter stated that the concern about giving inappropriate credit for dispersion techniques is irrelevant in the context of this designation modeling as CAA section 123 applies only to emission limitation controls.

iii. EPA Response

After consideration of comments, the EPA continues to recommend the use of actual stack heights when using actual emissions and the use of GEP height when modeling with allowable emissions where such emissions limits are or would be subject to CAA section 123 and to the EPA's corresponding regulations implementing GEP requirements. This would include limits established under any CAA provision that are intended to be credited in an implementation plan for attaining and maintaining the NAAQS. The use of GEP for allowable emissions modeling in such situations is based on the fact that the modeling conducted to determine the emissions limits was or would be based on GEP stack heights. Therefore, if actual stack heights (when above GEP) were used in such situations, the behavior of the modeled sources would not be consistent with the modeling results used to determine the emissions limits relied upon to demonstrate attainment of the NAAQS.

e. Meteorological Data

i. Summary of Proposal

For purposes of conducting modeling that simulates what might be expected to be measured by an ambient monitor, the EPA recommended the use of 3 years of meteorological data. The EPA stated that, ideally, air agencies would use the most recent 3 years of meteorological data and the same 3 years of actual emissions data when modeling for designations. The EPA noted that the Modeling TAD has additional suggestions on these meteorological inputs. *See* 79 FR 27465, May 13, 2014.

ii. Brief Summary of Comments

Some commenters recommended the use of 1 year of meteorological data rather than 3 years and provided several reasons: Use of 1 year of on-site meteorological data would yield a very robust data set; 3 years does not provide a significant benefit over 1 year; 1 year of meteorological data is sufficient for PSD purposes; collection of 3 years of data would delay the running of AERMOD; and collection of 3 years of data would be unnecessarily expensive. Commenters stated that, while relatively few meteorological databases with 3 years of on-site meteorological data exist, many sources may have previously collected a full year of data and should be able to use that data without starting all over again on an expensive 3-year effort. One state commenter asked the EPA to clarify what is meant by ''the most recent 3 years.''

One state commenter recommended that up to 5 years of meteorological data be used and stated that, while a single 3-year period may not provide adequate confidence in the analysis, 5 years will provide more 3-year combinations that can be compared to the NAAQS, and more meteorological data improves confidence in the result. Some commenters requested that the EPA clarify:

- That air agencies need not use concurrent meteorological data, given that some sites simply do not have concurrent meteorological data.
- Given the lack of 3 years of on-site data in many areas, the EPA should approve the use of prognostic meteorological data.

iii. EPA Response

The EPA's recommendation is to use the most recent 3 years of representative site-specific data or when site-specific data are not readily available, or it is not feasible or cost-effective to collect site-specific data, the most recent 3 years of representative National Weather Service meteorological data or other representative data. When the most recent 3 years of representative meteorological data are not available, the use of older representative meteorological data can be used. For such cases, the Modeling TAD offers recommendations on synching the older meteorological data with the more recent emissions, especially for those sources utilizing hourly emissions. The Modeling TAD provides an explanation of the need for 3 years of meteorological data, even if only 1 year of on-site meteorological data are available. With regards to the type of meteorological data that are available, *i.e.* site-specific, NWS data, or prognostic data, the EPA's Modeling Guideline should be consulted on the latest acceptable forms

of meteorological data at the time of the modeling analyses.

f. Modeling Protocol, Including Multiple Sources

i. Summary of Proposal

This rulemaking proposed that each state list the sources that are to be addressed under this rule and the approach to be used to meet this rule's requirements (air quality characterization through monitoring, air quality characterization through modeling, or establishment of a requirement for a timely source shutdown) for each source. In preparation for conducting modeling, the EPA proposed that the state would need to develop a modeling protocol for all the sources the state plans to model. Specifically, in § 51.1203(d), the EPA proposed that the air agency consult with the appropriate EPA Regional Office in developing modeling protocols and submit the protocol to the Regional Administrator for review. In § 51.1203(d)(1), the EPA proposed that the modeling protocol shall include information about the modeling approach to be followed, including but not limited to the model to be used, modeling domain, receptor grid, emissions dataset, meteorological dataset and how the state will account for background SO_2 concentrations. The EPA stated that details on the suggested protocol elements and the recommended standard format of this protocol can be found in the Modeling TAD. *See* 79 FR 27465, May 13, 2014.

ii. Brief Summary of Comments

Some state and industry commenters requested that the EPA provide more specific guidance on conducting multi-source modeling analyses. Commenters stated that leaving these topics for negotiation with the EPA Regional Office will lead to inconsistent application of guidance among states. Commenters requested guidance on when a source should be modeled by itself, when a source should be modeled with other sources in the surrounding area, more detail on the size and location of sources that should be included in a multi-source analyses, and who would be responsible for conducting analyses when sources are located in multi-state areas. One state commenter requested that guidance on modeling facilities across state lines should be addressed.

iii. EPA Response

The determination of whether to include nearby sources in a modeling exercise around a source that exceeds the emissions threshold is case specific, and a standardized methodology cannot be developed to fit all scenarios. Therefore, the final rule does not promulgate requirements addressing nearby sources. The EPA has offered technical recommendations in the Modeling TAD. The identification of nearby sources for modeling should rely on sound technical reasoning and best professional judgment. The EPA emphasizes that not all emissions sources near the source of interest need to be explicitly modeled, as in some cases the impacts of those sources can be sufficiently represented by a background monitor as discussed in the Modeling TAD and section 8.2 of the EPA's Modeling Guideline.

As stated previously, the TADs provide recommendations but are not binding or enforceable and create no obligations on any person. Although the draft TADs are referenced as recommended approaches in the preamble to the proposal and in this rulemaking, they are not required to be adhered to by any air agency who is required to characterize air quality around an SO_2 source identified in this rulemaking. The TADs have been provided in order to potentially aid air agencies seeking advice in the air quality characterization process required by this rulemaking. The Agency has indicated that the TADs are meant to be used as possible tools to aid air agencies. The EPA is not codifying changes to the TADs in this rulemaking in response to any comments received on the proposed rule. The TADs are living documents which the EPA may update as necessary.

g. Ongoing Air Agency Data Requirements for Areas That Were Initially Modeled

i. Summary of Proposal

The EPA proposed that, for areas with modeled air quality data based on actual emissions that did not exceed the standard, air agencies would be required to continue to submit information to the EPA in subsequent years that provide a reasonable assurance that the area continues to have air quality that does not exceed the standard. The EPA proposed three options for how air agencies that rely on modeling of actual emissions would need to conduct additional emissions and/or modeling analyses. In the proposed rule, the EPA believed that such additional analyses would only be needed for areas that had been designated as ''unclassifiable/attainment'' based on actual emissions-based modeling. The EPA further noted in the proposed rule that modeled source areas would not be subject to these ongoing data requirements if (1) modeling for the source was conducted using allowable emissions, or (2) the modeling for the source was conducted using actual emissions and the relevant sources then adopted enforceable emission limits consistent with the actual emissions rates used in the modeling.

In Option 1, the EPA proposed that any air agency that will be subject to an ongoing data requirement for modeled areas would be required to assess the most recent SO_2 emissions data annually, beginning in the year after the area is designated as unclassifiable/attainment, and to conduct updated air quality modeling every 3 years, and in additional years when the air agency or the EPA determines that such modeling is warranted. Air agencies would be able to request that the EPA Regional Administrator approve a suspension of the triennial modeling requirement for an area if their most recent modeling DV was less than 50 percent of the NAAQS.

In Option 2, the EPA proposed to require the air agency to provide the EPA with an assessment of SO_2 emissions changes for each source annually, as in Option 1, but to not have a requirement to conduct updated air quality modeling every 3 years. For sources for which the air agency determines that emissions have increased, the air agency would be required to submit to the EPA an assessment of the cause of the increase, and provide the EPA with an initial determination of whether air quality modeling would be needed to verify that the area around the source continues to have air quality levels that do not exceed the standard. If the air agency or the EPA determines that additional air quality modeling is necessary, the air agency would be required to submit the results of that assessment in a timely fashion—within 12 months.

In Option 3, the EPA proposed to require the state to perform periodic screening modeling every 3 years for all source areas that had been previously modeled and determined to be attaining the standard, and submit such modeling for review to the EPA. Screening modeling is commonly performed using a set of default parameters rather than area-specific parameters, and it generally simulates air quality levels that are more ''conservative'' than levels that would be estimated using area-specific parameters. In the proposal, the EPA stated that a complete, full-scale modeling analysis with updated emissions and meteorological inputs would only be required if the state performs screening modeling that indicates a potential violation. Under all

three options, if the modeling performed indicates that air quality levels in an area exceed the SO_2 NAAQS, the EPA may take any appropriate action, including, but not limited to, requiring adoption of enforceable emission limits to ensure that future air quality levels in the area do not exceed the SO_2 NAAQS; redesignation of the area to nonattainment; or issuance of a SIP call requiring action by the state to bring the area into attainment.

The EPA requested comment on these three options for ongoing data requirements for air agencies with sources modeled based on actual emissions, and requested that each commenter provide a clear rationale for their position. The EPA also invited comments on any alternative ideas and asked that the commenter provide a detailed rationale and estimate of any associated costs for any such recommendations. *See* 79 FR 27465, May 13, 2014.

ii. Brief Summary of Comments

Several state, environmental, and tribal commenters supported Option 1. These commenters stated that an approach that simply assesses SO_2 emissions changes at large sources would not account for variations in meteorological conditions, increased SO_2 emissions from interactive sources, or improvements to the actual modeling computer program. One commenter stated that annual modeling makes far more sense from the perspective of protecting the public health, and suggested that modeling once every 3 years is an extremely periodic and slow way of assessing air quality, such that people living in the impacted area could be unaware for years, and thus unable to take action to protect themselves or place pressure on their government to correct the problem.

Several state and industry commenters opposed Option 1 and stated that modeling assessments should not be conducted on a 3-year or any other regular basis. Some believed the requirement to model every 3 years would be an inefficient use of resources and arbitrary since it would not take into account information which might show that undergoing a revised modeling analysis would be unnecessary. They claimed that as long as conditions have remained the same or possibly improved in the intervening timeframe, additional modeling will provide no additional useful information. Others opposed Option 1 on the grounds that no other ambient standard requires such a detailed on-going analysis. Consistent with their concerns about resources, commenters supported the aspect of Option 1 that would enable the air agency to terminate certain ongoing data requirements if air quality modeling indicated a DV equal to or less than 50 percent of the 1-hour SO_2 NAAQS.

A number of state and tribal commenters objected to Option 2. One tribal commenter stated that the proposed emissions assessments required in Option 2, which lack a regular air quality modeling requirement, are not stringent enough. Some state commenters expressed concern that this option could lead to an indeterminate number of future analyses required, and that such open-ended requirements have cost implications that could strain states' already-limited resources. On the other hand, more than 20 state and industry commenters supported Option 2 because it balances providing air quality protection with level of effort from state regulatory authorities. Several commenters noted that with SO_2 emissions declining on a national level, remodeling would not be expected to be required and a simple analysis of the change in emissions would be sufficient to determine the need for additional modeling. A state commenter suggested providing clearer guidance regarding what level of emissions increase would trigger further evaluation of sources, rather than having the air agency provide an assessment for each source with increased emissions. The commenter suggested (1) if the original modeling level was equal to or greater than 90 percent of the standard, then new modeling would be required for the area in the event there is any increase in emissions in the area; (2) if the original modeling level was between 50 percent and 75 percent of the standard, then new modeling would be required for the area if area emissions increased by 15 percent or more; and (3) if the original modeling level was less than 50 percent of the standard, then the ongoing modeling requirement should not apply (similar to the provision in Option 1).

Another state commenter stated that, ideally, under Option 2, agencies would have a 2.5-year timeframe to complete the entire ongoing data requirement process: The first year would consist of preparing and submitting data for the national emissions inventory for the previous year; 6 months thereafter agencies would submit a report to the EPA stating whether air quality modeling is needed; and 12 more months would then be permitted to perform any additional modeling deemed necessary.

Regarding Option 3, several state and industry commenters disagreed with having any default modeling requirement, even for screening modeling, and opposed this option. Several commenters objected to the required use of a screening model for the following reasons: Most of the facilities will have multiple emission points and the screening tools were not designed to evaluate such complex situations; the mandatory use of screening models will result in an overly cautious, ineffective approach to verification; and screening modeling is almost as complex and time consuming as full-scale modeling and thus this option would not be a good use of state and the EPA resources.

Lastly, some commenters suggested that the air agency should be able to choose which ongoing data requirement approach it intends to follow for a particular area. Another commenter suggested an approach that would be a combination of all three options, where the air agency would evaluate emissions changes each year, and then conduct screening modeling or full-scale modeling if the magnitude of emission changes warrant.

iii. EPA Response

The EPA recognizes the concerns of commenters about the resource considerations associated with Options 1 and 3, which for areas with modeling based on actual emissions and designated as attaining would require full-scale modeling or screening modeling every 3 years, even if annual emissions in the area were not increasing. We disagree with those commenters who oppose any requirement for ongoing data assessment at all; and with those commenters who suggest a requirement for annual modeling for all areas. The EPA believes that a reasonable requirement for ongoing evaluation of priority areas identified by this rule is important to meeting the public health objectives of this NAAQS while balancing resource constraints of air agencies in a manageable way. The EPA agrees with commenters that suggest it would be reasonable to check emissions changes first, and based on that information, then make a determination about whether to conduct additional modeling. The EPA is also mindful of the fact that in this rule, modeling is effectively serving as a surrogate for monitoring, and so the EPA believes it is reasonable to have similar approaches for terminating the ongoing data requirements for both areas where air quality was initially characterized by monitoring, and areas where air quality was initially characterized by modeling.

After considering the comments received on the proposed rule, the EPA is finalizing a combination of elements from Option 1 and Option 2. As outlined in proposed Option 2, the final approach requires the air agency to conduct an assessment of emissions changes annually for all source areas for which the initial air quality modeling was based on actual emissions and the area was designated as attaining the standard. The air agency must provide this assessment to the EPA in the form of a report, to be submitted by July 1 of the following year. This assessment should reflect the most recent quality-assured emissions data available for the relevant sources in the area. The report must also describe the reason for emissions increases in the previous year at any listed sources, and must include a recommendation indicating for which sources and areas the emissions increase was substantial enough to warrant updated air quality modeling that would help determine air quality levels relative to the standard.

Adapting suggested criteria from a state commenter (with some modification), the EPA recommends as a general guideline that the air agency should conduct additional modeling (using the most recent actual emissions as inputs) for an area if (1) the original modeling level was equal to or greater than 90 percent of the standard, and there is any increase in emissions in the area; or (2) if the original modeling level was between 50 percent and 90 percent of the standard, and emissions in the area increased by 15 percent or more. However, the EPA is not promulgating specific criteria for when additional modeling is required because the EPA believes that the need for additional modeling is best judged on a case-by-case basis reflecting case-specific information on emissions changes and prior modeling results. For example, if the emissions increase was substantial and the previous modeling had indicated that air quality in the area was just under the standard, then air quality modeling would be warranted. In other cases where air quality has been modeled to be well below the standard and annual emissions increase only slightly in the following year, the air agency would be able to exercise judgment regarding whether additional modeling would be needed. The use of case-specific judgment will be especially important in cases involving multiple sources or multiple emission units that may have different emissions-air quality relationships.

The modeling analysis for the area would then be due within 12 months of the air agency recommendation that such modeling is warranted (*i.e.* by July 1 of the following year). In this way, if new modeling is recommended, the whole process ideally would take 18 months from the end of the ''ongoing data requirement'' year to when new modeling would be due (not 30 months as suggested by a state commenter).

The EPA finds that the relatively straightforward approach described in proposed Option 2 requiring the examination of emissions data annually (rather than conducting updated air quality modeling every 3 years for every area) is consistent with the frequency with which ambient monitoring data is evaluated. This approach also provides some flexibility to the air agency in recommending whether the magnitude of emissions changes in an area would be large enough to warrant new modeling. As compared to Options 1 and 3, this approach also would be expected to involve less overall workload for air agencies over time.

In addition, as provided in Option 1, the final rule also includes a provision in § 51.1205(b) enabling the air agency to terminate the ongoing data requirement for a modeled area if it meets certain criteria. The provision is analogous to § 51.1205(a), which allows for the air agency to obtain EPA approval to cease operation of a new ambient monitor if the most recent DV is low enough to meet certain criteria (*e.g.* less than or equal to 50 percent of the level of the NAAQS, or meeting the criteria of 40 CFR 58.14). Thus, for areas that were originally modeled based on actual emissions, § 51.1205(b) of the rule allows termination of the air agency's annual emission reporting requirement if the air agency submits an air quality modeling analysis, using updated actual emissions data from the most recent 3 years, that demonstrates that air quality DVs at all receptors in the analysis are less than or equal to 50 percent of the 1-hour SO_2 NAAQS, and such demonstration is approved by the EPA Regional Administrator. Likewise, if the initial modeling of a source area demonstrates that air quality DVs at all receptors in the analysis are less than or equal to 50 percent of the 1-hour SO_2 NAAQS, and such demonstration is approved by the EPA Regional Administrator, the area would not be subject to ongoing data requirements as well. The EPA believes that including this type of provision in the final rule structures the rule in a balanced way for both modeled and monitored areas in order to meet the objectives of ensuring that such areas continue to meet the standard and continue to protect public health, while recognizing the resource constraints of air agencies.

h. Procedural Approach for Post-Attainment Annual Reporting

i. Summary of Proposal

The EPA proposed two options regarding the procedures by which air agencies would submit ongoing data reports to the EPA for source areas characterized through modeling, and by which the EPA would review and act on them. Under Option 1, the EPA proposed that the air agency would submit a report to the EPA annually as an appendix to its annual monitoring plan. The annual monitoring plan is required to be submitted to the EPA Regional Administrator by July 1 each year. The inclusion of this report as an appendix to the annual monitoring plan would ensure that the report would be subject to the same opportunities for public review and comment that are to be provided for the monitoring plan pursuant to regulations at 40 CFR 58.10. Those regulations specify that if the air agency modifies the monitoring plan from the previous year, then prior to taking final action to approve or disapprove the plan, the EPA would be required to provide an opportunity for public review and comment on the modified plan. The regulations also indicate that if the air agency has already provided a public comment opportunity in developing its revised monitoring plan and has made no further changes to the plan after reviewing the public comments that were received, then it could submit the public comments along with the revised plan to the EPA, and the EPA Regional Administrator would not need to provide a separate opportunity for comment before approving or disapproving the plan.

Under Option 2, the ongoing report would not be submitted to the EPA as an appendix to the annual monitoring network plan, but it would take the form of a separate, independent submittal from the state to the EPA Regional Administrator. The EPA proposed that this report would be due by the same July 1st date each year and that this independent submittal would follow the general guidelines set forth in 40 CFR 58.10 regarding opportunities for public review as described in Option 1, but the report would only include the annual assessments associated with sources in areas that were designated unclassifiable/attainment based on modeling of actual emissions.

In the proposed rule, the EPA requested comment on the two procedural options as well as any alternative ideas suggested by commenters. For any such recommendations, the EPA requested

that the commenter provide a detailed rationale and estimate of any associated costs. *See* 79 FR 27467, May 13, 2014.

ii. Brief Summary of Comments

Some state, tribal and industry commenters recommended that this information be included as an appendix to the annual monitoring plan, rather than as a stand-alone document. One commenter stated that, since both options have a deadline of July 1st each year, a separate document would only add more time and resource use. Several state commenters recommended that the assessment be submitted separately from the annual monitoring plan. These commenters provided the following rationale: Since these documents are not related, they should be kept separate; since the annual report refers to modeling, it will cause less confusion for the general public if it is a separate document from the annual monitoring plan; and because the annual monitoring plan and the emissions inventory submittals are performed by separate work units on different timelines, it would be better to deliver the products separately rather than delay one or the other to deliver them together.

iii. EPA Response

After considering the comments received related to both of the proposed options, the EPA believes that the best approach for the final rule is to allow the affected air agencies the discretion to either include the required annual data requirements report for modeled areas either as an appendix to the state's monitoring plan, or as a stand-alone document. The air agency will have the flexibility under the final rule to select the approach that best meets the Agency's workload, schedule, and particular needs. The EPA believes that either of the procedural approaches will be sufficient to implement the ongoing data requirements. Regardless of which approach is chosen by the air agency, the report must be submitted to the respective EPA Regional Office by July 1st annually and made available for public review and comment. The first report is due on July 1st of the year after the effective date of the area's initial designation and additional reports are due July 1st of each subsequent year.

E. Other Key Issues and Comments

Comments on the proposed rule also raised several other issues not already addressed in this document. This section identifies and addresses the key issues raised by those comments.

1. March 2015 Consent Decree

The proposed rule did not contain any regulatory deadlines for the EPA to complete area designations under the 2010 SO_2 NAAQS. However, at the same time that the EPA was developing the proposed rule and the final rule, the agency was also engaged in district court litigation from public interest groups and some states and state agencies seeking to have the EPA placed on a binding schedule to complete the designations. The parties in these cases filed complete briefs in one of these cases, resulting first in the court finding that the EPA was liable for having failed to meet the statutory deadline to complete all area designations. Subsequently, the EPA and the other parties conducted extensive settlement discussions over the remedy, *i.e.,* the schedule by which the EPA would complete its duties. This resulted in a settlement between the EPA and the public interest group plaintiffs, which the plaintiff-interveners did not join.

On June 2, 2014, the EPA published notice of a proposed consent decree reflecting this settlement *(Sierra Club et al v. McCarthy,* Civil Action No. 3:13-cv-3953–SI (N.D. Cal.)). 79 FR 31325. This proposed consent decree included deadlines for the EPA to complete designations in three phases, the latter two of which were due on the same dates that the EPA discussed as its intended designations dates in the preamble to the proposed DRR. The EPA received several comments on the notice informing the public of the proposed consent decree itself, and in response to this proposed rule.

The EPA is not promulgating deadlines for its completion of area designations in this final rule. Therefore, any comments directed to the merits of the consent decree itself are outside the scope of this rulemaking, and we will not respond to them here. Instead, as discussed earlier in this document, on March 2, 2015, the court issued an order entering the consent decree and establishing its deadlines as binding on the EPA. As also explained earlier, the 2017 and 2020 deadlines for the latter two stages of designations established by the consent decree will allow the EPA and states to use the new data and information that is timely generated by the implementation of this rule to inform the designations required to be completed by those dates, but it is not likely that full implementation of the rule can occur quickly enough to support the next round of designations required by the court's order to be completed by July 2, 2016.

2. Recommendations for the EPA To Designate Areas as Unclassifiable

Several commenters recommended that the EPA take prompt action to designate areas with inadequate data for air quality characterization as unclassifiable. A number of commenters asserted that the EPA cannot use the rule to supersede the statutory schedule under which the EPA is required to make area designations, including statutorily-appropriate ''unclassifiable'' designations. One industry group commented that the CAA does not authorize the EPA to conduct designations according to the schedule anticipated by the proposed rule preamble, commenting that the EPA must instead complete designations in accordance with the schedule under CAA section 107(d)(1) (designating areas unclassifiable where appropriate), and then redesignating unclassifiable areas as either attainment or nonattainment later. Similarly, a state commenter expressed the view that further data are not necessary to meet the CAA. Several commenters also stated that the proposed rule effectively nullifies the ''unclassifiable'' designation, use of which would have allowed the EPA to meet its statutory deadline. One commenter also stated that the EPA should continue to use the ''unclassifiable'' designation where appropriate, and should not seek to designate all areas as attainment or nonattainment.

Several commenters also addressed the interrelationship between the proposed rule and the proposed consent decree for settling the lawsuit regarding the EPA's failure to promulgate designations for areas without monitored violations. One state commenter urged that the EPA codify the proposed consent decree into the rule. Another state commenter objected to this suggestion, stating that the proposed consent decree specifies a designations schedule that conflicts with the proposed schedule and compromises a commenter's ability to comment on the impact of that consent decree on the rule. An industrial commenter found the consent decree to undermine the proposed rule. These commenters urged that the EPA re-propose the relationship between the consent decree and the rule. An industry group stated that the issuance of the proposed consent decree undermines the rule because it would require an early round of designations that would be based on modeling, in contravention of the process under the proposed rule that offers the option of basing designations on monitoring data.

As stated previously, the EPA is not establishing or modifying any area designation requirements provided for in section 107 of the CAA through this rulemaking. The purpose of this rulemaking is to require states to characterize air quality in priority areas throughout the country where existing ambient monitors may not be adequately characterizing peak 1-hour SO_2 concentrations. The air quality data obtained as a result of this rulemaking then may be used in future designations or redesignations, as appropriate. While the notice of proposed rulemaking described the EPA's anticipated designations schedule, for purposes of explaining the timeline by which the EPA anticipates that the data the EPA was proposing to require will be used, the timeline for possible future use of these data does not dictate the schedule or the substantive features of the requirements for obtaining data for air quality characterization purposes, and the Agency believes it will be highly valuable to obtain these data even if that occurs after initial designations occur.

While the notice of proposed rulemaking described the EPA's expectations that designations for areas not already completed in August 2013 would be completed either in 2017 or in 2020, the timetables for obtaining additional data are as prompt as the EPA considers reasonable whether or not such data can be used to inform the remaining designations, and thus alternate approaches and timetables for designations would not result in a different timetable for implementation of the rule's requirements. In particular, whether designations proceed according to the approach described in the EPA's notice of proposed rulemaking, or whether areas are first designated unclassifiable and subsequently redesignated to attainment or nonattainment, the same timetable, and substance of requirements for data to support more properly informed future judgments regarding areas' attainment status is warranted. Because this rulemaking is not intended to define the designations process and did not propose regulatory deadlines for issuing designations, it would be inappropriate in this final rulemaking to codify any particular schedule for designations action.

The proposed consent decree referenced by the comments concerns separate legal proceedings that are addressing the EPA's obligations to designate areas under CAA section 107. The commenters have not identified why any potential outcome of those proceedings warrants any particular revision to the rule, nor have they explained why the validity of the DRR is contingent on use of any particular designations approach. While the court's decision establishing timing requirements for the EPA's designations obligations will of course affect the EPA's approach to designations, including affecting the extent to which the EPA will be able to use the data required under the rule at various times in the designations or redesignations processes, these effects do not determine the validity of the data collection requirements of the rule. For these reasons, the EPA believes that the ability of commenters to address issues relevant to the rule was not compromised by the proposed consent decree and other actions or statements in the proceedings regarding the EPA's timetable for designations, and the EPA finds that re-proposal of the rule is not justified.

3. The Cost of Monitoring or Modeling Under this Rule

Several state and industry commenters stated that, because of funding limitations at the state level, any monitoring or modeling done to meet the requirements of the rule would likely need to be done by the affected sources. Commenters also stated that the rule will present yet another burden on the regulated community when facilities are already spending resources on emissions reductions projects that are required as the result of other EPA air quality rules.

Commenters also stated that even if sources voluntarily set up and operate their own monitors, state and local agencies will nevertheless still need to dedicate resources to administer the program, provide technical assistance, conduct performance audits, ensure data quality and submit the data to the EPA's AQS database each year. Commenters also stated that the initial state funding should be provided by the EPA through CAA section 103 or 105 grant funds in order to establish the monitoring sites required to meet the requirements of the rule.

The EPA recognizes that there will be costs and resources required to satisfy the requirements of this rulemaking. As suggested by both state and industry stakeholders who attended the EPA's May–June 2012 stakeholder meetings, in the absence of increased grant funding it may be necessary for air agencies to rebalance their existing grant funds for this purpose, or to consider alternative funding approaches such as working closely with affected sources to assist in funding either the modeling or monitoring required to meet the requirements of the rule. Early planning may be helpful to address these funding needs.

Because the CAA assigns to states much of the responsibility for developing air quality characterization data, the EPA describes the requirements of this rule in a consistent manner: Air agencies are the entities with principal responsibility to establish and operate monitors, and conduct modeling, and to provide air quality data to the EPA. However, the EPA recognizes that other parties (such as facility owners) also may perform significant portions of the work that this rule requires. The EPA would consider monitoring or modeling conducted by a third party to be an appropriate means for air agencies to obtain the data necessary to meet the requirements of this rule, provided that the state provides oversight to assure that (1) any monitoring is conducted in a manner that is equivalent to SLAMs and quality-assured in accordance with applicable requirements, and (2) any modeling analysis that the state submits, even if it was initially provided to the state by a third party, is done in a reasonable manner and follows the recommendations in the Modeling TAD or as otherwise agree upon with the EPA Regional Office on a case-by-case basis.

4. How the DRR Addresses SO_2 Sources in Areas That Are Already Designated

The intent of this DRR is to direct state and tribal air agencies to characterize air quality in areas around the largest sources of SO_2 emissions, through the use of either air quality modeling or ambient monitoring, and to provide such data to the EPA. The additional information required by this rule will be able to inform future action by the EPA or the state (*e.g.,* future designation decisions).

The proposed rule did not specifically address whether the requirement to characterize a sources' SO_2 emission impacts would apply differently based on whether areas containing sources were still undesignated, or whether they had already been designated as nonattainment, attainment, or unclassifiable. However, much of the discussion in the proposed rule preamble concerned how implementation of the rule might inform future area designations, thus implying that the air quality characterization requirement might apply only to areas that remained undesignated at the time of the rule's implementation. The EPA believes it is necessary to clarify how the rule applies to areas that have already been designated in some manner, either during the initial round of designations in August 2013 or in

subsequent rounds of designations pursuant to the March 2015 consent decree.

The first question is whether air agencies are required under this rule to characterize air quality near sources in areas that were designated as nonattainment in August 2013. *See* 78 FR 47191, August 5, 2013. In general, we expect nonattainment plans to provide adequate characterization of the impacts of sources within those nonattainment areas. Therefore, we have concluded that an air agency will not be required under this rule to characterize air quality around SO_2 sources located in a designated nonattainment area. Specifically, we have clarified the definition of ''applicable source'' in § 51.1200 of the final rule to be ''a stationary source that is (1) not located in a designated nonattainment area, and (2) has annual actual SO_2 emissions of 2,000 tons or more, or has been identified by an air agency or by the EPA Regional Administrator as requiring further air quality characterization.'' Thus, as a general matter, this rule does not require the state's January 2016 list of sources triggering the requirements of this rule to include sources located within areas already designated as nonattainment.

However, it may be possible that in some cases an SO_2 source or group of sources within the boundary of an existing nonattainment area can have significant impacts outside the nonattainment area, potentially raising concerns that these impacts might not be adequately evaluated in a nonattainment plan. The EPA notes that for such cases, the air agency and the EPA Regional Administrator retain the authority under this rule to require additional characterization of air quality around specific sources located in an existing nonattainment area, in the same manner that they retain the authority, as warranted, to require characterization of air quality around sources that are below the emissions threshold identified in this rule.

Related questions also arise for sources in areas that will be subject to evaluation and designation by July 2016 under the March 2015 consent decree regarding SO_2 designations. Because all sources that meet the March 2015 consent decree criteria for designation by July 2016 will also exceed the 2,000 ton threshold under this DRR, these sources will need to be included on the January 2016 list of sources subject to requirements for air quality characterization under this rule. Subsequent designations do not alter this list. The list is a permanent list of prioritized sources that excludes sources in areas designated as nonattainment before January 2016 and is not altered by designations promulgated after January 2016. In particular, the list of sources would not be altered by promulgation of nonattainment designations in July 2016. Nevertheless, the EPA expects that if the area around a ''consent decree'' source is designated as nonattainment by July 2016, pursuant to the consent decree, then the information that was adequate to inform this designation would also satisfy the air agency's obligation under this rule to submit modeling information in January 2017 characterizing air quality around that source.

The next question is how this rule applies to sources in areas that have been designated as ''unclassifiable'' or as ''unclassifiable/attainment.'' [12] The EPA did not apply these designations to any areas in August 2013, but the EPA may apply these designations to some areas in the designations required to be completed by July 2016. This rule requires air quality characterization for areas previously designated as unclassifiable, just as it requires air quality characterization for undesignated areas. If the EPA has previously determined through a designation action that sufficient information has not yet been identified to support an attainment or nonattainment designation (*i.e.,* the area was initially designated as unclassifiable), then the additional information required by this rule will be used to inform possible future actions by the EPA or the state (*e.g.,* to determine whether the area is attaining or not attaining the standard, and change designation status).

With regard to ''unclassifiable/attainment'' areas, no areas were given this designation in the August 2013 designations. However, it is possible that some areas may be given this designation in the July 2016 designations based on relevant air quality characterization information (such as air quality modeling) that has been provided by the air agency or other parties in the designations process. The applicable sources in any such areas designated pursuant to the March 2015 consent decree would have also been included in the list of sources that air agencies would be required to submit to the EPA in January 2016 according to this rule. If an area has already been designated by the EPA as ''unclassifiable/attainment'' by July 2016 pursuant to the consent decree, then the EPA expects that, as was the case for areas as designated nonattainment, the information that was adequate to inform an unclassifiable/attainment designation would also satisfy the air agency's obligation under this rule to submit modeling information in January 2017 characterizing air quality around that source. As a result, under this rule, the air agency would not be required to provide additional air quality characterization information to the EPA by January 2017.

However, these already-designated ''unclassifiable/attainment'' areas would nevertheless be subject to the ongoing data requirements included in § 51.1205 of this rule. While modeling for purposes of informing designations promulgated by July 2016 would also be considered modeling to address the requirements of this rule, the EPA is promulgating revised rule language that clarifies that the ongoing data requirements apply to areas modeled based on actual emissions whether that modeling was conducted for purposes of informing designations by July 2016 or conducted only for satisfying the requirements of this rule. Accordingly, § 51.1205(b) has been modified to apply to any attainment area designated based on modeling of actual emissions to characterize air quality.

5. How Air Agencies Should Address Modeling and Monitoring in Multi-State Areas To Meet the Requirements of the Rule

As with the previous issue, a review of the comments and questions received from states has made the EPA aware of the need to clarify how the rule applies to situations where an applicable source that is located in one state or tribal jurisdiction has an impact on SO_2 concentrations in one or more other jurisdictions. While the final rule preserves the option of the air agency of the jurisdiction in which the source is located to choose how to satisfy the air quality characterization requirements of the rule (*i.e.,* through either monitoring or modeling), the EPA urges all air agencies involved to consult and coordinate in order to make appropriate decisions concerning whether modeling

[12] While states have and may continue to submit designations recommendations identifying areas as ''attainment,'' the EPA expects to continue its traditional approach, where appropriate, of using a designation category of ''unclassifiable/attainment'' for areas that the EPA determines meet the NAAQS. The EPA expects to reserve the category ''unclassifiable'' for areas where the EPA cannot determine based on available information whether the area is meeting or not meeting the NAAQS or where the EPA cannot determine whether the area contributes to a violation in a nearby area. *See* SO_2 designations guidance issued by Stephen D. Page on March 20, 2015, available at *http://www.epa.gov/airquality/sulfurdioxide/pdfs/20150320SO2designations.pdf.*

or monitoring would be the most effective method to characterize the peak 1-hour SO_2 concentrations in the ambient air affected by such sources.

If the jurisdiction in which the source is located prefers to employ ambient monitoring to characterize air quality, the EPA believes it would be appropriate to use ambient monitoring only if: (1) The air agency coordinates with the other jurisdiction in identifying appropriate ambient monitoring sites; and (2) there is an agreement established with the other jurisdiction (in which peak 1-hour SO_2 impacts are being experienced), and possibly with the facility owner, regarding logistical, financial and operational responsibilities associated with the purchase, installation and operation of the monitor or monitors that is acceptable to all parties. However, if one or both jurisdictions do not wish to employ ambient monitoring, and a monitoring agreement cannot be reached, the EPA believes that the obligation to characterize air quality rests with the jurisdiction in which the source is located. Without an adequate multi-jurisdiction monitoring plan, the air agency would need to use modeling analyses to characterize air quality in the multi-jurisdiction area. Consultation among all involved jurisdictions will be important for planning and conducting technically appropriate modeling. The EPA expects that early and active coordination among all involved parties can lead to beneficial agreements for characterizing air quality in multi-jurisdiction areas, and the EPA will work with air agencies to help facilitate such agreements.

V. Environmental Justice Considerations

The EPA believes the human health or environmental risk addressed by this action will not have disproportionately high and adverse human health or environmental effects on minority, low-income, or indigenous populations because it does not affect the level of protection provided to human health or the environment under the SO_2 NAAQS. When promulgated, these regulations will require that air agencies characterize air quality around certain large emissions sources, or secure emission limits on sources to reduce annual emissions below 2,000 tpy. It is intended that the actions resulting from this rule would lead to greater protection for U.S. citizens, including minority, low-income, or indigenous populations, by reducing exposure to high ambient concentrations of SO_2. In addition, this rule will help communities by informing residents about ambient air quality around the largest sources of SO_2.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not an economically significant action, but raises novel policy issues and was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket.

B. Paperwork Reduction Act (PRA)

The information collection activities in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2495.01. A copy of the ICR is available in the docket for this rule, and is briefly summarized here. The information collection requirements are not enforceable until OMB approves them.

The EPA is requiring air agencies to more extensively characterize ambient SO_2 air quality concentrations, pursuant to sections 110(a)(2)(B), 110(a)(2)(K), 301(a) and 114 of the CAA. For purposes of analysis of the estimated paperwork burden, the EPA assumed that 43 states and tribes would take actions to characterize air quality through either air quality modeling or ambient monitoring in 412 areas around SO_2 sources emitting 2,000 tpy of more across the country, and such states would submit the results of these analyses to the EPA. Under this rule, the air agency will have the ability to choose, on an area-by-area basis, the analytical approach to follow for characterizing air quality around each qualifying source. For this reason, there is no way of determining exactly how many areas may be characterized through ambient monitoring versus air quality modeling approaches. Therefore, this section presents two sets of estimated costs, one that assumes all source areas would be characterized through ambient monitoring, and the other that assumes that all source areas would be characterized through air quality modeling.

Potential ambient air monitoring costs are estimated based on the assumption that air quality for each of the 412 SO_2 sources exceeding the 2,000 tpy threshold would be characterized through a single newly deployed air monitor. (Note, however, that the Monitoring TAD discusses situations where more than one monitor may be appropriate or necessary to properly characterize peak 1-hour SO_2 concentrations in certain areas, which would increase costs proportionally.) Estimates are provided for a 3-year period and include a calculation for equipment amortization over 7 years (as is typically done in monitoring-related ICRs). For the period of 2016, 2017, and 2018 (monitoring related expenditures would begin in 2016), the total approximate average annual monitoring cost, including a calculation for equipment amortization, is $8,662,110 (total capital, and labor and non-labor operation and maintenance) with a total burden of 102,869 hours. The annual labor costs associated with these hours is $7,080,572. Included in the $8,662,110 total are other annual costs of non-labor operations and maintenance of $706,827 and equipment and contract costs of $874,711. For reference purposes, an estimate for initial establishment of a new SO_2 monitoring station is $92,614 (does not include equipment amortization). In addition to the costs that would be incurred by the state and local air agencies, there would be an estimated burden to the EPA related to salary cost and equipment cost, etc., of a total of 52,717 hours and $776,005.

Potential air quality modeling costs are estimated based on the assumption that air quality for each of the 412 SO_2 sources exceeding the 2,000 tpy threshold would be characterized through air quality modeling analyses. Based on market research, stakeholder feedback and assumptions about the procedures to follow when conducting modeling for designations purposes,[13] an estimate of modeling costs for a single modeling run centered on an identified source would be approximately $30,000. If air agencies choose to characterize air quality through modeling analyses around all 412 sources expected to be identified as exceeding the source threshold, then total national costs for modeling analyses would be estimated at $12,360,000. If these costs were incurred over the course of 3 years, then the approximate annual cost for each year over that period would be $4,120,000.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB

[13] The Draft SO_2 NAAQS Designations Modeling Technical Assistance Document can be found at: *http://www.epa.gov/airquality/sulfurdioxide/pdfs/SO2ModelingTAD.pdf.*

control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9. When OMB approves this ICR, the agency will announce that approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities contained in this final rule.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if a rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This final rule will not impose any requirements directly on small entities. Entities potentially affected directly by this final rule include state, local and tribal governments and none of these governments are small entities. Other types of small entities are also not directly subject to the requirements of this rule.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531, and does not significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The requirement to characterize air quality to inform the area designation process for the revised NAAQS is imposed by the CAA. This rule is intended to interpret those requirements as they apply to the 2010 1 hour SO_2 NAAQS.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175. It would not have a substantial direct effect on one or more Indian tribes. Furthermore, this regulation does not affect the relationship or distribution of power and responsibilities between the federal government and Indian tribes. The CAA and the Tribal Air Rule establish the relationship of the federal government and tribes in characterizing air quality and developing plans to attain the NAAQS, and this regulation does nothing to modify that relationship. Thus, Executive Order 13175 does not apply to this action.

Consistent with the EPA Policy on Consultation and Coordination with Indian tribes, the EPA held several meetings with tribal environmental professionals to discuss issues associated with this rule, including discussions at the National Tribal Forum on May 1, 2013, and on National Tribal Air Association policy calls. These meetings discussed the SO_2 implementation White Paper. The EPA provided an opportunity for tribes and stakeholders to provide written comments on the concepts discussed in the White Paper. Summaries of these meetings are included in the docket for this rule. The EPA also provided information on the proposed rule and conducted consultation with the National Tribal Air Association in the form of a briefing on April 24, 2014, and a webinar on May 21, 2014.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not directly involve an environmental health risk or safety risk.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. The EPA is finalizing this SO_2 DRR to require air agencies to more extensively characterize ambient SO_2 air quality concentrations, pursuant to sections 110(a)(2)(B), 110(a)(2)(K), 301(a) and 114 of the CAA. The rule does not prescribe specific control strategies by which the SO_2 NAAQS will be met. Such strategies will be developed by states on a case-by-case basis only if the information generated by this rule results in an area being designated nonattainment, thereby triggering the need for the state to develop an attainment plan for the area. The EPA cannot predict whether the attainment plan prepared by the state will include regulations on energy suppliers, distributors, or users. Thus, the EPA concludes that this rule is not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

This action does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on any population, including any minority, low-income or indigenous populations, because it does not affect the level of protection provided to human health or the environment. That level of protection is established by the NAAQS itself. The results of the evaluation of environmental justice considerations is contained in section V of this preamble titled, ''Environmental Justice Considerations.''

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

L. Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this final action must be filed in the United States Court of Appeals for the District of Columbia Circuit by October 20, 2015. Filing a petition for reconsideration by the Administrator of this final action does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of this action.

Statutory Authority

The statutory authority for this action is provided by 42 U.S.C. 7401 *et seq.,* and particularly sections 7403, 7407, 7410, 7414 and 7601.

List of Subjects in 40 CFR Part 51

Environmental protection, Air pollution control, Intergovernmental relations, Sulfur oxides.

Dated: August 10, 2015.

Gina McCarthy,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 51 of the Code of Federal Regulations is amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

■ 2. Subpart BB is added to read as follows:

Subpart BB—Data Requirements for Characterizing Air Quality for the Primary SO_2 NAAQS

Sec.

51.1200 Definitions.
51.1201 Purpose.
51.1202 Applicability.
51.1203 Air agency requirements.
51.1204 Enforceable emission limits providing for attainment.
51.1205 Ongoing data requirements.

Subpart BB—Data Requirements for Characterizing Air Quality for the Primary SO_2 NAAQS

§ 51.1200 Definitions.

The following definitions apply for the purposes of this subpart. All terms not defined herein will have the meaning given them in § 51.100 or in the Clean Air Act (CAA). *Air agency* means the agency or organization responsible for air quality management within a state, local governmental jurisdiction, territory or area subject to tribal government. *Annual SO_2 emissions data* means the quality-assured annual SO_2 emissions data for a stationary source. Such data may have been required to be reported to the EPA in accordance with an existing regulatory requirement (such as the Air Emissions Reporting Rule or the Acid Rain Program); however, annual SO_2 emissions data may be obtained or determined through other reliable means as well.

Applicable source means a stationary source that is:

(1) Not located in a designated nonattainment area, and

(2) Has actual annual SO_2 emissions data of 2,000 tons or more, or has been identified by an air agency or by the EPA Regional Administrator as requiring further air quality characterization. *2010 SO_2 NAAQS* means the primary National Ambient Air Quality Standard for sulfur oxides (sulfur dioxide) as codified at 40 CFR 50.17, as effective August 23, 2010.

§ 51.1201 Purpose.

The purpose of this subpart is to require air agencies to develop and submit air quality data characterizing maximum 1-hour ambient concentrations of SO_2 across the United States through either ambient air quality monitoring or air quality modeling analysis at the air agency's election. These monitoring and modeling data may be used in future determinations by the EPA regarding areas' SO_2 NAAQS attainment status, or for other actions designed to ensure attainment of the 2010 SO_2 NAAQS and provide protection to the public from the short-term health effects associated with exposure to SO_2 concentrations that exceed the NAAQS.

§ 51.1202 Applicability.

This subpart applies to any air agency in whose jurisdiction is located one or more applicable sources of SO_2 emissions that have annual actual SO_2 emissions of 2,000 tons or more; or in whose jurisdiction is located one or more sources of SO_2 emissions that have been identified by the air agency or by the EPA Regional Administrator as requiring further air quality characterization. For the purposes of this subpart, the subject air agency shall identify applicable sources of SO_2 based on the most recently available annual SO_2 emissions data for such sources.

§ 51.1203 Air agency requirements.

(a) The air agency shall submit a list of applicable SO_2 sources identified pursuant to § 51.1202 located in its jurisdiction to the EPA by January 15, 2016. This list may be revised by the Regional Administrator after review based on available SO_2 emissions data.

(b) For each source area subject to requirements for air quality characterization, the air agency shall notify the EPA by July 1, 2016, whether it has chosen to characterize peak 1-hour SO_2 concentrations in such area through ambient air quality monitoring; characterize peak 1-hour SO_2 concentrations in such area through air quality modeling techniques; or provide federally enforceable emission limitations by January 13, 2017 that limit emissions of applicable sources to less than 2,000 tpy, in accordance with paragraph (e) of this section, or provide documentation that the applicable source has permanently shut down. Emission limits in accordance with paragraph (e) of this section may be established in lieu of conducting monitoring or modeling unless, in the judgment of the air agency or the EPA Regional Administrator, the area warrants further air quality characterization even with the establishment of any new emission limit(s). If the air agency has chosen to establish requirements to limit emissions for applicable sources in an area, the notification from the air agency shall describe the requirements and emission limits the air agency intends to apply. For any area with multiple applicable sources, the air agency (or air agencies if a multi-state area) shall use the same technique (monitoring, modeling, or emissions limitation) for all applicable sources in the area. If multiple air agencies have applicable sources in an area, the air agencies must consult with each other to employ a common technique for the area.

(c) *Monitoring.* For each area identified in the notification submitted pursuant to paragraph (b) of this section as an area for which SO_2 concentrations will be characterized through ambient monitoring, the required monitors shall be sited and operated either as SLAMS or in a manner equivalent to SLAMS. In either case, monitors shall meet applicable criteria in 40 CFR part 58, appendices A, C, and E and their data shall be subject to data certification and reporting requirements as prescribed in 40 CFR 58.15 and 58.16. These requirements include quarterly reporting of monitoring data to the Air Quality System, and the annual certification of data by May 1 of the following year.

(1) The air agency shall include relevant information about monitors used to meet the requirements of this paragraph (c) in the air agency's Annual Monitoring Network Plan required by 40 CFR 58.10 due July 1, 2016. The air agency shall consult with the appropriate EPA Regional Office in the development of plans to install, supplement, or maintain an appropriate ambient SO_2 monitoring network pursuant to the requirements of 40 CFR part 58 and of this subpart.

(2) All existing, *new,* or relocated ambient monitors intended to meet the requirements of this paragraph (c) must be operational by January 1, 2017 and must be operated continually until approved for shut down by EPA.

(3) Any SO_2 monitor identified by an air agency in its approved Annual Monitoring Network Plan as having the purpose of meeting the requirements of this paragraph (c) that: Is not located in

an area designated as nonattainment as the 2010 SO_2 NAAQS is not also being used to satisfy other ambient SO_2 minimum monitoring requirements listed in 40 CFR part 58, appendix D, section 4.4; and is not otherwise required as part of a SIP, permit, attainment plan or maintenance plan, may be eligible for shut down upon EPA approval if it produces a design value no greater than 50 percent of the 2010 SO_2 NAAQS from data collected in either its first or second 3-year period of operation. The air agency must receive EPA Regional Administrator approval of a request to cease operation of the monitor as part of the EPA's action on the Annual Monitoring Network Plan under 40 CFR 58.10 prior to shutting down any qualifying monitor under this paragraph (c).

(d) *Modeling.* For each area identified in the notification submitted pursuant to paragraph (b) of this section as an area for which SO_2 concentrations will be characterized through air quality modeling, the air agency shall submit by July 1, 2016, a technical protocol for conducting such modeling to the Regional Administrator for review. The air agency shall consult with the appropriate EPA Regional Office in developing these modeling protocols.

(1) The modeling protocol shall include information about the modeling approach to be followed, including but not limited to the model to be used, modeling domain, receptor grid, emissions dataset, meteorological dataset and how the air agency will account for background SO_2 concentrations.

(2) Modeling analyses shall characterize air quality based on either actual SO_2 emissions from the most recent 3 years, or on any federally enforceable allowable emission limit or limits established by the air agency or the EPA and that are effective and require compliance by January 13, 2017.

(3) Except as provided by § 51.1204, the air agency shall conduct the modeling analysis for any applicable source identified by the air agency pursuant to paragraph (a) of this section, and for its associated area and any nearby area, as applicable, and submit the modeling analysis to the EPA Regional Office by January 13, 2017.

(e) *Federally enforceable requirement to limit SO_2 emissions to under 2,000 tons per year.* For each area identified in the notification submitted pursuant to paragraph (b) of this sectionas an area for which the air agency will adopt federally enforceable requirements in lieu of characterizing air quality through monitoring or modeling, the air agency shall submit documentation to the EPA by January 13, 2017, showing that such requirements have been adopted, are in effect, and been made federally enforceable by January 13, 2017, through an appropriate legal mechanism, and the provisions either:

(1) Require the applicable sources in the area to emit less than 2,000 tons of SO_2 per year for calendar year 2017 and thereafter; or

(2) Document that the applicable sources in the area have permanently shut down by January 13, 2017.

§ 51.1204 Enforceable emission limits providing for attainment.

At any time prior to January 13, 2017, the air agency may submit to the EPA federally enforceable SO_2 emissions limits (effective no later than January 13, 2017) for one or more applicable sources that provide for attainment of the 2010 SO_2 NAAQS in the area affected by such emissions. The submittal shall include associated air quality modeling and other analyses that demonstrate that all modeling receptors in the area will not violate the 2010 SO_2 NAAQS, taking into account the updated allowable emission limits on applicable sources as well as emissions limits that may apply to any other sources in the area. The air agency shall not be subject to the ongoing data requirements of § 51.1205 for such area if the air quality modeling and other analyses demonstrate that the area will not violate the 2010 SO_2 NAAQS.

§ 51.1205 Ongoing data requirements.

(a) *Monitored areas.* For any area where SO_2 monitoring was conducted to characterize air quality pursuant to § 51.1203, the air agency shall continue to operate the monitor(s) used to meet those requirements and shall continue to report ambient data pursuant to existing ambient monitoring regulations, unless the monitor(s) have been approved for shut down by the EPA Regional Administrator pursuant to § 51.1203(c)(3) or pursuant to 40 CFR 58.14.

(b) *Modeled areas.* For any area where modeling of actual SO_2 emissions serve as the basis for designating such area as attainment for the 2010 SO_2 NAAQS, the air agency shall submit an annual report to the EPA Regional Administrator by July 1 of each year, either as a stand-alone document made available for public inspection, or as an appendix to its Annual Monitoring Network Plan (also due on July 1 each year under 40 CFR 58.10), that documents the annual SO_2 emissions of each applicable source in each such area and provides an assessment of the cause of any emissions increase from the previous year. The first report for each such area is due by July 1 of the calendar year after the effective date of the area's initial designation.

(1) The air agency shall include in such report a recommendation regarding whether additional modeling is needed to characterize air quality in any area to determine whether the area meets or does not meet the 2010 SO_2 NAAQS. The EPA Regional Administrator will consider the emissions report and air agency recommendation, and may require that the air agency conduct updated air quality modeling for the area and submit it to the EPA within 12 months.

(2) An air agency will no longer be subject to the requirements of this paragraph (b) for a particular area if it provides air quality modeling demonstrating that air quality values at all receptors in the analysis are no greater than 50 percent of the 1-hour SO_2 NAAQS, and such demonstration is approved by the EPA Regional Administrator.

(c) Any air agency that demonstrates that an area would meet the 2010 SO_2 NAAQS with allowable emissions is not required pursuant to paragraph (b) of this section to submit future annual reports for the area.

(d) If modeling or monitoring information required to be submitted by the air agency to the EPA pursuant to this subpart indicates that an area is not attaining the 2010 SO_2 NAAQS, the EPA may take appropriate action, including but not limited to requiring adoption of enforceable emission limits to ensure continued attainment of the 2010 SO_2 NAAQS, designation or redesignation of the area to nonattainment, or issuance of a SIP Call.

[FR Doc. 2015–20367 Filed 8–20–15; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL REGISTER

Vol. 80 Friday,

No. 162 August 21, 2015

Part VI

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Final Frameworks for Early Season Migratory Bird Hunting Regulations; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

[Docket No. FWS–HQ–MB–2014–0064; FF09M21200–156–FXMB1231099BPP0]

RIN 1018–BA67

Migratory Bird Hunting; Final Frameworks for Early-Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes final early-season frameworks from which the States, Puerto Rico, and the Virgin Islands may select season dates, limits, and other options for the 2015–16 migratory bird hunting seasons. Early seasons are those that generally open prior to October 1, and include seasons in Alaska, Hawaii, Puerto Rico, and the Virgin Islands. The effect of this final rule is to facilitate the selection of hunting seasons by the States and Territories to further the annual establishment of the early-season migratory bird hunting regulations.

DATES: This rule takes effect on August 21, 2015

ADDRESSES: States and Territories should send their season selections to: Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, MS: MB, 5275 Leesburg Pike, Falls Church, VA 22041–3803 You may inspect comments during normal business hours at the Service's office at 5275 Leesburg Pike, Falls Church, Virginia, or at *http://www.regulations.gov* at Docket No. FWS–HQ–MB–2014–0064.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel, U.S. Fish and Wildlife Service, Department of the Interior, MS: MB, 5275 Leesburg Pike, Falls Church, VA 22041–3803; (703) 358–1967.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 2015

On April 13, 2015, we published in the **Federal Register** (80 FR 19852) a proposal to amend part 20 of title 50 of the Code of Federal Regulations (CFR). The proposal provided a background and overview of the migratory bird hunting regulations process, and addressed the establishment of seasons, limits, and other regulations for hunting migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K of part 20. Major steps in the 2015–16 regulatory cycle relating to open public meetings and **Federal Register** notifications were also identified in the April 13, 2015, proposed rule.

Further, we explained that all sections of subsequent documents outlining hunting frameworks and guidelines were organized under numbered headings. Subsequent documents will refer only to numbered items requiring attention. Therefore, it is important to note that we omit those items requiring no attention, and remaining numbered items might be discontinuous or appear incomplete.

On June 11, 2015, we published in the **Federal Register** (80 FR 33223) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations. The June 11 supplement also provided detailed information on the 2015–16 regulatory schedule and announced the Service Regulations Committee (SRC) and Flyway Council meetings.

On July 21, 2015, we published in the **Federal Register** (80 FR 43266) a third document specifically dealing with the proposed frameworks for early-season regulations. We published the proposed frameworks for late-season regulations (primarily hunting seasons that start after October 1 and most waterfowl seasons not already established) in a mid-August 2015 **Federal Register**.

This document is the fifth in a series of proposed, supplemental, and final rulemaking documents. It establishes final frameworks from which States may select season dates, shooting hours, and daily bag and possession limits for the 2015–16 season. These selections will be published in the **Federal Register** as amendments to §§ 20.101 through 20.107, and § 20.109.

Population Status and Harvest

Information on the status of waterfowl and information on the status and harvest of migratory shore and upland game birds, including detailed information on methodologies and results, is available at the address indicated under **FOR FURTHER INFORMATION CONTACT** or from our Web site at *http://www.fws.gov/migratorybirds/NewsPublicationsReports.html.*

Review of Public Comments

The preliminary proposed rulemaking (April 13, 2015, **Federal Register**) opened the public comment period for migratory game bird hunting regulations. Comments concerning early-season issues are summarized below and numbered in the order used in the April 13, 2015, **Federal Register** document. Only the numbered items pertaining to early-seasons issues for which we received written comments are included. Consequently, the issues do not follow in consecutive numerical or alphabetical order.

We received recommendations from all four Flyway Councils. Some recommendations supported continuation of last year's frameworks. Due to the comprehensive nature of the annual review of the frameworks performed by the Councils, support for continuation of last year's frameworks is assumed for items for which no recommendations were received. Council recommendations for changes in the frameworks are summarized below.

General

Written Comments: A commenter protested the entire migratory bird hunting regulations process, the killing of all migratory birds, and status and habitat data on which the migratory bird hunting regulations are based.

Service Response: Our long-term objectives continue to include providing opportunities to harvest portions of certain migratory game bird populations and to limit harvests to levels compatible with each population's ability to maintain healthy, viable numbers. Having taken into account the zones of temperature and the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory birds, we believe that the hunting seasons provided for herein are compatible with the current status of migratory bird populations and long-term population goals. Additionally, we are obligated to, and do, give serious consideration to all information received as public comment. We believe that the Flyway-Council system of migratory bird management has been a longstanding, successful example of State–Federal cooperative management since its establishment in 1952. However, as always, we continue to seek new ways to improve the process.

1. Ducks

Categories used to discuss issues related to duck harvest management are: (A) General Harvest Strategy; (B) Regulatory Alternatives, including specification of framework dates, season lengths, and bag limits; (C) Zones and Split Seasons; and (D) Special Seasons/Species Management. The categories correspond to previously published issues/discussions, and only those containing substantial recommendations are discussed below.

C. Zones and Split Seasons

Council Recommendations: The Mississippi and Central Flyway Councils recommended no changes to the existing zone and split season guidelines. However, they further recommended that States be provided the option of changing duck zones and split arrangements in either the 2016–17 or 2017–18 seasons, with the next open season in 2021 for the 2021–25 period.

Service Response: Zones and split seasons are ''special regulations'' designed to distribute hunting opportunities and harvests according to temporal, geographic, and demographic variability in waterfowl and other migratory game bird populations. For ducks, States have been allowed the option of dividing their allotted hunting days into two (or in some cases three) segments to take advantage of species-specific peaks of abundance or to satisfy hunters in different areas who want to hunt during the peak of waterfowl abundance in their area. However, the split-season option does not fully satisfy many States that wish to provide a more equitable distribution of harvest opportunities. Therefore, we also have allowed the establishment of independent seasons in up to four zones within States for the purpose of providing more equitable distribution of harvest opportunity for hunters throughout the State.

In 1978, we prepared an environmental assessment (EA) on the use of zones to set duck hunting regulations. A primary tenet of the 1978 EA was that zoning would be for the primary purpose of providing equitable distribution of duck hunting opportunities within a State or region and not for the purpose of increasing total annual waterfowl harvest in the zoned areas. In fact, target harvest levels were to be adjusted downward if they exceeded traditional levels as a result of zoning. Subsequent to the 1978 EA, we conducted a review of the use of zones and split seasons in 1990. In 2011, we prepared a new EA analyzing some specific proposed changes to the zone and split season guidelines. The current guidelines were then finalized in 2011 (76 FR 53536; August 26, 2011).

Currently, every 5 years, States are afforded the opportunity to change the zoning and split season configuration within which they set their annual duck hunting regulations. The next regularly scheduled open season for changes to zone and split season configurations is in 2016, for use during the 2016–20 period. However, as we discussed in the September 23, 2014, **Federal Register** (79 FR 56864), and the April 13, 2015, **Federal Register** (80 FR 19852), we are implementing significant changes to the annual regulatory process as outlined in the 2013 SEIS. As such, the previously identified May 1, 2016, due date for zone and split season configuration changes, which was developed under the current regulatory process, is too late for those States wishing to change zone and split season configurations for implementation in the 2016–17 season. Under the new regulatory schedule, we anticipate publishing the proposed rule for all 2016–17 migratory bird seasons sometime this fall—approximately 30 days after the SRC meeting (which is scheduled for October 20–22, 2015). A final rule tentatively would be published 75 days after the proposed rule (no later than April 1). This schedule would preclude inclusion of new zone descriptions in the proposed rule as had been done in past open seasons and would not be appropriate because it would preclude the ability for the public to comment on these new individual State zone descriptions. Therefore, we need to include any new proposed 2016–20 zone descriptions in the 2016–17 hunting seasons proposed rule document that will be published later this year.

Considering all of the above, we agree with the Mississippi and Central Flyway Councils and have decided that a two-phase approach is appropriate. For those States wishing to change zone and split season configurations in time for the 2016–17 season, we will need to receive new configuration and zone descriptions by December 1, 2015. States that do not send in new zone and split season configuration changes until the previously identified May 1, 2016, deadline will have those changes implemented in the 2017–18 hunting season. The next scheduled open season would remain in 2021 for the 2021–25 seasons.

For the current open season, the guidelines for duck zone and split season configurations will be as follows:

Guidelines for Duck Zones and Split Seasons

The following zone and split-season guidelines apply only for the regular duck season:

(1) A zone is a geographic area or portion of a State, with a contiguous boundary, for which independent dates may be selected for the regular duck season.

(2) Consideration of changes for management-unit boundaries is not subject to the guidelines and provisions governing the use of zones and split seasons for ducks.

(3) Only minor (less than a county in size) boundary changes will be allowed for any grandfathered arrangement, and changes are limited to the open season.

(4) Once a zone and split option is selected during an open season, it must remain in place for the following 5 years.

Any State may continue the configuration used in the previous 5-year period. If changes are made, the zone and split-season configuration must conform to one of the following options:

(1) No more than four zones with no splits,

(2) Split seasons (no more than three segments) with no zones, or

(3) No more than three zones with the option for two-way (two-segment) split seasons in one, two, or all zones.

Grandfathered Zone and Split Arrangements

When we first implemented the zone and split guidelines in 1991, several States had completed experiments with zone and split arrangements different from our original options. We offered those States a one-time opportunity to continue (''grandfather'') those arrangements, with the stipulation that only minor changes could be made to zone boundaries. If any of those States now wish to change their zone and split arrangement:

(1) The new arrangement must conform to one of the three options identified above; and

(2) The State cannot go back to the grandfathered arrangement that it previously had in place.

Management Units

We will continue to utilize the specific limitations previously established regarding the use of zones and split seasons in special management units, including the High Plains Mallard Management Unit. We note that the original justification and objectives established for the High Plains Mallard Management Unit provided for additional days of hunting opportunity at the end of the regular duck season. In order to maintain the integrity of the management unit, current guidelines prohibit simultaneous zoning and/or three-way split seasons within a management unit and the remainder of the State. Removal of this limitation would allow additional proliferation of zone and split configurations and compromise the original objectives of the management unit.

D. Special Seasons/Species Management

i. September Teal Seasons

Utilizing the criteria developed for the teal season harvest strategy, this year's estimate of 8.3 million blue-winged teal from the traditional survey area indicates that a 16-day September teal season in the Atlantic, Central, and Mississippi Flyways is appropriate for 2015.

4. Canada Geese

A. Special Seasons

Council Recommendations: The Pacific Flyway Council recommended increasing season length from 7 to 15 days and the daily bag limit from 2 to 5 for Canada geese in Idaho.

Service Response: We agree with the Pacific Flyway Council's request to increase the Canada goose season length and daily bag limit in Idaho. The special early Canada goose hunting season is generally designed to reduce or control overabundant resident Canada goose populations. Increasing the season length from 7 to 15 days and the daily bag limit from 2 to 5 geese in Idaho may help reduce or control the abundance of resident Canada geese.

B. Regular Seasons

Council Recommendations: The Mississippi Flyway Council recommended that the framework opening date for all species of geese for the regular goose seasons in the Lower Peninsula of Michigan and Wisconsin be September 16, 2015, and in the Upper Peninsula of Michigan be September 11, 2015.

Service Response: We concur with recommended framework opening dates. Michigan, beginning in 1998, and Wisconsin, beginning in 1989, have opened their regular Canada goose seasons prior to the Flyway-wide framework opening date to address resident goose management concerns in these States. As we have previously stated in our 2008 final rule (73 FR 50678, August 27, 2008), we agree with the objective to increase harvest pressure on resident Canada geese in the Mississippi Flyway and will continue to consider the opening dates in both States as exceptions to the general Flyway opening date, to be reconsidered annually. The framework closing date for the early goose season in the Upper Peninsula of Michigan is September 10. By changing the framework opening date for the regular season to September 11 in the Upper Peninsula of Michigan there will be no need to close goose hunting in that area for 5 days and thus lose the ability to maintain harvest pressure on resident Canada geese. We note that the most recent resident Canada goose estimate for the Mississippi Flyway was 1,461,000 geese during the spring of 2014, above the Flyway's population goal of 1.18 to 1.40 million birds.

8. Swans

Council Recommendations: In March the Atlantic, Mississippi, and Central Flyway Councils recommended increasing tundra swan permit numbers by 25 percent (2,400 permits) for the 2015–16 season, if the final 3-year running average mid-winter count exceeds 110,000 Eastern Population tundra swans, in accordance with the Eastern Population tundra swan management plan.

Service Response: At the June 24–25, 2015, SRC meeting, the Atlantic, Mississippi, and Central Flyway Councils withdrew their recommendations to increase tundra swan permit numbers because the final 3-year running average mid-winter count did not exceed 110,000 Eastern Population tundra swans.

9. Sandhill Cranes

Council Recommendations: The Atlantic and Mississippi Flyway Councils recommended that Kentucky be granted an operational sandhill crane hunting season beginning in 2015 following the guidelines established in the Eastern Population of Sandhill Cranes Management Plan (EP Management Plan). Kentucky's operational season would consist of a maximum season length of 60 days (with no splits) to be held between September 1 and January 31, with a daily bag limit of 2 birds, and a season limit of 3 birds. Hunting would occur between sunrise and sunset. Per the guidelines set forth in the EP Management Plan, and based on the State's 5-year peak average of 12,072 birds, Kentucky would be allowed to issue a maximum of 1,207 tags during the 2015–16 season. These permits would be divided among 400 permitted hunters. Hunters would be required to take mandatory whooping crane identification training, utilize Service-approved nontoxic shot shells, tag birds, report harvest daily via Kentucky's reporting system, and complete a post-season survey.

The Central and Pacific Flyway Councils recommended using the Rocky Mountain Population (RMP) sandhill crane harvest allocation of 938 birds as proposed in the allocation formula using the 3-year running population average for 2012–14. The Councils also recommended that, under the new annual regulatory process beginning with the 2016–17 season, the harvest strategy described in the Pacific and Central Flyway Management Plan for RMP sandhill cranes be published in the proposed season frameworks and be used to determine allowable harvest. They recommended that the final allowable harvest each year be included in the final season frameworks published in February.

The Pacific Flyway Council recommended some minor changes to the hunt area boundaries in Idaho to simplify and clarify hunt area descriptions. More specifically, Area 5 would now include all of Franklin County, and Area 1 would include all of Caribou County except that portion lying within the Grays Lake Basin. The Pacific Flyway Council also recommended eliminating the Lower Colorado River Valley Population (LCRVP) experimental season.

Service Response: We agree with the recommendation to grant operational status to Kentucky's sandhill crane hunting season. Kentucky held an experimental sandhill crane season during 2011–13 and was granted an additional year in order to finalize analysis of the first 3 years of data collected during the experiment. The structure of the experimental seasons conformed to the frameworks outlined in the Eastern Population of Sandhill Cranes Management Plan. Harvest of sandhill cranes in Kentucky during 2011–13 ranged from 59 to 96 birds per year. This level of annual harvest was well below the allowable annual harvest of 1,174 birds determined by the permit allocation system outlined in the management plan. Therefore, we believe that Kentucky's crane season should continue on an operational basis, and that seasons should conform to the frameworks and permit guidelines outlined in the Eastern Population of Sandhill Cranes Management Plan.

We also agree with the Central and Pacific Flyway Councils' recommendations on the RMP sandhill crane harvest allocation of 938 cranes for the 2015–16 season, as outlined in the RMP sandhill crane management plan's hunting area requirements and harvest allocation formula. The objective for RMP sandhill cranes is to manage for a stable population index of 17,000–21,000 cranes determined by an average of the three most recent, reliable September (fall pre-migration) surveys. Additionally, the RMP management plan allows for the regulated harvest of cranes when the 3-year average of the population indices exceeds 15,000 cranes. The most recent 3-year average

for the RMP sandhill crane fall index is 18,482 birds, a slight increase from the previous 3-year average of 17,757 cranes.

Regarding the RMP crane harvest and the new regulatory process, currently, results of the fall survey of RMP sandhill cranes, upon which the annual allowable harvest is based, will continue to be released between December 15 and January 31 each year, which is after the date for which proposed frameworks will be formulated in the new regulatory process. If the usual procedures for determining allowable harvest were used, data 2–4 years old would be used to determine the annual allocation for RMP sandhill cranes. Due to the variability in fall survey counts and recruitment for this population, and their impact on the annual harvest allocations, we agree that relying on data that is 2–4 years old is not ideal. Thus, we agree that the formula to determine the annual allowable harvest for RMP sandhill cranes should be used under the new regulatory schedule and propose to utilize it as such. That formula uses information on abundance and recruitment collected annually through operational monitoring programs, as well as constant values based on past research or monitoring for survival of fledglings to breeding age and harvest retrieval rate. The formula is:

$$H = C \times P \times R \times L \times f$$

Where:

H = total annual allowable harvest;
C = the average of the three most recent, reliable fall population indices;
P = the average proportion of fledged chicks in the fall population in the San Luis Valley during the most recent 3 years for which data are available;
R = estimated recruitment of fledged chicks to breeding age (current estimate is 0.5);
L = retrieval rate of 0.80 (allowance for an estimated 20 percent crippling loss based on hunter interviews); and
f = (C/16,000) (a variable factor used to adjust the total harvest to achieve a desired effect on the entire population)

A final estimate for the allowable harvest would be available to publish in the final rule, allowing us to use data that is 1–3 years old as is currently practiced. We look forward to continuing discussions and work on the RMP crane issue with the Central and Pacific Flyway Councils this summer in preparation for the 2016–17 season.

We also agree with the Pacific Flyway Council's recommendation for minor changes to the existing RMP sandhill crane hunting area boundaries in Idaho. The boundary adjustments are intended to simplify and clarify existing hunting area boundary descriptions, and are consistent with the Pacific and Central Flyway Council's RMP sandhill crane management plan hunting area requirements.

Finally, we also agree with the Pacific Flyway Council's recommendation to eliminate the LCRVP sandhill crane experimental hunting season. As requested by the Pacific Flyway Council in 2006 (71 FR 51407, August 29, 2006), we authorized in 2007 a carefully controlled, very limited experimental season for LCRVP sandhill cranes in Arizona based on our final environmental assessment (72 FR 49624, August 28, 2007). In 2009, the Pacific Flyway Council recommended extending the experimental season for LCRVP sandhill cranes in Arizona for an additional 3 years (74 FR 43009, August 25, 2009). The extension was necessary due to implementation difficulties that prohibited initiating the new hunt. We continued to support the establishment of the 3-year experimental framework for this hunt, conditional on successful monitoring being conducted as called for in the Flyway hunting plan for this population. Subsequently, the only hunting season successfully implemented in Arizona for this population was in 2010 where 5 youth participated and no cranes were harvested. The Pacific Flyway Council has indicated in their recent recommendation that there are no plans to hunt this population in the near future.

11. Moorhens and Gallinules

Council Recommendations: The Atlantic Flyway Council recommended allowing the hunting of purple swamphens (*Porphyrio porphyria*) in Florida beginning in 2015. They recommended that hunting be allowed during any open waterfowl season and that all regulations in 50 CFR part 20 subparts C and D would apply. Further, they recommended a daily bag limit of 25 birds, with a possession limit of 75. They also recommended that we exclude this species from monitoring programs.

Service Response: Purple swamphens are a species native to the U.S. Territories of American Samoa, Baker and Howland Islands, and Guam, and Commonwealth of the Northern Mariana Islands and as such are protected under 50 CFR 10.13. In Florida, purple swamphens are an introduced species that likely resulted from escapees. Available data indicate that the population may be expanding and competing with native species. As such, in 2010, we established a Control Order in 50 CFR 21.53 in order to control possible expansion of the species (75 FR 9314, March 1, 2010). However, there has never been a sport hunting season established in the United States for purple swamphens. Consequently, we believe a new hunting season for purple swamphens would require appropriate National Environmental Policy Act (NEPA) coverage. Since a NEPA analysis of this proposal has not yet been conducted, we do not support the Council's recommendation at this time. We will reconsider it after appropriate NEPA analysis has been completed.

14. Woodcock

Council Recommendations: The Atlantic, Mississippi, and Central Flyway Councils recommend that we remove the ''interim'' label from the American woodcock harvest strategy and consider the strategy operational.

Service Response: In 2011, we implemented an interim harvest strategy for woodcock for a period of 5 years (2011–15) (76 FR 19876, April 8, 2011). The interim harvest strategy provides a transparent framework for making regulatory decisions for woodcock season length and bag limit while we work to improve monitoring and assessment protocols for this species. Utilizing the criteria developed for the interim strategy, the 3-year average for the Singing Ground-Survey indices and associated confidence intervals fall within the ''moderate package'' for both the Eastern and Central Management Regions. As such, a ''moderate season'' for both management regions for the 2015–16 woodcock hunting season is appropriate. Specifics of the interim harvest strategy can be found at *http://www.fws.gov/migratorybirds/NewsPublicationsReports.html.*

Regarding the Flyway Councils' recommendations to remove the ''interim'' label from the current American woodcock harvest strategy and consider the strategy operational, we agree. The current strategy has been in place since 2011 and we foresee no further changes to the harvest strategy at this time.

15. Band-Tailed Pigeons

Council Recommendations: The Central and Pacific Flyway Councils recommended decreasing the season length from 30 days to 14 days, and decreasing the daily bag limit from 5 to 2 for the Interior Population of band-tailed pigeons.

Service Response: We agree with the Central and Pacific Flyway Councils' recommendations to decrease season length from 30 to 14 days and daily bag limit from 5 to 2 birds for Interior band-tailed pigeons. Last year (79 FR 51405,

August 28, 2014), we recommended that the Councils work together and with the Service's Division of Migratory Bird Management to review available information and conduct an assessment of the harvest potential of this population. We also requested they advise us of the results of this assessment and develop a regulatory recommendation using this information at our June 2015 regulatory meeting. Technical representatives from the Central and Pacific Flyway Councils and the Service's Division of Migratory Bird Management met in Denver on October 23–24, 2014, to discuss an approach to assessing harvest potential and review available demographic data for interior band-tailed pigeons. At the meeting in Denver, participants agreed on using the Potential Take Level framework (PTL) for the harvest potential assessment.

The objective of this PTL assessment was to derive an estimate of allowable harvest to compare with the best estimate of observed harvest after accounting for uncertainty of demographic parameters (*i.e.,* survival, reproduction, and population size). The assessment used all available demographic information for this species, albeit limited, but the information is dated and may not adequately represent extant conditions. Also, current abundance is largely unknown, and estimated hunter harvest is highly imprecise and may be biased high relative to the true value. Considering all the data, their precision, and potential biases, the assessment suggested that a conservative approach to harvest management for this population is warranted. Results were consistent with those of earlier investigators (1992) that reported low harvest potential for the Pacific Coast band-tailed pigeon. Results of the assessment provide a transparent approach to help inform the regulatory decision-making process for this population until additional information becomes available or a formal harvest strategy is developed. The PTL assessment could be updated if improved information on estimated hunter harvest and population size becomes available.

16. Mourning Doves

Council Recommendations: The Atlantic and Mississippi Flyway Councils recommended use of the ''standard'' season framework comprising a 90-day season and 15-bird daily bag limit for States within the Eastern Management Unit. The daily bag limit could be composed of mourning doves and white-winged doves, singly or in combination.

The Mississippi and Central Flyway Councils recommended the use of the ''standard'' season package of a 15-bird daily bag limit and a 70-day season for the 2015–16 mourning dove season in the States within the Central Management Unit.

The Pacific Flyway Council recommended use of the ''standard'' season framework for States in the Western Management Unit (WMU) population of mourning doves. In Idaho, Nevada, Oregon, Utah, and Washington, the season length would be no more than 60 consecutive days with a daily bag limit of 15 mourning and white-winged doves in the aggregate. In Arizona and California, the season length would be no more than 60 consecutive days, which could be split between two periods, September 1–15 and November 1–January 15. In Arizona, during the first segment of the season, the daily bag limit would be 15 mourning and white-winged doves in the aggregate, of which no more than 10 could be white-winged doves. During the remainder of the season, the daily bag limit would be 15 mourning doves. In California, the daily bag limit would be 15 mourning and white-winged doves in the aggregate, of which no more than 10 could be white-winged doves.

Service Response: Based on the harvest strategies and current population status, we agree with the recommended selection of the ''standard'' season frameworks for doves in the Eastern, Central, and Western Management Units for the 2015–16 seasons.

Lastly, as we discussed in the April 13, 2015, **Federal Register** (80 FR 19852), 2016 is the next open season for changes to dove zone and split configurations for the 2016–20 period. The current guidelines were approved in 2006 (see July 28, 2006, **Federal Register**, 71 FR 43008), for the use of zones and split seasons for doves with implementation beginning in the 2007–08 season. While the initial period was for 4 years (2007–10), we further stated that, beginning in 2011, zoning would conform to a 5-year period.

As discussed above under C. Zones and Split Seasons for ducks, because of unintentional and unanticipated issues with changing the regulatory schedule for the 2016–17 season, we have decided that a two-phase approach is appropriate. For those States wishing to change zone and split season configurations in time for the 2016–17 season, we will need to receive that new configuration and zone descriptions by December 1, 2015. For those States that do not send in zone and split season configuration changes until the previously identified May 1, 2016, deadline, we will implement those changes in the 2017–18 hunting season. The next normally scheduled open season will be in 2021 for the 2021–25 seasons.

For the current open season, the guidelines for dove zone and split season configurations will be as follows:

Guidelines for Dove Zones and Split Seasons in the Eastern and Central Mourning Dove Management Units

(1) A zone is a geographic area or portion of a State, with a contiguous boundary, for which independent seasons may be selected for dove hunting.

(2) States may select a zone and split option during an open season. The option must remain in place for the following 5 years except that States may make a one-time change and revert to their previous zone and split configuration in any year of the 5-year period. Formal approval will not be required, but States must notify the Service before making the change.

(3) Zoning periods for dove hunting will conform to those years used for ducks, *e.g.,* 2016–20.

(4) The zone and split configuration consists of two zones with the option for 3-way (3-segment) split seasons in one or both zones. As a grandfathered arrangement, Texas will have three zones with the option for 2-way (2-segment) split seasons in one, two, or all three zones.

(5) States that do not wish to zone for dove hunting may split their seasons into no more than 3 segments.

For the 2016–20 period, any State may continue the configuration used in 2011–15. If changes are made, the zone and split-season configuration must conform to one of the options listed above. If Texas uses a new configuration for the entirety of the 5-year period, it cannot go back to the grandfathered arrangement that it previously had in place.

18. Alaska

Council Recommendations: The Pacific Flyway Council recommended two changes in the Alaska early-season frameworks. Specifically, they recommended:

1. For white-fronted geese in Unit 18 (Yukon-Kuskokwim Delta), increasing the daily bag limit from 8 to 10.

2. For Canada geese in Units 6–B, 6–C, and on Hinchinbrook and Hawkins Islands in Unit 6–D, increasing the

possession limit from two times to three times the daily bag limit.

Service Response: We agree with the Pacific Flyway Council's recommendation to increase the daily bag limit from 8 to 10 white-fronted geese in Unit 18. The recent 3-year (2012–14) average fall population of Pacific white-fronted geese was 627,108 geese, and is well above the population objective of 300,000 geese as identified in the Pacific Flyway Council's management plan for this population. The Yukon-Kuskokwim Delta (Unit 18) supports more than 95 percent of the breeding population of Pacific white-fronted geese.

We also agree with the Pacific Flyway Council's recommendation to increase the possession limit for Canada geese from two times to three times the daily bag limit in Units 6–B, 6–C, and on Hinchinbrook and Hawkins Islands in Unit 6–D. The recent 3-year (2011–14, no estimate was available in 2013) average breeding population of dusky Canada geese was 13,678 geese, and is the highest 3-year average since 1995. The dusky Canada goose annual population index has increased steadily since 2009, and 2014 (15,574) had the highest value since 2005. The status of dusky Canada geese continues to be of concern, and harvest restrictions have been and remain in place to protect these geese throughout their range since the 1970s. We continue to support the harvest strategy described in the Pacific Flyway Council's management plan for this population.

National Environmental Policy Act (NEPA)

The programmatic document, ''Second Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (EIS 20130139),'' filed with the Environmental Protection Agency (EPA) on May 24, 2013, addresses NEPA compliance by the Service for issuance of the annual framework regulations for hunting of migratory game bird species. We published a notice of availability in the **Federal Register** on May 31, 2013 (78 FR 32686), and our Record of Decision on July 26, 2013 (78 FR 45376). We also address NEPA compliance for waterfowl hunting frameworks through the annual preparation of separate environmental assessments, the most recent being ''Duck Hunting Regulations for 2015–16,'' with its corresponding August 2015 finding of no significant impact. In addition, an August 1985 environmental assessment entitled ''Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands'' is available from the person indicated under the caption **FOR FURTHER INFORMATION CONTACT**.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), provides that, ''The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act'' (and) shall ''insure that any action authorized, funded, or carried out . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat. . . .'' Consequently, we conducted formal consultations to ensure that actions resulting from these regulations would not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion, which concluded that the regulations are not likely to jeopardize the continued existence of any endangered or threatened species. Additionally, these findings may have caused modification of some regulatory measures previously proposed, and the final frameworks reflect any such modifications. Our biological opinions resulting from this section 7 consultation are public documents available for public inspection at the address indicated under **ADDRESSES**.

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has reviewed this rule and has determined that this rule is significant because it would have an annual effect of $100 million or more on the economy.

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.

An updated economic analysis was prepared for the 2013–14 season. This analysis was based on data from the newly released 2011 National Hunting and Fishing Survey, the most recent year for which data are available (see discussion in Regulatory Flexibility Act section below). This analysis estimated consumer surplus for three alternatives for duck hunting (estimates for other species are not quantified due to lack of data). The alternatives were: (1) Issue restrictive regulations allowing fewer days than those issued during the 2012–13 season, (2) issue moderate regulations allowing more days than those in alternative 1, and (3) issue liberal regulations identical to the regulations in the 2012–13 season. For the 2013–14 season, we chose Alternative 3, with an estimated consumer surplus across all flyways of $317.8–$416.8 million. For the 2015–16 season, we have also chosen alternative 3. We also chose alternative 3 for the 2009–10, the 2010–11, the 2011–12, and the 2012–13 seasons. The 2013–14 analysis is part of the record for this rule and is available at *http://www.regulations.gov* at Docket No. FWS–HQ–MB–2014–0064.

Regulatory Flexibility Act

The annual migratory bird hunting regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis. This analysis was revised annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, 2004, 2008, and 2013. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 2013 Analysis was based on the 2011 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend approximately $1.5 billion at small businesses in 2013. Copies of the Analysis are available upon request from the Division of Migratory Bird Management (see **FOR FURTHER INFORMATION CONTACT**) or from our Web site at *http://www.fws.gov/migratorybirds/*

NewReportsPublications/SpecialTopics/SpecialTopics.html#HuntingRegs or at *http://www.regulations.gov* at Docket No. FWS–HQ–MB–2014–0064.

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule will have an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we are not deferring the effective date under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

This final rule does not contain any new information collection that requires approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. OMB has reviewed and approved the information collection requirements associated with migratory bird surveys and assigned the following OMB control numbers:

- 1018–0019—North American Woodcock Singing Ground Survey (expires 5/31/2018).
- 1018–0023—Migratory Bird Surveys (expires 6/30/2017). Includes Migratory Bird Harvest Information Program, Migratory Bird Hunter Surveys, Sandhill Crane Survey, and Parts Collection Survey.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.,* that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

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

Takings Implication Assessment

In accordance with Executive Order 12630, this rule, authorized by the Migratory Bird Treaty Act (16 U.S.C. 703–711), does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this rule allows hunters to exercise otherwise unavailable privileges and, therefore, reduces restrictions on the use of private and public property.

Energy Effects—Executive Order 13211

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

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 512 DM 2, we have evaluated possible effects on Federally-recognized Indian tribes and have determined that there are no effects on Indian trust resources. However, in the April 30, 2015, **Federal Register**, we solicited proposals for special migratory bird hunting regulations for certain Tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for the 2015–16 migratory bird hunting season. The resulting proposals were contained in a separate August 4, 2015, proposed rule (80 FR 46218). By virtue of these actions, we have consulted with affected Tribes.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which seasons meet their individual needs. Any State or Indian tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, we intend that the public be given the greatest possible opportunity to comment. Thus, when the preliminary proposed rulemaking was published, we established what we believed were the longest periods possible for public comment. In doing this, we recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, States would have insufficient time to select season dates and limits; to communicate those selections to us; and to establish and publicize the necessary regulations and procedures to implement their decisions. We therefore find that ''good cause'' exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these frameworks will, therefore, take effect immediately upon publication.

Therefore, under authority of the Migratory Bird Treaty Act (July 3, 1918), as amended (16 U.S.C. 703–711), we prescribe final frameworks setting forth the species to be hunted, the daily bag and possession limits, the shooting hours, the season lengths, the earliest opening and latest closing season dates, and hunting areas, from which State conservation agency officials will select hunting season dates and other options. Upon receipt of season selections from these officials, we will publish a final rulemaking amending 50 CFR part 20 to reflect seasons, limits, and shooting hours for the conterminous United States for the 2015–16 season.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 2015–16 hunting season are authorized under 16 U.S.C. 703–712 and 16 U.S.C. 742a–j.

Dated: August 10, 2015.

Michael J. Bean,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

Final Regulations Frameworks for 2015–16 Early Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Department of the Interior approved the following frameworks, which prescribe season lengths, bag limits, shooting hours, and outside dates within which States may select hunting seasons for certain migratory game birds between September 1, 2015, and March 10, 2016. These frameworks are summarized below.

General

Dates: All outside dates noted below are inclusive.

Shooting and Hawking (taking by falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily.

Possession Limits: Unless otherwise specified, possession limits are three times the daily bag limit.

Permits: For some species of migratory birds, the Service authorizes the use of permits to regulate harvest or monitor their take by sport hunters, or both. In many cases (*e.g.,* tundra swans, some sandhill crane populations), the Service determines the amount of harvest that may be taken during hunting seasons during its formal regulations-setting process, and the States then issue permits to hunters at levels predicted to result in the amount of take authorized by the Service. Thus, although issued by States, the permits would not be valid unless the Service approved such take in its regulations.

These Federally authorized, State-issued permits are issued to individuals, and only the individual whose name and address appears on the permit at the time of issuance is authorized to take migratory birds at levels specified in the permit, in accordance with provisions of both Federal and State regulations governing the hunting season. The permit must be carried by the permittee when exercising its provisions and must be presented to any law enforcement officer upon request. The permit is not transferrable or assignable to another individual, and may not be sold, bartered, traded, or otherwise provided to another person. If the permit is altered or defaced in any way, the permit becomes invalid.

Flyways and Management Units

Waterfowl Flyways

Atlantic Flyway—includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Mississippi Flyway—includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Central Flyway—includes Colorado (east of the Continental Divide), Kansas, Montana (Counties of Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all Counties east thereof), Nebraska, New Mexico (east of the Continental Divide except the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Pacific Flyway—Includes Alaska, Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, and those portions of Colorado, Montana, New Mexico, and Wyoming not included in the Central Flyway.

Management Units

Mourning Dove Management Units

Eastern Management Unit—All States east of the Mississippi River, and Louisiana.

Central Management Unit—Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming.

Western Management Unit—Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington.

Woodcock Management Regions

Eastern Management Region—Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Central Management Region—Alabama, Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, and Wisconsin.

Other geographic descriptions are contained in a later portion of this document.

Definitions

Dark geese: Canada geese, white-fronted geese, brant (except in Alaska, California, Oregon, Washington, and the Atlantic Flyway), and all other goose species, except light geese.

Light geese: snow (including blue) geese and Ross's geese.

Waterfowl Seasons in the Atlantic Flyway

In the Atlantic Flyway States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, North Carolina, and Pennsylvania, where Sunday hunting is prohibited Statewide by State law, all Sundays are closed to all take of migratory waterfowl (including mergansers and coots).

Special September Teal Season

Outside Dates: Between September 1 and September 30, an open season on all species of teal may be selected by the following States in areas delineated by State regulations:

Atlantic Flyway—Delaware, Florida, Georgia, Maryland, North Carolina, South Carolina, and Virginia.

Mississippi Flyway—Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin. The seasons in Iowa, Michigan, and Wisconsin are experimental.

Central Flyway—Colorado (part), Kansas, Nebraska, New Mexico (part), Oklahoma, and Texas. The season in the northern portion of Nebraska is experimental.

Hunting Seasons and Daily Bag Limits: Not to exceed 16 consecutive hunting days in the Atlantic, Mississippi, and Central Flyways. The daily bag limit is 6 teal.

Shooting Hours:

Atlantic Flyway—One-half hour before sunrise to sunset, except in South Carolina, where the hours are from sunrise to sunset.

Mississippi and Central Flyways—One-half hour before sunrise to sunset, except in the States of Arkansas, Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin, where the hours are from sunrise to sunset.

Special September Duck Seasons

Florida, Kentucky, and Tennessee: In lieu of a special September teal season, a 5-consecutive-day season may be selected in September. The daily bag limit may not exceed 6 teal and wood ducks in the aggregate, of which no more than 2 may be wood ducks. In addition, a 4-consecutive-day experimental season may be selected in September either immediately before or immediately after the 5-consecutive-day

teal/wood duck season. The daily bag limit is 6 teal.

Iowa: In lieu of an experimental special September teal season, Iowa may hold up to 5 days of its regular duck hunting season in September. All ducks that are legal during the regular duck season may be taken during the September segment of the season. The September season segment may commence no earlier than the Saturday nearest September 20 (September 19). The daily bag and possession limits will be the same as those in effect last year but are subject to change during the late-season regulations process. The remainder of the regular duck season may not begin before October 10.

Special Youth Waterfowl Hunting Days

Outside Dates: States may select 2 days per duck-hunting zone, designated as ''Youth Waterfowl Hunting Days,'' in addition to their regular duck seasons. The days must be held outside any regular duck season on a weekend, holidays, or other non-school days when youth hunters would have the maximum opportunity to participate. The days may be held up to 14 days before or after any regular duck-season frameworks or within any split of a regular duck season, or within any other open season on migratory birds.

Daily Bag Limits: The daily bag limits may include ducks, geese, mergansers, coots, and gallinules and will be the same as those allowed in the regular season. Flyway species and area restrictions will remain in effect.

Shooting Hours: One-half hour before sunrise to sunset.

Participation Restrictions: Youth hunters must be 15 years of age or younger. In addition, an adult at least 18 years of age must accompany the youth hunter into the field. This adult may not duck hunt, but may participate in other seasons that are open on the special youth day.

Scoters, Eiders, and Long-Tailed Ducks (Atlantic Flyway)

Outside Dates: Between September 15 and January 31.

Hunting Seasons and Daily Bag Limits: Not to exceed 107 days, with a daily bag limit of 7, singly or in the aggregate, of the listed sea duck species, of which no more than 4 may be scoters.

Daily Bag Limits During the Regular Duck Season: Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may choose to allow the above sea duck limits in addition to the limits applying to other ducks during the regular duck season. In all other areas, sea ducks may be taken only during the regular open season for ducks and are part of the regular duck season daily bag (not to exceed 4 scoters) and possession limits.

Areas: In all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, and New York; in any waters of the Atlantic Ocean and in any tidal waters of any bay that are separated by at least 1 mile of open water from any shore, island, and emergent vegetation in New Jersey, South Carolina, and Georgia; and in any waters of the Atlantic Ocean and in any tidal waters of any bay that are separated by at least 800 yards of open water from any shore, island, and emergent vegetation in Delaware, Maryland, North Carolina, and Virginia; and provided that any such areas have been described, delineated, and designated as special sea duck hunting areas under the hunting regulations adopted by the respective States.

Special Early Canada Goose Seasons

Atlantic Flyway

General Seasons

A Canada goose season of up to 15 days during September 1–15 may be selected for the Eastern Unit of Maryland. Seasons not to exceed 30 days during September 1–30 may be selected for Connecticut, Florida, Georgia, New Jersey, New York (Long Island Zone only), North Carolina, Rhode Island, and South Carolina. Seasons may not exceed 25 days during September 1–25 in the remainder of the Flyway. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Daily Bag Limits: Not to exceed 15 Canada geese.

Shooting Hours: One-half hour before sunrise to sunset, except that during any general season, shooting hours may extend to one-half hour after sunset if all other waterfowl seasons are closed in the specific applicable area.

Mississippi Flyway

General Seasons

Canada goose seasons of up to 15 days during September 1–15 may be selected, except in the Upper Peninsula in Michigan, where the season may not extend beyond September 10, and in Minnesota, where a season of up to 22 days during September 1–22 may be selected. The daily bag limit may not exceed 5 Canada geese, except in designated areas of Minnesota where the daily bag limit may not exceed 10 Canada geese. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

A Canada goose season of up to 10 consecutive days during September 1–10 may be selected by Michigan for Huron, Saginaw, and Tuscola Counties, except that the Shiawassee National Wildlife Refuge, Shiawassee River State Game Area Refuge, and the Fish Point Wildlife Area Refuge will remain closed. The daily bag limit may not exceed 5 Canada geese.

Shooting Hours: One-half hour before sunrise to sunset, except that during September 1–15 shooting hours may extend to one-half hour after sunset if all other waterfowl and crane seasons are closed in the specific applicable area.

Central Flyway

General Seasons

In Kansas, Nebraska, Oklahoma, South Dakota, and Texas, Canada goose seasons of up to 30 days during September 1–30 may be selected. In Colorado, New Mexico, North Dakota, Montana, and Wyoming, Canada goose seasons of up to 15 days during September 1–15 may be selected. The daily bag limit may not exceed 5 Canada geese, except in Kansas, Nebraska, and Oklahoma, where the daily bag limit may not exceed 8 Canada geese and in North Dakota and South Dakota, where the daily bag limit may not exceed 15 Canada geese. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Shooting Hours: One-half hour before sunrise to sunset, except that during September 1–15 shooting hours may extend to one-half hour after sunset if all other waterfowl and crane seasons are closed in the specific applicable area.

Pacific Flyway

General Seasons

California may select a 9-day season in Humboldt County during September 1–15. The daily bag limit is 2.

Colorado may select a 9-day season during September 1–15. The daily bag limit is 4.

Oregon may select a 15-day season during September 1–15, except that in the Northwest Zone the season may be during September 1–20. The daily bag limit is 5.

Idaho may select a 15-day season during September 1–15. The daily bag limit is 5.

Washington may select a 15-day season during September 1–15. The

daily bag limit is 5, except in Pacific County where the daily bag limit is 15.

Wyoming may select an 8-day season during September 1–15. The daily bag limit is 3.

Areas open to hunting of Canada geese in each State must be described, delineated, and designated as such in each State's hunting regulations.

Regular Goose Seasons

Mississippi Flyway

Regular goose seasons may open as early as September 11 in the Upper Peninsula of Michigan and September 16 in Wisconsin and the Lower Peninsula of Michigan. Season lengths, bag and possession limits, and other provisions will be established during the late-season regulations process.

Sandhill Cranes

Regular Seasons in the Mississippi Flyway

Outside Dates: Between September 1 and February 28 in Minnesota and between September 1 and January 31 in Kentucky.

Hunting Seasons: A season not to exceed 37 consecutive days may be selected in the designated portion of northwestern Minnesota (Northwest Goose Zone), and a season not to exceed 60 consecutive days, in Kentucky.

Daily Bag Limit: 2 sandhill cranes. In Kentucky the seasonal bag limit is 3 sandhill cranes.

Permits: Each person participating in the regular sandhill crane seasons must have a valid Federal or State sandhill crane hunting permit.

Other Provisions: The number of permits (where applicable), open areas, season dates, protection plans for other species, and other provisions of seasons must be consistent with the management plans and approved by the Mississippi Flyway Council.

Experimental Season in the Mississippi Flyway

Outside Dates: Between September 1 and January 31.

Hunting Seasons: A season not to exceed 60 consecutive days may be selected in Tennessee.

Bag Limit: Not to exceed 3 daily and 3 per season in Tennessee.

Permits: Each person participating in the regular sandhill crane season must have a valid Federal or State sandhill crane hunting permit.

Other Provisions: Numbers of permits, open areas, season dates, protection plans for other species, and other provisions of seasons must be consistent with the management plan and approved by the Mississippi Flyway Council.

Regular Seasons in the Central Flyway

Outside Dates: Between September 1 and February 28.

Hunting Seasons: Seasons not to exceed 37 consecutive days may be selected in designated portions of Texas (Area 2). Seasons not to exceed 58 consecutive days may be selected in designated portions of the following States: Colorado, Kansas, Montana, North Dakota, South Dakota, and Wyoming. Seasons not to exceed 93 consecutive days may be selected in designated portions of the following States: New Mexico, Oklahoma, and Texas.

Daily Bag Limits: 3 sandhill cranes, except 2 sandhill cranes in designated portions of North Dakota (Area 2) and Texas (Area 2).

Permits: Each person participating in the regular sandhill crane season must have a valid Federal or State sandhill crane hunting permit.

Special Seasons in the Central and Pacific Flyways

Arizona, Colorado, Idaho, Montana, New Mexico, Utah, and Wyoming may select seasons for hunting sandhill cranes within the range of the Rocky Mountain Population (RMP) subject to the following conditions:

Outside Dates: Between September 1 and January 31.

Hunting Seasons: The season in any State or zone may not exceed 30 consecutive days.

Bag limits: Not to exceed 3 daily and 9 per season.

Permits: Participants must have a valid permit, issued by the appropriate State, in their possession while hunting.

Other Provisions: Numbers of permits, open areas, season dates, protection plans for other species, and other provisions of seasons must be consistent with the management plan and approved by the Central and Pacific Flyway Councils, with the following exceptions:

A. In Utah, 100 percent of the harvest will be assigned to the RMP quota;

B. In Arizona, monitoring the racial composition of the harvest must be conducted at 3-year intervals;

C. In Idaho, 100 percent of the harvest will be assigned to the RMP quota; and

D. In New Mexico, the season in the Estancia Valley is experimental, with a requirement to monitor the level and racial composition of the harvest; greater sandhill cranes in the harvest will be assigned to the RMP quota.

Common Moorhens and Purple Gallinules

Outside Dates: Between September 1 and the last Sunday in January (January 31) in the Atlantic, Mississippi, and Central Flyways. States in the Pacific Flyway have been allowed to select their hunting seasons between the outside dates for the season on ducks; therefore, they are late-season frameworks, and no frameworks are provided in this document.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 70 days in the Atlantic, Mississippi, and Central Flyways. Seasons may be split into 2 segments. The daily bag limit is 15 common moorhens and purple gallinules, singly or in the aggregate of the two species.

Zoning: Seasons may be selected by zones established for duck hunting.

Rails

Outside Dates: States included herein may select seasons between September 1 and the last Sunday in January (January 31) on clapper, king, sora, and Virginia rails.

Hunting Seasons: Seasons may not exceed 70 days, and may be split into 2 segments.

Daily Bag Limits:

Clapper and King Rails—In Connecticut, Delaware, Maryland, New Jersey, and Rhode Island, 10, singly or in the aggregate of the two species. In Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Texas, and Virginia, 15, singly or in the aggregate of the two species.

Sora and Virginia Rails—In the Atlantic, Mississippi, and Central Flyways and the Pacific Flyway portions of Colorado, Montana, New Mexico, and Wyoming, 25 rails, singly or in the aggregate of the two species. The season is closed in the remainder of the Pacific Flyway.

Snipe

Outside Dates: Between September 1 and February 28, except in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, Vermont, and Virginia, where the season must end no later than January 31.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 107 days and may be split into two segments. The daily bag limit is 8 snipe.

Zoning: Seasons may be selected by zones established for duck hunting.

American Woodcock

Outside Dates: States in the Eastern Management Region may select hunting seasons between October 1 and January 31. States in the Central Management Region may select hunting seasons

between the Saturday nearest September 22 (September 19) and January 31.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 45 days in the Eastern Region and 45 days in the Central Region. The daily bag limit is 3. Seasons may be split into two segments.

Zoning: New Jersey may select seasons in each of two zones. The season in each zone may not exceed 36 days.

Band-Tailed Pigeons

Pacific Coast States (California, Oregon, Washington, and Nevada)

Outside Dates: Between September 15 and January 1.

Hunting Seasons and Daily Bag Limits: Not more than 9 consecutive days, with a daily bag limit of 2.

Zoning: California may select hunting seasons not to exceed 9 consecutive days in each of two zones. The season in the North Zone must close by October 3.

Four-Corners States (Arizona, Colorado, New Mexico, and Utah)

Outside Dates: Between September 1 and November 30.

Hunting Seasons and Daily Bag Limits: Not more than 14 consecutive days, with a daily bag limit of 2.

Zoning: New Mexico may select hunting seasons not to exceed 14 consecutive days in each of two zones. The season in the South Zone may not open until October 1.

Doves

Outside Dates: Between September 1 and January 15, except as otherwise provided, States may select hunting seasons and daily bag limits as follows:

Eastern Management Unit

Hunting Seasons and Daily Bag Limits: Not more than 90 days, with a daily bag limit of 15 mourning and white-winged doves in the aggregate.

Zoning and Split Seasons: States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods. Regulations for bag and possession limits, season length, and shooting hours must be uniform within specific hunting zones.

Central Management Unit

For all States except Texas:

Hunting Seasons and Daily Bag Limits: Not more than 70 days, with a daily bag limit of 15 mourning and white-winged doves in the aggregate.

Zoning and Split Seasons: States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods.

Texas

Hunting Seasons and Daily Bag Limits: Not more than 70 days, with a daily bag limit of 15 mourning, white-winged, and white-tipped doves in the aggregate, of which no more than 2 may be white-tipped doves.

Zoning and Split Seasons: Texas may select hunting seasons for each of three zones subject to the following conditions:

A. The hunting season may be split into not more than two periods, except in that portion of Texas in which the special white-winged dove season is allowed, where a limited take of mourning and white-tipped doves may also occur during that special season (see Special White-winged Dove Area).

B. A season may be selected for the North and Central Zones between September 1 and January 25; and for the South Zone between the Friday nearest September 20 (September 18), but not earlier than September 17, and January 25.

C. Except as noted above, regulations for bag and possession limits, season length, and shooting hours must be uniform within each hunting zone.

Special White-winged Dove Area in Texas:

In addition, Texas may select a hunting season of not more than 4 days for the Special White-winged Dove Area of the South Zone between September 1 and September 19. The daily bag limit may not exceed 15 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 2 may be mourning doves and no more than 2 may be white-tipped doves.

Western Management Unit

Hunting Seasons and Daily Bag Limits:

Idaho, Nevada, Oregon, Utah, and Washington—Not more than 60 consecutive days, with a daily bag limit of 15 mourning and white-winged doves in the aggregate.

Arizona and California—Not more than 60 days, which may be split between two periods, September 1–15 and November 1–January 15. In Arizona, during the first segment of the season, the daily bag limit is 15 mourning and white-winged doves in the aggregate, of which no more than 10 could be white-winged doves. During the remainder of the season, the daily bag limit is 15 mourning doves. In California, the daily bag limit is 15 mourning and white-winged doves in the aggregate, of which no more than 10 could be white-winged doves.

Alaska

Outside Dates: Between September 1 and January 26.

Hunting Seasons: Alaska may select 107 consecutive days for waterfowl, sandhill cranes, and common snipe in each of 5 zones. The season may be split without penalty in the Kodiak Zone. The seasons in each zone must be concurrent.

Closures: The hunting season is closed on emperor geese, spectacled eiders, and Steller's eiders.

Daily Bag and Possession Limits:

Ducks—Except as noted, a basic daily bag limit of 7 ducks. Daily bag limits in the North Zone are 10, and in the Gulf Coast Zone, they are 8. The basic limits may include no more than 1 canvasback daily and may not include sea ducks.

In addition to the basic duck limits, Alaska may select sea duck limits of 10 daily, singly or in the aggregate, including no more than 6 each of either harlequin or long-tailed ducks. Sea ducks include scoters, common and king eiders, harlequin ducks, long-tailed ducks, and common and red-breasted mergansers.

Light Geese—The daily bag limit is 4.

Canada Geese—The daily bag limit is 4 with the following exceptions:

A. In Units 5 and 6, the taking of Canada geese is permitted from September 28 through December 16.

B. On Middleton Island in Unit 6, a special, permit-only Canada goose season may be offered. A mandatory goose identification class is required. Hunters must check in and check out. The bag limit is 1 daily and 1 in possession. The season will close if incidental harvest includes 5 dusky Canada geese. A dusky Canada goose is any dark-breasted Canada goose (Munsell 10 YR color value five or less) with a bill length between 40 and 50 millimeters.

C. In Units 9, 10, 17, and 18, the daily bag limit is 6 Canada geese.

White-fronted Geese—The daily bag limit is 4 with the following exceptions:

A. In Units 9, 10, and 17, the daily bag limit is 6 white-fronted geese.

B. In Unit 18, the daily bag limit is 10 white-fronted geese.

Brant—The daily bag limit is 2.

Snipe—The daily bag limit is 8.

Sandhill cranes—The daily bag limit is 2 in the Southeast, Gulf Coast, Kodiak, and Aleutian Zones, and Unit 17 in the North Zone. In the remainder of the North Zone (outside Unit 17), the daily bag limit is 3.

Tundra Swans—Open seasons for tundra swans may be selected subject to the following conditions:

A. All seasons are by registration permit only.

B. All season framework dates are September 1–October 31.

C. In Unit 17, no more than 200 permits may be issued during this operational season. No more than 3 tundra swans may be authorized per permit, with no more than 1 permit issued per hunter per season.

D. In Unit 18, no more than 500 permits may be issued during the operational season. No more than 3 tundra swans may be authorized per permit. No more than 1 permit may be issued per hunter per season.

E. In Unit 22, no more than 300 permits may be issued during the operational season. No more than 3 tundra swans may be authorized per permit. No more than 1 permit may be issued per hunter per season.

F. In Unit 23, no more than 300 permits may be issued during the operational season. No more than 3 tundra swans may be authorized per permit. No more than 1 permit may be issued per hunter per season.

Hawaii

Outside Dates: Between October 1 and January 31.

Hunting Seasons: Not more than 65 days (75 under the alternative) for mourning doves.

Bag Limits: Not to exceed 15 (12 under the alternative) mourning doves.

Note: Mourning doves may be taken in Hawaii in accordance with shooting hours and other regulations set by the State of Hawaii, and subject to the applicable provisions of 50 CFR part 20.

Puerto Rico

Doves and Pigeons

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days.

Daily Bag and Possession Limits: Not to exceed 20 Zenaida, mourning, and white-winged doves in the aggregate, of which not more than 10 may be Zenaida doves and 3 may be mourning doves. Not to exceed 5 scaly-naped pigeons.

Closed Seasons: The season is closed on the white-crowned pigeon and the plain pigeon, which are protected by the Commonwealth of Puerto Rico.

Closed Areas: There is no open season on doves or pigeons in the following areas: Municipality of Culebra, Desecheo Island, Mona Island, El Verde Closure Area, and Cidra Municipality and adjacent areas.

Ducks, Coots, Moorhens, Gallinules, and Snipe

Outside Dates: Between October 1 and January 31.

Hunting Seasons: Not more than 55 days may be selected for hunting ducks, common moorhens, and common snipe. The season may be split into two segments.

Daily Bag Limits:

Ducks—Not to exceed 6.

Common moorhens—Not to exceed 6.

Common snipe—Not to exceed 8.

Closed Seasons: The season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, and masked duck, which are protected by the Commonwealth of Puerto Rico. The season also is closed on the purple gallinule, American coot, and Caribbean coot.

Closed Areas: There is no open season on ducks, common moorhens, and common snipe in the Municipality of Culebra and on Desecheo Island.

Virgin Islands

Doves and Pigeons

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days for Zenaida doves.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida doves.

Closed Seasons: No open season is prescribed for ground or quail doves or pigeons.

Closed Areas: There is no open season for migratory game birds on Ruth Cay (just south of St. Croix).

Local Names for Certain Birds: Zenaida dove, also known as mountain dove; bridled quail-dove, also known as Barbary dove or partridge; common ground-dove, also known as stone dove, tobacco dove, rola, or tortolita; scaly-naped pigeon, also known as red-necked or scaled pigeon.

Ducks

Outside Dates: Between December 1 and January 31.

Hunting Seasons: Not more than 55 consecutive days.

Daily Bag Limits: Not to exceed 6.

Closed Seasons: The season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, and masked duck.

Special Falconry Regulations

Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29. These States may select an extended season for taking migratory game birds in accordance with the following:

Extended Seasons: For all hunting methods combined, the combined length of the extended season, regular season, and any special or experimental seasons must not exceed 107 days for any species or group of species in a geographical area. Each extended season may be divided into a maximum of 3 segments.

Framework Dates: Seasons must fall between September 1 and March 10.

Daily Bag Limits: Falconry daily bag limits for all permitted migratory game birds must not exceed 3 birds, singly or in the aggregate, during extended falconry seasons, any special or experimental seasons, and regular hunting seasons in all States, including those that do not select an extended falconry season.

Regular Seasons: General hunting regulations, including seasons and hunting hours, apply to falconry in each State listed in 50 CFR 21.29. Regular season bag limits do not apply to falconry. The falconry bag limit is not in addition to gun limits.

Area, Unit, and Zone Descriptions

Doves

Alabama

South Zone—Baldwin, Barbour, Coffee, Covington, Dale, Escambia, Geneva, Henry, Houston, and Mobile Counties.

North Zone—Remainder of the State.

Florida

Northwest Zone—The Counties of Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Okaloosa, Santa Rosa, Walton, Washington, Leon (except that portion north of U.S. 27 and east of State Road 155), Jefferson (south of U.S. 27, west of State Road 59 and north of U.S. 98), and Wakulla (except that portion south of U.S. 98 and east of the St. Marks River).

South Zone—Remainder of State.

Louisiana

North Zone—That portion of the State north of a line extending east from the Texas border along State Highway 12 to U.S. Highway 190, east along U.S. 190 to Interstate Highway 12, east along Interstate Highway 12 to Interstate Highway 10, then east along Interstate Highway 10 to the Mississippi border.

South Zone—The remainder of the State.

Mississippi

North Zone—That portion of the State north and west of a line extending west from the Alabama State line along U.S. Highway 84 to its junction with State Highway 35, then south along State Highway 35 to the Louisiana State line.

South Zone—The remainder of Mississippi.

Texas

North Zone—That portion of the State north of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to TX 20; west along TX 20 to TX 148; north along TX 148 to I–10 at Fort Hancock; east along I–10 to I–20; northeast along I–20 to I–30 at Fort Worth; northeast along I–30 to the Texas-Arkansas State line.

South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Del Rio, proceeding east on U.S. 90 to State Loop 1604 west of San Antonio; then south, east, and north along Loop 1604 to Interstate Highway 10 east of San Antonio; then east on I–10 to Orange, Texas.

Special White-winged Dove Area in the South Zone—That portion of the State south and west of a line beginning at the International Toll Bridge in Del Rio; then northeast along U.S. Highway 277 Spur to U.S. Highway 90 in Del Rio; then east along U.S. Highway 90 to State Loop 1604; then along Loop 1604 south and east to Interstate Highway 37; then south along Interstate Highway 37 to U.S. Highway 181 in Corpus Christi; then north and east along U.S. 181 to the Corpus Christi Ship Channel, then eastwards along the south shore of the Corpus Christi Ship Channel to the Gulf of Mexico.

Central Zone—That portion of the State lying between the North and South Zones.

Band-Tailed Pigeons

California

North Zone—Alpine, Butte, Del Norte, Glenn, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama, and Trinity Counties.

South Zone—The remainder of the State.

New Mexico

North Zone—North of a line following U.S. 60 from the Arizona State line east to I–25 at Socorro and then south along I–25 from Socorro to the Texas State line.

South Zone—The remainder of the State.

Washington

Western Washington—The State of Washington excluding those portions lying east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Woodcock

New Jersey

North Zone—That portion of the State north of NJ 70.

South Zone—The remainder of the State.

Special Early Canada Goose Seasons

Atlantic Flyway

Connecticut

North Zone—That portion of the State north of I–95.

South Zone—The remainder of the State.

Maryland

Eastern Unit—Calvert, Caroline, Cecil, Dorchester, Harford, Kent, Queen Anne's, St. Mary's, Somerset, Talbot, Wicomico, and Worcester Counties; and that part of Anne Arundel County east of Interstate 895, Interstate 97 and Route 3; that part of Prince George's County east of Route 3 and Route 301; and that part of Charles County east of Route 301 to the Virginia State line.

Western Unit—Allegany, Baltimore, Carroll, Frederick, Garrett, Howard, Montgomery, and Washington Counties and that part of Anne Arundel County west of Interstate 895, Interstate 97 and Route 3; that part of Prince George's County west of Route 3 and Route 301; and that part of Charles County west of Route 301 to the Virginia State line.

Massachusetts

Western Zone—That portion of the State west of a line extending south from the Vermont border on I–91 to MA 9, west on MA 9 to MA 10, south on MA 10 to U.S. 202, south on U.S. 202 to the Connecticut border.

Central Zone—That portion of the State east of the Berkshire Zone and west of a line extending south from the New Hampshire border on I–95 to U.S. 1, south on U.S. 1 to I–93, south on I–93 to MA 3, south on MA 3 to U.S. 6, west on U.S. 6 to MA 28, west on MA 28 to I–195, west to the Rhode Island border; except the waters, and the lands 150 yards inland from the high-water mark, of the Assonet River upstream to the MA 24 bridge, and the Taunton River upstream to the Center St.–Elm St. bridge will be in the Coastal Zone.

Coastal Zone—That portion of Massachusetts east and south of the Central Zone.

New York

Lake Champlain Goose Area—The same as the Lake Champlain Waterfowl Hunting Zone, which is that area of New York State lying east and north of a continuous line extending along Route 11 from the New York-Canada International boundary south to Route 9B, south along Route 9B to Route 9, south along Route 9 to Route 22 south of Keeseville, south along Route 22 to the west shore of South Bay along and around the shoreline of South Bay to Route 22 on the east shore of South Bay, southeast along Route 22 to Route 4, northeast along Route 4 to the New York-Vermont boundary.

Northeast Goose Area—The same as the Northeastern Waterfowl Hunting Zone, which is that area of New York State lying north of a continuous line extending from Lake Ontario east along the north shore of the Salmon River to Interstate 81, south along Interstate Route 81 to Route 31, east along Route 31 to Route 13, north along Route 13 to Route 49, east along Route 49 to Route 365, east along Route 365 to Route 28, east along Route 28 to Route 29, east along Route 29 to Route 22 at Greenwich Junction, north along Route 22 to Washington County Route (CR) 153, east along Washington CR 153 to the New York-Vermont boundary, exclusive of the Lake Champlain Zone.

East Central Goose Area—That area of New York State lying inside of a continuous line extending from Interstate Route 81 in Cicero, east along Interstate 31 to Route 13, north along Route 13 to Route 49, east along Route 49 to Route 365, east along Route 365 to Route 28, east along Route 28 to Route 29, east along Route 29 to Route 147 at Kimball Corners, south along Route 147 to Schenectady CR 40 (West Glenville Road), west along Route 40 to Touareuna Road, south along Touareuna Road to Schenectady CR 59, south along CR 59 to State Route 5, east along Route 5 to the Lock 9 bridge, southwest along the Lock 9 bridge to Route 5S, southeast along Route 5S to Schenectady CR 58, southwest along CR 58 to the NYS Thruway, south along the Thruway to Route 7, southwest along Route 7 to Schenectady CR 103, south along CR 103 to Route 406, east along Route 406 to Schenectady CR 99 (Windy Hill Road), south along CR 99 to Dunnsville Road, south along Dunnsville Road to Route 397, southwest along Route 397 to Route 146 at Altamont, west along Route 146 to Albany CR 252, northwest along CR 252 to Schenectady CR 131, north along Route 131 to Route 7, west along Route 7 to Route 10 at Richmondville, south on Route 10 to Route 23 at Stamford, west along Route 23 to Route 7 in Oneonta, southwest along Route 7 to Route 79 to Interstate Route 88 near Harpursville, west along Interstate 88 to Interstate Route 81, north along Interstate 81 to the point of beginning.

West Central Goose Area—That area of New York State lying within a continuous line beginning at the point where the northerly extension of Route 269 (County Line Road on the Niagara-

Orleans County boundary) meets the International boundary with Canada, south to the shore of Lake Ontario at the eastern boundary of Golden Hill State Park, south along the extension of Route 269 and Route 269 to Route 104 at Jeddo, west along Route 104 to Niagara CR 271, south along CR 271 to Route 31E at Middleport, south along Route 31E to Route 31, west along Route 31 to Griswold Street, south along Griswold Street to Ditch Road, south along Ditch Road to Foot Road, south along Foot Road to the north bank of Tonawanda Creek, west along the north bank of Tonawanda Creek to Route 93, south along Route 93 to Route 5, east along Route 5 to Crittenden-Murrays Corners Road, south on Crittenden-Murrays Corners Road to the NYS Thruway, east along the Thruway 90 to Route 98 (at Thruway Exit 48) in Batavia, south along Route 98 to Route 20, east along Route 20 to Route 19 in Pavilion Center, south along Route 19 to Route 63, southeast along Route 63 to Route 246, south along Route 246 to Route 39 in Perry, northeast along Route 39 to Route 20A, northeast along Route 20A to Route 20, east along Route 20 to Route 364 (near Canandaigua), south and east along Route 364 to Yates CR 18 (Italy Valley Road), southwest along CR 18 to Yates CR 34, east along CR 34 to Yates CR 32, south along CR 32 to Steuben CR 122, south along CR 122 to Route 53, south along Route 53 to Steuben CR 74, east along CR 74 to Route 54A (near Pulteney), south along Route 54A to Steuben CR 87, east along CR 87 to Steuben County Route 96, east along CR 96 to Steuben CR 114, east along CR 114 to Schuyler CR 23, east and southeast along CR 23 to Schuyler CR 28, southeast along CR 28 to Route 409 at Watkins Glen, south along Route 409 to Route 14, south along Route 14 to Route 224 at Montour Falls, east along Route 224 to Route 228 in Odessa, north along Route 228 to Route 79 in Mecklenburg, east along Route 79 to Route 366 in Ithaca, northeast along Route 366 to Route 13, northeast along Route 13 to Interstate Route 81 in Cortland, north along Route 81 to the north shore of the Salmon River to shore of Lake Ontario, extending generally northwest in a straight line to the nearest point of the International boundary with Canada, south and west along the International boundary to the point of beginning.

Hudson Valley Goose Area—That area of New York State lying within a continuous line extending from Route 4 at the New York-Vermont boundary, west and south along Route 4 to Route 149 at Fort Ann, west on Route 149 to Route 9, south along Route 9 to Interstate Route 87 (at Exit 20 in Glens Falls), south along Route 87 to Route 29, west along Route 29 to Route 147 at Kimball Corners, south along Route 147 to Schenectady CR 40 (West Glenville Road), west along CR 40 to Touareuna Road, south along Touareuna Road to Schenectady CR 59, south along CR 59 to State Route 5, east along State Route 5 to the Lock 9 bridge, southwest along the Lock 9 bridge to Route 5S, southeast along Route 5S to Schenectady CR 58, southwest along CR 58 to the NYS Thruway, south along the Thruway to Route 7, southwest along Route 7 to Schenectady CR 103, south along CR 103 to Route 406, east along Route 406 to Schenectady CR 99 (Windy Hill Road), south along CR 99 to Dunnsville Road, south along Dunnsville Road to Route 397, southwest along Route 397 to Route 146 at Altamont, southeast along Route 146 to Main Street in Altamont, west along Main Street to Route 156, southeast along Route 156 to Albany CR 307, southeast along CR 307 to Route 85A, southwest along Route 85A to Route 85, south along Route 85 to Route 443, southeast along Route 443 to Albany CR 301 at Clarksville, southeast along CR 301 to Route 32, south along Route 32 to Route 23 at Cairo, west along Route 23 to Joseph Chadderdon Road, southeast along Joseph Chadderdon Road to Hearts Content Road (Greene CR 31), southeast along CR 31 to Route 32, south along Route 32 to Greene CR 23A, east along CR 23A to Interstate Route 87 (the NYS Thruway), south along Interstate 87 to Route 28 (Exit 19) near Kingston, northwest on Route 28 to Route 209, southwest on Route 209 to the New York-Pennsylvania boundary, southeast along the New York-Pennsylvania boundary to the New York-New Jersey boundary, southeast along the New York-New Jersey boundary to Route 210 near Greenwood Lake, northeast along Route 210 to Orange CR 5, northeast along CR 5 to Route 105 in the Village of Monroe, east and north along Route 105 to Route 32, northeast along Route 32 to Orange CR 107 (Quaker Avenue), east along CR 107 to Route 9W, north along Route 9W to the south bank of Moodna Creek, southeast along the south bank of Moodna Creek to the New Windsor-Cornwall town boundary, northeast along the New Windsor-Cornwall town boundary to the Orange-Dutchess County boundary (middle of the Hudson River), north along the county boundary to Interstate Route 84, east along Interstate 84 to the Dutchess-Putnam County boundary, east along the county boundary to the New York-Connecticut boundary, north along the New York-Connecticut boundary to the New York-Massachusetts boundary, north along the New York-Massachusetts boundary to the New York-Vermont boundary, north to the point of beginning.

Eastern Long Island Goose Area (NAP High Harvest Area)—That area of Suffolk County lying east of a continuous line extending due south from the New York-Connecticut boundary to the northernmost end of Roanoke Avenue in the Town of Riverhead; then south on Roanoke Avenue (which becomes CR 73) to State Route 25; then west on Route 25 to Peconic Avenue; then south on Peconic Avenue to CR 104 (Riverleigh Avenue); then south on CR 104 to CR 31 (Old Riverhead Road); then south on CR 31 to Oak Street; then south on Oak Street to Potunk Lane; then west on Stevens Lane; then south on Jessup Avenue (in Westhampton Beach) to Dune Road (CR 89); then due south to international waters.

Western Long Island Goose Area (RP Area)—That area of Westchester County and its tidal waters southeast of Interstate Route 95 and that area of Nassau and Suffolk Counties lying west of a continuous line extending due south from the New York-Connecticut boundary to the northernmost end of the Sunken Meadow State Parkway; then south on the Sunken Meadow Parkway to the Sagtikos State Parkway; then south on the Sagtikos Parkway to the Robert Moses State Parkway; then south on the Robert Moses Parkway to its southernmost end; then due south to international waters.

Central Long Island Goose Area (NAP Low Harvest Area)—That area of Suffolk County lying between the Western and Eastern Long Island Goose Areas, as defined above.

South Goose Area—The remainder of New York State, excluding New York City.

Pennsylvania

Southern James Bay Population (SJBP) Zone—The area north of I–80 and west of I–79, including in the city of Erie west of Bay Front Parkway to and including the Lake Erie Duck Zone (Lake Erie, Presque Isle, and the area within 150 yards of the Lake Erie Shoreline).

Vermont

Lake Champlain Zone—The U.S. portion of Lake Champlain and that area north and west of the line extending from the New York border along U.S. 4 to VT 22A at Fair Haven; VT 22A to U.S. 7 at Vergennes; U.S. 7 to VT 78 at Swanton; VT 78 to VT 36; VT 36 to Maquam Bay on Lake Champlain; along

and around the shoreline of Maquam Bay and Hog Island to VT 78 at the West Swanton Bridge; VT 78 to VT 2 in Alburg; VT 2 to the Richelieu River in Alburg; along the east shore of the Richelieu River to the Canadian border.

Interior Zone—That portion of Vermont east of the Lake Champlain Zone and west of a line extending from the Massachusetts border at Interstate 91; north along Interstate 91 to US 2; east along US 2 to VT 102; north along VT 102 to VT 253; north along VT 253 to the Canadian border.

Connecticut River Zone—The remaining portion of Vermont east of the Interior Zone.

Mississippi Flyway

Arkansas

Early Canada Goose Area—Baxter, Benton, Boone, Carroll, Clark, Conway, Crawford, Faulkner, Franklin, Garland, Hempstead, Hot Springs, Howard, Johnson, Lafayette, Little River, Logan, Madison, Marion, Miller, Montgomery, Newton, Perry, Pike, Polk, Pope, Pulaski, Saline, Searcy, Sebastian, Sevier, Scott, Van Buren, Washington, and Yell Counties.

Illinois

North September Canada Goose Zone—That portion of the State north of a line extending west from the Indiana border along Interstate 80 to I–39, south along I–39 to Illinois Route 18, west along Illinois Route 18 to Illinois Route 29, south along Illinois Route 29 to Illinois Route 17, west along Illinois Route 17 to the Mississippi River, and due south across the Mississippi River to the Iowa border.

Central September Canada Goose Zone—That portion of the State south of the North September Canada Goose Zone line to a line extending west from the Indiana border along I–70 to Illinois Route 4, south along Illinois Route 4 to Illinois Route 161, west along Illinois Route 161 to Illinois Route 158, south and west along Illinois Route 158 to Illinois Route 159, south along Illinois Route 159 to Illinois Route 3, south along Illinois Route 3 to St. Leo's Road, south along St. Leo's road to Modoc Road, west along Modoc Road to Modoc Ferry Road, southwest along Modoc Ferry Road to Levee Road, southeast along Levee Road to County Route 12 (Modoc Ferry entrance Road), south along County Route 12 to the Modoc Ferry route and southwest on the Modoc Ferry route across the Mississippi River to the Missouri border.

South September Canada Goose Zone—That portion of the State south and east of a line extending west from the Indiana border along Interstate 70, south along U.S. Highway 45, to Illinois Route 13, west along Illinois Route 13 to Greenbriar Road, north on Greenbriar Road to Sycamore Road, west on Sycamore Road to N. Reed Station Road, south on N. Reed Station Road to Illinois Route 13, west along Illinois Route 13 to Illinois Route 127, south along Illinois Route 127 to State Forest Road (1025 N), west along State Forest Road to Illinois Route 3, north along Illinois Route 3 to the south bank of the Big Muddy River, west along the south bank of the Big Muddy River to the Mississippi River, west across the Mississippi River to the Missouri border.

South Central September Canada Goose Zone—The remainder of the State between the south border of the Central Zone and the North border of the South Zone

Iowa

North Zone—That portion of the State north of U.S. Highway 20.

South Zone—The remainder of Iowa.

Cedar Rapids/Iowa City Goose Zone—Includes portions of Linn and Johnson Counties bounded as follows: Beginning at the intersection of the west border of Linn County and Linn County Road E2W; then south and east along County Road E2W to Highway 920; then north along Highway 920 to County Road E16; then east along County Road E16 to County Road W58; then south along County Road W58 to County Road E34; then east along County Road E34 to Highway 13; then south along Highway 13 to Highway 30; then east along Highway 30 to Highway 1; then south along Highway 1 to Morse Road in Johnson County; then east along Morse Road to Wapsi Avenue; then south along Wapsi Avenue to Lower West Branch Road; then west along Lower West Branch Road to Taft Avenue; then south along Taft Avenue to County Road F62; then west along County Road F62 to Kansas Avenue; then north along Kansas Avenue to Black Diamond Road; then west on Black Diamond Road to Jasper Avenue; then north along Jasper Avenue to Rohert Road; then west along Rohert Road to Ivy Avenue; then north along Ivy Avenue to 340th Street; then west along 340th Street to Half Moon Avenue; then north along Half Moon Avenue to Highway 6; then west along Highway 6 to Echo Avenue; then north along Echo Avenue to 250th Street; then east on 250th Street to Green Castle Avenue; then north along Green Castle Avenue to County Road F12; then west along County Road F12 to County Road W30; then north along County Road W30 to Highway 151; then north along the Linn-Benton County line to the point of beginning.

Des Moines Goose Zone—Includes those portions of Polk, Warren, Madison and Dallas Counties bounded as follows: Beginning at the intersection of Northwest 158th Avenue and County Road R38 in Polk County; then south along R38 to Northwest 142nd Avenue; then east along Northwest 142nd Avenue to Northeast 126th Avenue; then east along Northeast 126th Avenue to Northeast 46th Street; then south along Northeast 46th Street to Highway 931; then east along Highway 931 to Northeast 80th Street; then south along Northeast 80th Street to Southeast 6th Avenue; then west along Southeast 6th Avenue to Highway 65; then south and west along Highway 65 to Highway 69 in Warren County; then south along Highway 69 to County Road G24; then west along County Road G24 to Highway 28; then southwest along Highway 28 to 43rd Avenue; then north along 43rd Avenue to Ford Street; then west along Ford Street to Filmore Street; then west along Filmore Street to 10th Avenue; then south along 10th Avenue to 155th Street in Madison County; then west along 155th Street to Cumming Road; then north along Cumming Road to Badger Creek Avenue; then north along Badger Creek Avenue to County Road F90 in Dallas County; then east along County Road F90 to County Road R22; then north along County Road R22 to Highway 44; then east along Highway 44 to County Road R30; then north along County Road R30 to County Road F31; then east along County Road F31 to Highway 17; then north along Highway 17 to Highway 415 in Polk County; then east along Highway 415 to Northwest 158th Avenue; then east along Northwest 158th Avenue to the point of beginning.

Cedar Falls/Waterloo Goose Zone—Includes those portions of Black Hawk County bounded as follows: Beginning at the intersection of County Roads C66 and V49 in Black Hawk County, then south along County Road V49 to County Road D38, then west along County Road D38 to State Highway 21, then south along State Highway 21 to County Road D35, then west along County Road D35 to Grundy Road, then north along Grundy Road to County Road D19, then west along County Road D19 to Butler Road, then north along Butler Road to County Road C57, then north and east along County Road C57 to U.S. Highway 63, then south along U.S. Highway 63 to County Road C66, then east along County Road C66 to the point of beginning.

Michigan

North Zone—Same as North duck zone.

Middle Zone—Same as Middle duck zone.

South Zone—Same as South duck zone.

Minnesota

Northwest Goose Zone—That portion of the State encompassed by a line extending east from the North Dakota border along U.S. Highway 2 to State Trunk Highway (STH) 32, north along STH 32 to STH 92, east along STH 92 to County State Aid Highway (CSAH) 2 in Polk County, north along CSAH 2 to CSAH 27 in Pennington County, north along CSAH 27 to STH 1, east along STH 1 to CSAH 28 in Pennington County, north along CSAH 28 to CSAH 54 in Marshall County, north along CSAH 54 to CSAH 9 in Roseau County, north along CSAH 9 to STH 11, west along STH 11 to STH 310, and north along STH 310 to the Manitoba border.

Intensive Harvest Zone—That portion of the State encompassed by a line extending east from the junction of US 2 and the North Dakota border, US 2 east to MN 32 N, MN 32 N to MN 92 S, MN 92 S to MN 200 E, MN 200 E to US 71 S, US 71 S to US 10 E, US 10 E to MN 101 S, MN 101 S to Interstate 94 E, Interstate 94 E to US 494 S, US 494 S to US 212 W, US 212 W to MN 23 S, MN 23 S to US 14 W, US 14 W to the South Dakota border, South Dakota Border north to the North Dakota border, North Dakota border north to US 2 E.

Rest of State—Remainder of Minnesota.

Wisconsin

Early-Season Subzone A—That portion of the State encompassed by a line beginning at the intersection of U.S. Highway 141 and the Michigan border near Niagara, then south along U.S. 141 to State Highway 22, west and southwest along State 22 to U.S. 45, south along U.S. 45 to State 22, west and south along State 22 to State 110, south along State 110 to U.S. 10, south along U.S. 10 to State 49, south along State 49 to State 23, west along State 23 to State 73, south along State 73 to State 60, west along State 60 to State 23, south along State 23 to State 11, east along State 11 to State 78, then south along State 78 to the Illinois border.

Early-Season Subzone B—The remainder of the State.

Central Flyway

North Dakota

Missouri River Canada Goose Zone—The area within and bounded by a line starting where ND Hwy 6 crosses the South Dakota border; then north on ND Hwy 6 to I–94; then west on I–94 to ND Hwy 49; then north on ND Hwy 49 to ND Hwy 200; then north on Mercer County Rd. 21 to the section line between sections 8 and 9 (T146N–R87W); then north on that section line to the southern shoreline to Lake Sakakawea; then east along the southern shoreline (including Mallard Island) of Lake Sakakawea to US Hwy 83; then south on US Hwy 83 to ND Hwy 200; then east on ND Hwy 200 to ND Hwy 41; then south on ND Hwy 41 to US Hwy 83; then south on US Hwy 83 to I–94; then east on I–94 to US Hwy 83; then south on US Hwy 83 to the South Dakota border; then west along the South Dakota border to ND Hwy 6.

Rest of State—Remainder of North Dakota.

South Dakota

Special Early Canada Goose Unit—The Counties of Campbell, Marshall, Roberts, Day, Clark, Codington, Grant, Hamlin, Deuel, Walworth; that portion of Perkins County west of State Highway 75 and south of State Highway 20; that portion of Dewey County north of Bureau of Indian Affairs Road 8, Bureau of Indian Affairs Road 9, and the section of U.S. Highway 212 east of the Bureau of Indian Affairs Road 8 junction; that portion of Potter County east of U.S. Highway 83; that portion of Sully County east of U.S. Highway 83; portions of Hyde, Buffalo, Brule, and Charles Mix counties north and east of a line beginning at the Hughes-Hyde County line on State Highway 34, east to Lees Boulevard, southeast to the State Highway 34, east 7 miles to 350th Avenue, south to Interstate 90 on 350th Avenue, south and east on State Highway 50 to Geddes, east on 285th Street to U.S. Highway 281, and north on U.S. Highway 281 to the Charles Mix-Douglas County boundary; that portion of Bon Homme County north of State Highway 50; McPherson, Edmunds, Kingsbury, Brookings, Lake, Moody, Miner, Faulk, Hand, Jerauld, Douglas, Hutchinson, Turner, Union, Clay, Yankton, Aurora, Beadle, Davison, Hanson, Sanborn, Spink, Brown, Harding, Butte, Lawrence, Meade, Shannon, Jackson, Mellette, Todd, Jones, Haakon, Corson, Ziebach, and McCook Counties; and those portions of Minnehaha and Lincoln counties outside of an area bounded by a line beginning at the junction of the South Dakota-Minnesota State line and Minnehaha County Highway 122 (254th Street) west to its junction with Minnehaha County Highway 149 (464th Avenue), south on Minnehaha County Highway 149 (464th Avenue) to Hartford, then south on Minnehaha County Highway 151 (463rd Avenue) to State Highway 42, east on State Highway 42 to State Highway 17, south on State Highway 17 to its junction with Lincoln County Highway 116 (Klondike Road), and east on Lincoln County Highway 116 (Klondike Road) to the South Dakota-Iowa State line, then north along the South Dakota-Iowa and South Dakota-Minnesota border to the junction of the South Dakota-Minnesota State line and Minnehaha County Highway 122 (254th Street).

Texas

Eastern Goose Zone—East of a line from the International Toll Bridge at Laredo, north following IH–35 and 35W to Fort Worth, northwest along U.S. Hwy. 81 and 287 to Bowie, north along U.S. Hwy. 81 to the Texas-Oklahoma State line.

Pacific Flyway

Idaho

Zone 1—All lands and waters within the Fort Hall Indian Reservation, including private in-holdings; Bannock County; Bingham County, except that portion within the Blackfoot Reservoir drainage; Caribou County within the Fort Hall Indian Reservation; and Power County east of State Highway 37 and State Highway 39.

Zone 2—Adams, Benewah, Blaine, Bonner, Bonneville, Boundary, Butte, Camas, Clark, Clearwater, Custer, Franklin, Fremont, Idaho, Jefferson, Kootenai, Latah, Lemhi, Lewis, Madison, Nez Perce, Oneida, Shoshone, Teton, and Valley Counties; and Power County west of State Highway 37 and State Highway 39.

Zone 3—Ada, Boise, Canyon, Cassia, Elmore, Gem, Gooding, Jerome, Lincoln, Minidoka, Owyhee, Payette, Twin Falls, and Washington Counties.

Zone 4—Bear Lake County; Bingham County within the Blackfoot Reservoir drainage; and Caribou County, except that portion within the Fort Hall Indian Reservation.

Oregon

Northwest Permit Zone—Benton, Clatsop, Columbia, Clackamas, Lane, Lincoln, Linn, Marion, Multnomah, Polk, Tillamook, Washington, and Yamhill Counties.

Southwest Zone—Those portions of Douglas, Coos, and Curry Counties east

of Highway 101, and Josephine and Jackson Counties.

South Coast Zone—Those portions of Douglas, Coos, and Curry Counties west of Highway 101.

Tillamook County Management Area—That portion of Tillamook County beginning at the point where Old Woods Rd crosses the south shores of Horn Creek, north on Old Woods Rd to Sand Lake Rd at Woods, north on Sand Lake Rd to the intersection with McPhillips Dr, due west (~200 yards) from the intersection to the Pacific coastline, south on the Pacific coastline to Neskowin Creek, east along the north shores of Neskowin Creek and then Hawk Creek to Salem Ave, east on Salem Ave in Neskowin to Hawk Ave, east on Hawk Ave to Hwy 101, north on Hwy 101 to Resort Dr, north on Resort Dr to a point due west of the south shores of Horn Creek at its confluence with the Nestucca River, due east (~80 yards) across the Nestucca River to the south shores of Horn Creek, east along the south shores of Horn Creek to the point of beginning.

Eastern Zone—Hood River, Wasco, Sherman, Gilliam, Morrow, Umatilla, Deschutes, Jefferson, Crook, Wheeler, Grant, Baker, Union, and Wallowa Counties.

Klamath County Zone—All of Klamath County.

Harney and Lake County Zone—All of Harney and Lake Counties.

Malheur County Zone—All of Malheur County.

Washington

Area 1—Skagit, Island, and Snohomish Counties.

Area 2A (SW Permit Zone)—Clark County, except portions south of the Washougal River; Cowlitz County; and Wahkiakum County.

Area 2B (SW Permit Zone)—Pacific County.

Area 3—All areas west of the Pacific Crest Trail and west of the Big White Salmon River that are not included in Areas 1, 2A, and 2B.

Area 4—Adams, Benton, Chelan, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanogan, Spokane, and Walla Walla Counties.

Area 5—All areas east of the Pacific Crest Trail and east of the Big White Salmon River that are not included in Area 4.

Wyoming

Teton County Zone—All of Teton County.

Balance of State Zone—Remainder of the State.

Ducks

Atlantic Flyway

New York

Lake Champlain Zone—The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont border.

Long Island Zone—That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I–95, and their tidal waters.

Western Zone—That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania border.

Northeastern Zone—That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, south along I–81 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I–87, north along I–87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont border, exclusive of the Lake Champlain Zone.

Southeastern Zone—The remaining portion of New York.

Maryland

Special Teal Season Area—Calvert, Caroline, Cecil, Dorchester, Harford, Kent, Queen Anne's, St. Mary's, Somerset, Talbot, Wicomico, and Worcester Counties; that part of Anne Arundel County east of Interstate 895, Interstate 97, and Route 3; that part of Prince Georges County east of Route 3 and Route 301; and that part of Charles County east of Route 301 to the Virginia State Line.

Mississippi Flyway

Indiana

North Zone—That part of Indiana north of a line extending east from the Illinois border along State Road 18 to U.S. 31; north along U.S. 31 to U.S. 24; east along U.S. 24 to Huntington; southeast along U.S. 224; south along State Road 5; and east along State Road 124 to the Ohio border.

Central Zone—That part of Indiana south of the North Zone boundary and north of the South Zone boundary.

South Zone—That part of Indiana south of a line extending east from the Illinois border along U.S. 40; south along U.S. 41; east along State Road 58; south along State Road 37 to Bedford; and east along U.S. 50 to the Ohio border.

Iowa

North Zone—That portion of Iowa north of a line beginning on the South Dakota–Iowa border at Interstate 29, southeast along Interstate 29 to State Highway 175, east along State Highway 175 to State Highway 37, southeast along State Highway 37 to State Highway 183, northeast along State Highway 183 to State Highway 141, east along State Highway 141 to U.S. Highway 30, and along U.S. Highway 30 to the Illinois border.

Missouri River Zone—That portion of Iowa west of a line beginning on the South Dakota-Iowa border at Interstate 29, southeast along Interstate 29 to State Highway 175, and west along State Highway 175 to the Iowa–Nebraska border.

South Zone—The remainder of Iowa.

Michigan

North Zone—The Upper Peninsula.

Middle Zone—That portion of the Lower Peninsula north of a line beginning at the Wisconsin State line in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and easterly and southerly along the south shore of Stony Creek to Scenic Drive, easterly and southerly along Scenic Drive to Stony Lake Road, easterly along Stony Lake and Garfield Roads to Michigan Highway 20, east along Michigan 20 to U.S. Highway 10 Business Route (BR) in the city of Midland, easterly along U.S. 10 BR to U.S. 10, easterly along U.S. 10 to Interstate Highway 75/U.S. Highway 23, northerly along I–75/U.S. 23 to the U.S. 23 exit at Standish, easterly along U.S. 23 to the centerline of the Au Gres River, then southerly along the centerline of the Au Gres River to Saginaw Bay, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canadian border.

South Zone—The remainder of Michigan.

Wisconsin

North Zone—That portion of the State north of a line extending east from the Minnesota State line along U.S. Highway 10 into Portage County to County Highway HH, east on County Highway HH to State Highway 66 and then east on State Highway 66 to U.S. Highway 10, continuing east on U.S. Highway 10 to U.S. Highway 41, then north on U.S. Highway 41 to the Michigan State line.

Mississippi River Zone—That area encompassed by a line beginning at the intersection of the Burlington Northern & Santa Fe Railway and the Illinois State line in Grant County and extending northerly along the Burlington Northern & Santa Fe Railway to the city limit of Prescott in Pierce County, then west along the Prescott city limit to the Minnesota State line.

South Zone—The remainder of Wisconsin.

Central Flyway

Colorado

Special Teal Season Area—Lake and Chaffee Counties and that portion of the State east of Interstate Highway 25.

Kansas

High Plains Zone—That portion of the State west of U.S. 283.

Early Zone—That part of Kansas bounded by a line from the Nebraska-Kansas State line south on K–128 to its junction with U.S.–36, then east on U.S.–36 to its junction with K–199, then south on K–199 to its junction with Republic County 30 Rd, then south on Republic County 30 Rd to its junction with K–148, then east on K–148 to its junction with Republic County 50 Rd, then south on Republic County 50 Rd to its junction with Cloud County 40th Rd, then south on Cloud County 40th Rd to its junction with K–9, then west on K–9 to its junction with U.S.–24, then west on U.S.–24 to its junction with U.S.–281, then north on U.S.–281 to its junction with U.S.–36, then west on U.S.–36 to its junction with U.S.–183, then south on U.S.–183 to its junction with U.S.–24, then west on U.S.–24 to its junction with K–18, then southeast on K–18 to its junction with U.S.–183, then south on U.S.–183 to its junction with K–4, then east on K–4 to its junction with I–135, then south on I–135 to its junction with K–61, then southwest on K–61 to McPherson County 14th Avenue, then south on McPherson County 14th Avenue to its junction with Arapaho Rd, then west on Arapaho Rd to its junction with K–61, then southwest on K–61 to its junction with K–96, then northwest on K–96 to its junction with U.S.–56, then southwest on U.S.–56 to its junction with K–19, then east on K–19 to its junction with U.S.–281, then south on U.S.–281 to its junction with U.S.–54, then west on U.S.–54 to its junction with U.S.–183, then north on U.S.–183 to its junction with U.S.–56, then southwest on U.S.–56 to its junction with Ford County Rd 126, then south on Ford County Rd 126 to its junction with U.S.–400, then northwest on U.S.–400 to its junction with U.S.–283, then north on U.S.–283 to its junction with the Nebraska-Kansas State line, then east along the Nebraska-Kansas State line to its junction with K–128.

Late Zone—That part of Kansas bounded by a line from the Nebraska-Kansas State line south on K–128 to its junction with U.S.–36, then east on U.S.–36 to its junction with K–199, then south on K–199 to its junction with Republic County 30 Rd, then south on Republic County 30 Rd to its junction with K–148, then east on K–148 to its junction with Republic County 50 Rd, then south on Republic County 50 Rd to its junction with Cloud County 40th Rd, then south on Cloud County 40th Rd to its junction with K–9, then west on K–9 to its junction with U.S.–24, then west on U.S.–24 to its junction with U.S.–281, then north on U.S.–281 to its junction with U.S.–36, then west on U.S.–36 to its junction with U.S.–183, then south on U.S.–183 to its junction with U.S.–24, then west on U.S.–24 to its junction with K–18, then southeast on K–18 to its junction with U.S.–183, then south on U.S.–183 to its junction with K–4, then east on K–4 to its junction with I–135, then south on I–135 to its junction with K–61, then southwest on K–61 to 14th Avenue, then south on 14th Avenue to its junction with Arapaho Rd, then west on Arapaho Rd to its junction with K–61, then southwest on K–61 to its junction with K–96, then northwest on K–96 to its junction with U.S.–56, then southwest on U.S.–56 to its junction with K–19, then east on K–19 to its junction with U.S.–281, then south on U.S.–281 to its junction with U.S.–54, then west on U.S.–54 to its junction with U.S.–183, then north on U.S.–183 to its junction with U.S.–56, then southwest on U.S.–56 to its junction with Ford County Rd 126, then south on Ford County Rd 126 to its junction with U.S.–400, then northwest on U.S.–400 to its junction with U.S.–283, then south on U.S.–283 to its junction with the Oklahoma-Kansas State line, then east along the Oklahoma-Kansas State line to its junction with U.S.–77, then north on U.S.–77 to its junction with Butler County, NE 150th Street, then east on Butler County, NE 150th Street to its junction with U.S.–35, then northeast on U.S.–35 to its junction with K–68, then east on K–68 to the Kansas-Missouri State line, then north along the Kansas-Missouri State line to its junction with the Nebraska State line, then west along the Kansas-Nebraska State line to its junction with K–128.

Southeast Zone—That part of Kansas bounded by a line from the Missouri-Kansas State line west on K–68 to its junction with U.S.–35, then southwest on U.S.–35 to its junction with Butler County, NE 150th Street, then west on NE 150th Street until its junction with K–77, then south on K–77 to the Oklahoma-Kansas State line, then east along the Kansas-Oklahoma State line to its junction with the Missouri State line, then north along the Kansas-Missouri State line to its junction with K–68.

Nebraska

Special Teal Season Area (south)—That portion of the State south of a line beginning at the Wyoming State line; east along U.S. 26 to Nebraska Highway L62A east to U.S. 385; south to U.S. 26; east to NE 92; east along NE 92 to NE 61; south along NE 61 to U.S. 30; east along U.S. 30 to the Iowa border.

Special Teal Season Area (north)—The remainder of the State.

High Plains—That portion of Nebraska lying west of a line beginning at the South Dakota-Nebraska border on U.S. Hwy. 183; south on U.S. Hwy. 183 to U.S. Hwy. 20; west on U.S. Hwy. 20 to NE Hwy. 7; south on NE Hwy. 7 to NE Hwy. 91; southwest on NE Hwy. 91 to NE Hwy. 2; southeast on NE Hwy. 2 to NE Hwy. 92; west on NE Hwy. 92 to NE Hwy. 40; south on NE Hwy. 40 to NE Hwy. 47; south on NE Hwy. 47 to NE Hwy. 23; east on NE Hwy. 23 to U.S. Hwy. 283; and south on U.S. Hwy. 283 to the Kansas-Nebraska border.

Zone 1—Area bounded by designated Federal and State highways and political boundaries beginning at the South Dakota-Nebraska border west of NE Hwy. 26E Spur and north of NE Hwy. 12; those portions of Dixon, Cedar and Knox Counties north of NE Hwy. 12; that portion of Keya Paha County east of U.S. Hwy. 183; and all of Boyd County. Both banks of the Niobrara River in Keya Paha and Boyd counties east of U.S. Hwy. 183 shall be included in Zone 1.

Zone 2—The area south of Zone 1 and north of Zone 3.

Zone 3—Area bounded by designated Federal and State highways, County Roads, and political boundaries beginning at the Wyoming–Nebraska border at the intersection of the Interstate Canal; east along northern borders of Scotts Bluff and Morrill Counties to Broadwater Road; south to Morrill County Rd 94; east to County Rd 135; south to County Rd 88; southeast to County Rd 151; south to County Rd 80; east to County Rd 161; south to County Rd 76; east to County Rd 165; south to Country Rd 167; south to U.S. Hwy. 26; east to County Rd 171; north to County Rd 68; east to County Rd 183; south to County Rd 64; east to County Rd 189; north to County Rd 70; east to

County Rd 201; south to County Rd 60A; east to County Rd 203; south to County Rd 52; east to Keith County Line; east along the northern boundaries of Keith and Lincoln Counties to NE Hwy. 97; south to U.S. Hwy 83; south to E Hall School Rd; east to N Airport Road; south to U.S. Hwy. 30; east to Merrick County Rd 13; north to County Rd O; east to NE Hwy. 14; north to NE Hwy. 52; west and north to NE Hwy. 91; west to U.S. Hwy. 281; south to NE Hwy. 22; west to NE Hwy. 11; northwest to NE Hwy. 91; west to U.S. Hwy. 183; south to Round Valley Rd; west to Sargent River Rd; west to Sargent Rd; west to Milburn Rd; north to Blaine County Line; east to Loup County Line; north to NE Hwy. 91; west to North Loup Spur Rd; north to North Loup River Rd; east to Pleasant Valley/Worth Rd; east to Loup County Line; north to Loup-Brown county line; east along northern boundaries of Loup and Garfield Counties to Cedar River Rd; south to NE Hwy. 70; east to U.S. Hwy. 281; north to NE Hwy. 70; east to NE Hwy. 14; south to NE Hwy. 39; southeast to NE Hwy. 22; east to U.S. Hwy. 81; southeast to U.S. Hwy. 30; east to U.S. Hwy. 75; north to the Washington County line; east to the Iowa-Nebraska border; south to the Missouri-Nebraska border; south to Kansas-Nebraska border; west along Kansas-Nebraska border to Colorado-Nebraska border; north and west to Wyoming-Nebraska border; north to intersection of Interstate Canal; and excluding that area in Zone 4.

Zone 4—Area encompassed by designated Federal and State highways and County Roads beginning at the intersection of NE Hwy. 8 and U.S. Hwy. 75; north to U.S. Hwy. 136; east to the intersection of U.S. Hwy. 136 and the Steamboat Trace (Trace); north along the Trace to the intersection with Federal Levee R–562; north along Federal Levee R–562 to the intersection with the Trace; north along the Trace/Burlington Northern Railroad right-of-way to NE Hwy. 2; west to U.S. Hwy. 75; north to NE Hwy. 2; west to NE Hwy. 43; north to U.S. Hwy. 34; east to NE Hwy. 63; north to NE Hwy. 66; north and west to U.S. Hwy. 77; north to NE Hwy. 92; west to NE Hwy. Spur 12F; south to Butler County Rd 30; east to County Rd X; south to County Rd 27; west to County Rd W; south to County Rd 26; east to County Rd X; south to County Rd 21 (Seward County Line); west to NE Hwy. 15; north to County Rd 34; west to County Rd J; south to NE Hwy. 92; west to U.S. Hwy. 81; south to NE Hwy. 66; west to Polk County Rd C; north to NE Hwy. 92; west to U.S. Hwy. 30; west to Merrick County Rd 17; south to Hordlake Road; southeast to Prairie Island Road; southeast to Hamilton County Rd T; south to NE Hwy. 66; west to NE Hwy. 14; south to County Rd 22; west to County Rd M; south to County Rd 21; west to County Rd K; south to U.S. Hwy. 34; west to NE Hwy. 2; south to U.S. Hwy. I–80; west to Gunbarrel Rd (Hall/Hamilton county line); south to Giltner Rd; west to U.S. Hwy. 281; south to U.S. Hwy. 34; west to NE Hwy. 10; north to Kearney County Rd R and Phelps County Rd 742; west to U.S. Hwy. 283; south to U.S. Hwy 34; east to U.S. Hwy. 136; east to U.S. Hwy. 183; north to NE Hwy. 4; east to NE Hwy. 10; south to U.S. Hwy. 136; east to NE Hwy. 14; south to NE Hwy. 8; east to U.S. Hwy. 81; north to NE Hwy. 4; east to NE Hwy. 15; south to U.S. Hwy. 136; east to NE Hwy. 103; south to NE Hwy. 8; east to U.S. Hwy. 75.

New Mexico (Central Flyway Portion)

North Zone—That portion of the State north of I–40 and U.S. 54.

South Zone—The remainder of New Mexico.

Pacific Flyway

California

Northeastern Zone—In that portion of California lying east and north of a line beginning at the intersection of Interstate 5 with the California-Oregon line; south along Interstate 5 to its junction with Walters Lane south of the town of Yreka; west along Walters Lane to its junction with Easy Street; south along Easy Street to the junction with Old Highway 99; south along Old Highway 99 to the point of intersection with Interstate 5 north of the town of Weed; south along Interstate 5 to its junction with Highway 89; east and south along Highway 89 to Main Street Greenville; north and east to its junction with North Valley Road; south to its junction of Diamond Mountain Road; north and east to its junction with North Arm Road; south and west to the junction of North Valley Road; south to the junction with Arlington Road (A22); west to the junction of Highway 89; south and west to the junction of Highway 70; east on Highway 70 to Highway 395; south and east on Highway 395 to the point of intersection with the California-Nevada State line; north along the California-Nevada State line to the junction of the California-Nevada-Oregon State lines west along the California-Oregon State line to the point of origin.

Colorado River Zone—Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada border south along U.S. 95 to Vidal Junction; south on a road known as ''Aqueduct Road'' in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the ''Desert Center to Rice Road'' to the town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east 7 miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone—That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I–15; east on I–15 to CA 127; north on CA 127 to the Nevada border.

Southern San Joaquin Valley Zone—All of Kings and Tulare Counties and that portion of Kern County north of the Southern Zone.

Balance of State Zone—The remainder of California not included in the Northeastern, Southern, and Colorado River Zones, and the Southern San Joaquin Valley Temporary Zone.

Canada Geese

Michigan

North Zone—Same as North duck zone.

Middle Zone—Same as Middle duck zone.

South Zone—Same as South duck zone.

Tuscola/Huron Goose Management Unit (GMU)—Those portions of Tuscola and Huron Counties bounded on the south by Michigan Highway 138 and Bay City Road, on the east by Colwood and Bay Port Roads, on the north by Kilmanagh Road and a line extending directly west off the end of Kilmanagh Road into Saginaw Bay to the west boundary, and on the west by the Tuscola-Bay County line and a line extending directly north off the end of the Tuscola-Bay County line into Saginaw Bay to the north boundary.

Allegan County GMU—That area encompassed by a line beginning at the

junction of 136th Avenue and Interstate Highway 196 in Lake Town Township and extending easterly along 136th Avenue to Michigan Highway 40, southerly along Michigan 40 through the city of Allegan to 108th Avenue in Trowbridge Township, westerly along 108th Avenue to 46th Street, northerly along 46th Street to 109th Avenue, westerly along 109th Avenue to I–196 in Casco Township, then northerly along I–196 to the point of beginning.

Saginaw County GMU—That portion of Saginaw County bounded by Michigan Highway 46 on the north; Michigan 52 on the west; Michigan 57 on the south; and Michigan 13 on the east.

Muskegon Wastewater GMU—That portion of Muskegon County within the boundaries of the Muskegon County wastewater system, east of the Muskegon State Game Area, in sections 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, and 32, T10N R14W, and sections 1, 2, 10, 11, 12, 13, 14, 24, and 25, T10N R15W, as posted.

Wisconsin

Same zones as for ducks but in addition:

Horicon Zone—That area encompassed by a line beginning at the intersection of State 21 and the Fox River in Winnebago County and extending westerly along State 21 to the west boundary of Winnebago County, southerly along the west boundary of Winnebago County to the north boundary of Green Lake County, westerly along the north boundaries of Green Lake and Marquette Counties to State 22, southerly along State 22 to State 33, westerly along State 33 to I–39, southerly along I–39 to I–90/94, southerly along I–90/94 to State 60, easterly along State 60 to State 83, northerly along State 83 to State 175, northerly along State 175 to State 33, easterly along State 33 to U.S. 45, northerly along U.S. 45 to the east shore of the Fond Du Lac River, northerly along the east shore of the Fond Du Lac River to Lake Winnebago, northerly along the western shoreline of Lake Winnebago to the Fox River, then westerly along the Fox River to State 21.

Exterior Zone—That portion of the State not included in the Horicon Zone.

Mississippi River Subzone—That area encompassed by a line beginning at the intersection of the Burlington Northern & Santa Fe Railway and the Illinois State line in Grant County and extending northerly along the Burlington Northern & Santa Fe Railway to the city limit of Prescott in Pierce County, then west along the Prescott city limit to the Minnesota State line.

Brown County Subzone—That area encompassed by a line beginning at the intersection of the Fox River with Green Bay in Brown County and extending southerly along the Fox River to State 29, northwesterly along State 29 to the Brown County line, south, east, and north along the Brown County line to Green Bay, due west to the midpoint of the Green Bay Ship Channel, then southwesterly along the Green Bay Ship Channel to the Fox River.

Sandhill Cranes

Mississippi Flyway

Minnesota

Northwest Goose Zone—That portion of the State encompassed by a line extending east from the North Dakota border along U.S. Highway 2 to State Trunk Highway (STH) 32, north along STH 32 to STH 92, east along STH 92 to County State Aid Highway (CSAH) 2 in Polk County, north along CSAH 2 to CSAH 27 in Pennington County, north along CSAH 27 to STH 1, east along STH 1 to CSAH 28 in Pennington County, north along CSAH 28 to CSAH 54 in Marshall County, north along CSAH 54 to CSAH 9 in Roseau County, north along CSAH 9 to STH 11, west along STH 11 to STH 310, and north along STH 310 to the Manitoba border.

Tennessee

Hunt Zone—That portion of the State south of Interstate 40 and east of State Highway 56.

Closed Zone—Remainder of the State.

Central Flyway

Colorado—The Central Flyway portion of the State except the San Luis Valley (Alamosa, Conejos, Costilla, Hinsdale, Mineral, Rio Grande, and Saguache Counties east of the Continental Divide) and North Park (Jackson County).

Kansas—That portion of the State west of a line beginning at the Oklahoma border, north on I–35 to Wichita, north on I–135 to Salina, and north on U.S. 81 to the Nebraska border.

Montana—The Central Flyway portion of the State except for that area south and west of Interstate 90, which is closed to sandhill crane hunting.

New Mexico

Regular-Season Open Area—Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt Counties.

Middle Rio Grande Valley Area—The Central Flyway portion of New Mexico in Socorro and Valencia Counties.

Estancia Valley Area—Those portions of Santa Fe, Torrance, and Bernallilo Counties within an area bounded on the west by New Mexico Highway 55 beginning at Mountainair north to NM 337, north to NM 14, north to I–25; on the north by I–25 east to U.S. 285; on the east by U.S. 285 south to U.S. 60; and on the south by U.S. 60 from U.S. 285 west to NM 55 in Mountainair.

Southwest Zone—Area bounded on the south by the New Mexico-Mexico border; on the west by the New Mexico-Arizona border north to Interstate 10; on the north by Interstate 10 east to U.S. 180, north to N.M. 26, east to N.M. 27, north to N.M. 152, and east to Interstate 25; on the east by Interstate 25 south to Interstate 10, west to the Luna county line, and south to the New Mexico/Mexico border.

North Dakota

Area 1—That portion of the State west of U.S. 281.

Area 2—That portion of the State east of U.S. 281.

Oklahoma—That portion of the State west of I–35.

South Dakota—That portion of the State west of U.S. 281.

Texas

Zone A—That portion of Texas lying west of a line beginning at the international toll bridge at Laredo, then northeast along U.S. Highway 81 to its junction with Interstate Highway 35 in Laredo, then north along Interstate Highway 35 to its junction with Interstate Highway 10 in San Antonio, then northwest along Interstate Highway 10 to its junction with U.S. Highway 83 at Junction, then north along U.S. Highway 83 to its junction with U.S. Highway 62, 16 miles north of Childress, then east along U.S. Highway 62 to the Texas-Oklahoma State line.

Zone B—That portion of Texas lying within boundaries beginning at the junction of U.S. Highway 81 and the Texas-Oklahoma State line, then southeast along U.S. Highway 81 to its junction with U.S. Highway 287 in Montague County, then southeast along U.S. Highway 287 to its junction with Interstate Highway 35W in Fort Worth, then southwest along Interstate Highway 35 to its junction with Interstate Highway 10 in San Antonio, then northwest along Interstate Highway 10 to its junction with U.S. Highway 83 in the town of Junction, then north along U.S. Highway 83 to its junction with U.S. Highway 62, 16 miles north of Childress, then east along U.S. Highway 62 to the Texas-Oklahoma State line, then south along the Texas-Oklahoma State line to the south bank of the Red River, then eastward along the vegetation line on the south bank of the Red River to U.S. Highway 81.

Zone C—The remainder of the State, except for the closed areas.

Closed areas—(A) That portion of the State lying east and north of a line beginning at the junction of U.S. Highway 81 and the Texas-Oklahoma State line, then southeast along U.S. Highway 81 to its junction with U.S. Highway 287 in Montague County, then southeast along U.S. Highway 287 to its junction with Interstate Highway 35W in Fort Worth, then southwest along Interstate Highway 35 to its junction with U.S. Highway 290 East in Austin, then east along U.S. Highway 290 to its junction with Interstate Loop 610 in Harris County, then south and east along Interstate Loop 610 to its junction with Interstate Highway 45 in Houston, then south on Interstate Highway 45 to State Highway 342, then to the shore of the Gulf of Mexico, and then north and east along the shore of the Gulf of Mexico to the Texas-Louisiana State line.

(B) That portion of the State lying within the boundaries of a line beginning at the Kleberg-Nueces County line and the shore of the Gulf of Mexico, then west along the County line to Park Road 22 in Nueces County, then north and west along Park Road 22 to its junction with State Highway 358 in Corpus Christi, then west and north along State Highway 358 to its junction with State Highway 286, then north along State Highway 286 to its junction with Interstate Highway 37, then east along Interstate Highway 37 to its junction with U.S. Highway 181, then north and west along U.S. Highway 181 to its junction with U.S. Highway 77 in Sinton, then north and east along U.S. Highway 77 to its junction with U.S. Highway 87 in Victoria, then south and east along U.S. Highway 87 to its junction with State Highway 35 at Port Lavaca, then north and east along State Highway 35 to the south end of the Lavaca Bay Causeway, then south and east along the shore of Lavaca Bay to its junction with the Port Lavaca Ship Channel, then south and east along the Lavaca Bay Ship Channel to the Gulf of Mexico, and then south and west along the shore of the Gulf of Mexico to the Kleberg-Nueces County line.

Wyoming

Regular Season Open Area—Campbell, Converse, Crook, Goshen, Laramie, Niobrara, Platte, and Weston Counties.

Riverton-Boysen Unit—Portions of Fremont County.

Park and Big Horn County Unit— All of Big Horn, Hot Springs, Park and Washakie Counties.

Pacific Flyway

Arizona

Special Season Area—Game Management Units 28, 30A, 30B, 31, and 32.

Idaho

Area 1—All of Bear Lake County and all of Caribou County except that portion lying within the Grays Lake Basin.

Area 2—All of Teton County except that portion lying west of state Highway 33 and south of Packsaddle Road (West 400 North) and north of the North Cedron Road (West 600 South) and east of the west bank of the Teton River.

Area 3—All of Fremont County except the Chester Wetlands Wildlife Management Area.

Area 4—All of Jefferson County.

Area 5—All of Bannock County east of Interstate-15 and south of U.S. Highway 30; and all of Franklin County.

Montana

Zone 1 (Warm Springs Portion of Deer Lodge County)—Those portions of Deer Lodge County lying within the following described boundary: Beginning at the intersection of I–90 and Highway 273, then westerly along Highway 273 to the junction of Highway 1, then southeast along said highway to Highway 275 at Opportunity, then east along said highway to East Side County road, then north along said road to Perkins Lake, then west on said lane to I–90, then north on said interstate to the junction of Highway 273, the point of beginning. Except for sections 13 and 24, T5N, R10W; and Warm Springs Pond number 3.

Zone 2 (Ovando-Helmville Area)—That portion of the Pacific Flyway, located in Powell County lying within the following described boundary: Beginning at the junction of State Routes 141 and 200, then west along Route 200 to its intersection with the Blackfoot River at Russell Gates Fishing Access Site (Powell-Missoula County line), then southeast along said river to its intersection with the Ovando-Helmville Road (County Road 104) at Cedar Meadows Fishing Access Site, then south and east along said road to its junction with State Route 141, then north along said route to its junction with State Route 200, the point of beginning.

Zone 3 (Dillon/Twin Bridges/Cardwell Areas)—That portion of Beaverhead, Madison, and Jefferson counties lying within the following described boundaries: Beginning at Dillon, then northerly along US Hwy 91 to its intersection with the Big Hole River at Brown's Bridge north of Glen, then southeasterly and northeasterly along the Big Hole River to High Road, then east along High Road to State Highway 41, then east along said highway to the Beaverhead River, then north along said river to the Jefferson River and north along the Jefferson River to the Ironrod Bridge, then northeasterly along State Highway 41 to the junction with State Highway 55, then northeasterly along said highway to the junction with I–90, then east along I–90 to Cardwell and Route 359 then south along Route 359 to the Parrot Hill/Cedar Hill Road then southwesterly along said road and the Cemetery Hill Road to the Parrot Ditch road to the Point of Rocks Road to Carney Lane to the Bench Road to the Waterloo Road and Bayers Lanes, to State Highway 41, then east along State Highway 41 to the Beaverhead River, then south along the Beaverhead River to the mouth of the Ruby River, then southeasterly along the Ruby River to the East Bench Road, then southwesterly along the East Bench Road to the East Bench Canal, then southwesterly along said canal to the Sweetwater Road, then west along Sweetwater Road to Dillon, the point of beginning, plus the remainder of Madison County and all of Gallatin County.

Zone 4 (Broadwater County)—All of Broadwater County.

Utah

Cache County—All of Cache County.

East Box Elder County—That portion of Box Elder County beginning on the Utah-Idaho State line at the Box Elder-Cache County line; west on the State line to the Pocatello Valley County Road; south on the Pocatello Valley County Road to I–15; southeast on I–15 to SR–83; south on SR–83 to Lamp Junction; west and south on the Promontory Point County Road to the tip of Promontory Point; south from Promontory Point to the Box Elder-Weber County line; east on the Box Elder-Weber County line to the Box Elder-Cache County line; north on the Box Elder-Cache County line to the Utah-Idaho State line.

Rich County—All of Rich County.

Uintah County—All of Uintah County.

Wyoming

Area 1 (Bear River)—All of the Bear River and Ham's Fork River drainages in Lincoln County.

Area 2 (Salt River Area)—All of the Salt River drainage in Lincoln County south of the McCoy Creek Road.

Area 3 (Eden Valley Area)—All lands within the Bureau of Reclamation's Eden Project in Sweetwater County.

Area 5 (Uintah County Area)—All of Uinta County.

All Migratory Game Birds in Alaska

North Zone—State Game Management Units 11–13 and 17–26.

Gulf Coast Zone—State Game Management Units 5–7, 9, 14–16, and 10 (Unimak Island only).

Southeast Zone—State Game Management Units 1–4.

Pribilof and Aleutian Islands Zone—State Game Management Unit 10 (except Unimak Island).

Kodiak Zone—State Game Management Unit 8.

All Migratory Game Birds in the Virgin Islands

Ruth Cay Closure Area—The island of Ruth Cay, just south of St. Croix.

All Migratory Game Birds in Puerto Rico

Municipality of Culebra Closure Area—All of the municipality of Culebra.

Desecheo Island Closure Area—All of Desecheo Island.

Mona Island Closure Area—All of Mona Island.

El Verde Closure Area—Those areas of the municipalities of Rio Grande and Loiza delineated as follows: (1) All lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of Routes 956 and 186 (Km 13.2) in the south; (2) all lands between Routes 186 and 966 from the juncture of 186 and 966 on the north, to the Caribbean National Forest Boundary on the south; (3) all lands lying west of Route 186 for 1 kilometer from the juncture of Routes 186 and 956 south to Km 6 on Route 186; (4) all lands within Km 14 and Km 6 on the west and the Caribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National Forest Boundary whether private or public.

Cidra Municipality and adjacent areas—All of Cidra Municipality and portions of Aguas Buenas, Caguas, Cayey, and Comerio Municipalities as encompassed within the following boundary: Beginning on Highway 172 as it leaves the municipality of Cidra on the west edge, north to Highway 156, east on Highway 156 to Highway 1, south on Highway 1 to Highway 765, south on Highway 765 to Highway 763, south on Highway 763 to the Rio Guavate, west along Rio Guavate to Highway 1, southwest on Highway 1 to Highway 14, west on Highway 14 to Highway 729, north on Highway 729 to Cidra Municipality boundary to the point of the beginning.

[FR Doc. 2015–20636 Filed 8–20–15; 8:45 am]

BILLING CODE 4310–55–P

Reader Aids

Federal Register

Vol. 80, No. 162

Friday, August 21, 2015

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**

Presidential Documents

Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**

Other Services

Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.fdsys.gov.**

Federal Register information and research tools, including Public Inspection List, indexes, and Code of Federal Regulations are located at: **www.ofr.gov.**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

FEDERAL REGISTER PAGES AND DATE, AUGUST

45841–46180 3
46181–46484 4
46485–46788 5
46789–47398 6
47399–47828 7
47829–48000 10
48001–48234 11
48235–48422 12
48423–48682 13
48683–49116 14
49117–49886 17
49887–50188 18
50189–50542 19
50543–50754 20
50755–51112 21

CFR PARTS AFFECTED DURING AUGUST

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

2 CFR

200 48683

Proposed Rules:

3474 47254

3 CFR

Proclamations:

9305 46175
9306 48423
9307 50541

Executive Orders:

13702 46177
13703 46181
13704 50751

Administrative Orders:

Notices:
Notice of August 7, 2015 48233
Presidential Determinations:
No. 2015-10 of August 5, 2015 50755

5 CFR

Ch. C 49117

Proposed Rules:

950 49173
1605 49173

6 CFR

Proposed Rules:

5 49175
19 47284

7 CFR

6 46185
301 48001
319 48002
457 48003
922 50189
953 50191
958 50193
985 50543
1208 46789

Proposed Rules:

16 47244
52 50803
185 49930
984 49930
1051 47210
1222 50225
3560 46853

9 CFR

Proposed Rules:

201 47871
381 50228

10 CFR

1 45841
37 45841
40 45841
50 45841
51 48235
55 45841
71 48683
72 49887
74 45841
75 45841
429 ..... 46730, 50757
430 ..... 46730, 48004, 50757

Proposed Rules:

Ch. I 49177
20 50804
429 ..... 46855, 46870, 50462
430 ..... 46521, 46855, 48624, 49933
431 ..... 46870, 50462

12 CFR

208 49082
217 49082
235 48684
701 45844
702 48010
1010 49127

Proposed Rules:

1238 50805

14 CFR

1 48686
23 48242
25 ..... 47399, 47400, 49892, 49893
39 ..... 45851, 45853, 45857, 46187, 48013, 48018, 48019, 48022, 49127, 49130, 49132, 50544, 50550, 50551, 50554, 50556
65 46791
71 ..... 48425, 48426, 48427, 48428, 48429, 48430, 48431, 48686
73 49134
97 ..... 45860, 45862, 50758, 50760
1217 45864

Proposed Rules:

1 50587
23 ..... 50587, 50808
25 ..... 49934, 49936, 49938, 50587
27 50587
29 50587
39 ..... 45900, 45902, 46206, 47871, 50230, 50233, 50810, 50812
61 50587
71 ..... 46525, 48469, 48470, 48766, 48767, 50235, 50237
73 49181
91 50587
121 50587
125 50587

135 50587

15 CFR

700 50761
744 47402
746 47402
902 48244
Proposed Rules:
902 48172

16 CFR

Proposed Rules:
Ch. II 48043
312 47429
1112 48769
1234 48769
1500 50238

17 CFR

229 50104
240 ....48964, 50104
241 47829
249 ....48964, 50104

18 CFR

2 50558
157 50558

19 CFR

181 47405
191 47405
351 46793

20 CFR

404 48248
422 47831
Proposed Rules:
702 49945
703 49945

21 CFR

73 ....46190, 50762
317 50559
866 46190
870 49895
874 46192
878 46485
882 49136
Proposed Rules:
573 48471
1308 48044

22 CFR

35 49138
62 48687
96 50195
Proposed Rules:
205 47238

24 CFR

5 46486
15 49140
200 48024
232 48024
982 50564
Proposed Rules:
5 47302
92 47302
200 47874
570 47302
574 47302
576 47302
578 47302
582 47302
583 47302
1003 47302

25 CFR

Proposed Rules:
41 49946

26 CFR

1 ....45865, 46795, 48249, 48433
602 ....45865, 46795
Proposed Rules:
1 ....45905, 46882, 47430, 48472, 50239, 50240, 50814
25 47430
26 47430
301 47430

27 CFR

9 47408
Proposed Rules:
9 46883

28 CFR

553 45883
Proposed Rules:
38 47316

29 CFR

1902 49897
1903 49897
1904 49897
1952 49897
1953 49897
1954 49897
1955 49897
1956 ....46487, 49897
4022 48688
Proposed Rules:
2 47328
1902 49956
1903 49956
1904 49956
1910 47566
1952 49956
1953 49956
1955 49956
1956 49956

31 CFR

Proposed Rules:
23 46208

32 CFR

199 46796
238 47834

33 CFR

100 ....48436, 49909, 50196, 50574, 50765
117 ....46492, 47410, 47411, 47850, 47851, 47852, 48251, 48440, 48441, 48689, 50576, 50768
147 47852
160 50576
165 ....45885, 45886, 46194, 47855, 48252, 48441, 48690, 48692, 48695, 49152, 49155, 49911, 50577, 50769, 50771
Proposed Rules:
100 49968
165 ....48782, 48784, 48787

34 CFR

200 50773
Ch. III 46799, 48028, 48443, 48696
300 50773
Proposed Rules:
75 47254
76 47254
Ch. VI 50588

36 CFR

Proposed Rules:
2 48280

37 CFR

Proposed Rules:
42 50720

38 CFR

1 49157
3 48450
17 46197
36 48254
Proposed Rules:
4 46888
50 47340
61 47340
62 47340

39 CFR

111 48702
Proposed Rules:
3050 ....46214, 49184, 49186, 50589, 50815

40 CFR

51 ....50199, 51052
52 ....45887, 45890, 46201, 46494, 46804, 47857, 47859, 47862, 48033, 48036, 48255, 48259, 48718, 48730, 48733, 49913, 50199, 50203, 50205, 50579, 50582, 50785, 50789
60 ....48262, 50386
63 50386
70 50199
71 50199
80 49164
131 51020
180 ....46816, 48743, 48749, 48753, 49168, 50207
271 50794
300 ....48757, 50797
1600 46822
Proposed Rules:
9 ....45914, 46526
22 ....45914, 46526
52 ....45915, 47880, 47883, 48051, 48280, 48281, 48790, 48791, 49187, 49190, 49970, 50240, 50248, 50590, 50591, 50816, 50817
56 50250
80 49193
85 ....45914, 46526
86 ....45914, 46526
123 47430
131 47430
233 47430
300 ....48793, 50817
501 47430
600 ....45914, 46526
721 47441
1033 ....45914, 46526
1036 ....45914, 46526
1037 ....45914, 46526
1039 ....45914, 46526
1042 ....45914, 46526
1065 ....45914, 46526
1066 ....45914, 46526
1068 ....45914, 46526

42 CFR

68b 48272
84 48268
110 47411
412 ....46652, 47036, 49326
418 47142
483 46390
Proposed Rules:
80 48473
409 ....46215, 49973
424 ....46215, 49973
484 ....46215, 49973

43 CFR

2 45893
4 48451

44 CFR

64 45894

45 CFR

Ch. XVI 48762
Proposed Rules:
87 47272
95 48200
1050 47272
Ch. XIII 48282
Subch. B 48282
1355 48200
1356 48200

46 CFR

Proposed Rules:
296 46527

47 CFR

20 45897
63 45898
73 46824
Proposed Rules:
0 46900
2 46900
11 47886
15 46900
18 46900
54 ....45916, 47448
73 45917
90 46928

48 CFR

207 45899
1837 50212
1852 50212
Proposed Rules:
1 46531
4 46531
9 46531
17 46531
22 46531
52 46531
202 45918
212 45918
215 45918
252 45918
1823 48282
1852 48282

49 CFR

27 46508
192 46847

193 46847
195 46847
232 47350
391 48765
611 46514
Proposed Rules:
37 50593
191 46930
192 46930
195 46930
512 ....45914, 46526
523 ....45914, 46526
534 ....45914, 46526
535 ....45914, 46526
537 ....45914, 46526
541 46930
583 ....45914, 46526
670 48794

50 CFR

17 ....47418, 48142, 49846
20 51090
218 46112
226 50926
300 46515
622 ....46205, 48041, 48277, 50585
635 ....46516, 50074
648 ....46518, 46848, 48244, 49171, 49917
660 ....46519, 46852, 50212
679 ....46520, 47864, 48467
Proposed Rules:
20 ....46218, 47388
216 48172
219 ....46939, 49196
222 45924
223 ....48053, 48061
224 ....48053, 48061
600 46941
622 48285
635 49974
648 46531
697 46533

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List August 11, 2015

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.