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# FEDERAL REGISTER

Vol. 78 Thursday,

No. 244 December 19, 2013

Pages 76721–76972

OFFICE OF THE FEDERAL REGISTER

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# Contents

**Federal Register**

Vol. 78, No. 244

Thursday, December 19, 2013

**Agriculture Department**
*See* Forest Service

**Alcohol, Tobacco, Firearms, and Explosives Bureau**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Annual Firearms Manufacturing and Exportation Report, 76859
Inventories, Licensed Explosives Importers, Manufacturers, Dealers, and Permittees, 76860
Prevent All Cigarette Trafficking Act Registration Form, 76859–76860

**Children and Families Administration**
NOTICES
Proposed Adoption of Administration for Native Americans Program Policies and Procedures, 76834–76836

**Coast Guard**
RULES
Drawbridge Operations:
Chambers Creek, Steilacoom, WA, 76750–76751
Upper Mississippi River, Clinton, IA, 76750
Safety Zones:
Vessel Launch; Menominee River; Marinette, WI, 76751–76753

**Commerce Department**
*See* Industry and Security Bureau
*See* International Trade Administration
*See* National Oceanic and Atmospheric Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 76811

**Commodity Futures Trading Commission**
PROPOSED RULES
Position Limits for Derivatives; Correction, 76787–76788

**Comptroller of the Currency**
NOTICES
Income Tax Allocation in a Holding Company Structure; Interagency Policy Statement, 76889–76892

**Defense Department**
NOTICES
Arms Sales, 76822–76827

**Energy Department**
*See* Federal Energy Regulatory Commission

**Environmental Protection Agency**
RULES
Standards of Performance:
Petroleum Refineries for which Construction, Reconstruction, or Modification Commenced After May 14, 2007, 76753–76756
PROPOSED RULES
Standards of Performance:
Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007, 76788–76789
NOTICES
Applications:
Eastern Shoshone Tribe and Northern Arapaho Tribe, Treatment in a Similar Manner as a State under the Clean Air Act; Approval, 76829–76830

**Executive Office of the President**
*See* Presidential Documents

**Export-Import Bank**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 76830–76831

**Federal Aviation Administration**
RULES
Special Conditions:
Boeing Model 777–200, –300, and –300ER Series Airplanes; Rechargeable Lithium Ion Batteries and Battery Systems, 76731–76734
Bombardier Inc., Models BD–500–1A10 and BD–500–1A11 series airplanes; Seats with Non Traditional, Large, Non Metallic Panels, 76734–76736
Bombardier Inc., Models BD–500–1A10 and BD–500–1A11 series airplanes; Side Stick Controllers: Pilot Strength, Pilot Control Authority, and Pilot Control, 76736–76738
PROPOSED RULES
Modification of Class B Airspace:
Philadelphia, PA, 76779–76781
Salt Lake City, UT, 76781–76784
Modification, Revocation, and Establishment of Area Navigation (RNAV) Routes:
Charlotte, NC, 76784–76787
Special Conditions:
Airbus Model A350–900 Airplanes; Permanently Installed Rechargeable Lithium-Ion Batteries and Battery Systems, 76772–76775
Airbus, Model A350–900 Series Airplane; Lightning Protection of Fuel Tank Structure to Prevent Fuel Tank Vapor Ignition, 76775–76779
NOTICES
Meetings:
RTCA Special Committee 214/EUROCAE WG–78: Standards for Air Traffic Data Communication Services, 76888

**Federal Communications Commission**
PROPOSED RULES
Additional Connect America Fund Phase II Issues, 76789–76791
Connect America Fund Phase II Cost Model; Availability of Version 4.0:
Adopting Current Default Inputs in Final Version of Model, 76791–76795
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 76831–76834

**Federal Deposit Insurance Corporation**
RULES
Removal of Transferred Office of Thrift Supervision Regulations Regarding Recordkeeping, etc., 76721–76728
PROPOSED RULES
Removal of Transferred Office of Thrift Supervision Regulations Regarding Disclosure, etc., 76768–76772
NOTICES
Income Tax Allocation in a Holding Company Structure; Interagency Policy Statement, 76889–76892

**Federal Energy Regulatory Commission**
NOTICES
Activities Under Blanket Certificates:
Midwestern Gas Transmission Company, 76827–76828
Combined Filings, 76828–76829
Environmental Assessment; Availability, etc.:
Lockhart Power Co., Inc., 76904–76968

**Federal Highway Administration**
NOTICES
MAP–21 Comprehensive Truck Size and Weight Limits Study Materials, 76888–76889

**Federal Motor Carrier Safety Administration**
RULES
Regulatory Guidance:
Hours of Service of Drivers Rest Break Requirement; Drivers Who Become Ineligible for the Short-Haul Exception during the Duty Day, 76757–76758

**Federal Reserve System**
NOTICES
Changes in Bank Control:
Acquisitions of Shares of a Bank or Bank Holding Company, 76834
Income Tax Allocation in a Holding Company Structure; Interagency Policy Statement, 76889–76892

**Fish and Wildlife Service**
PROPOSED RULES
Endangered and Threatened Wildlife and Plants:
12-Month Finding on a Petition to List Coleman's Coralroot, 76795–76807

**Food and Drug Administration**
RULES
Citizen Petition Submissions:
Technical Amendment, 76748–76750
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Current Good Manufacturing Practice in Manufacturing, Packaging, Labeling, or Holding Operations for Dietary Supplements, 76836–76838
Guidance for Industry on Hypertension Indication; Drug Labeling for Cardiovascular Outcome Claims, 76841
Testing Communications on Medical Devices and Radiation-Emitting Products, 76841–76842
Tobacco Products, Exemptions From Substantial Equivalence Requirements, 76838–76840
Unique Device Identification System, 76840–76841
Meetings:
Developing Novel Endpoints for Premium Intraocular Lenses; Public Workshop, 76842–76843

**Forest Service**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Environmental Justice and the Urban Forest in Atlanta, GA, 76810

**Health and Human Services Department**
*See* Children and Families Administration
*See* Food and Drug Administration
*See* Inspector General Office, Health and Human Services Department
*See* National Institutes of Health

**Homeland Security Department**
*See* Coast Guard
*See* U.S. Customs and Border Protection
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Qualitative Feedback on Agency Service Delivery; Generic Clearance, 76849–76851

**Industry and Security Bureau**
RULES
Export Administration Regulations:
Legal Authority Updates, 76738–76741
Unverified List (UVL); Revisions, 76741–76748
NOTICES
Denials of Export Privileges:
Andrew Vincent O'Donnell, 76812–76813
Igor Bobel, 76813–76814
Mohammed Soroush Mahalaty, 76814–76815

**Inspector General Office, Health and Human Services Department**
NOTICES
Statement of Delegation of Authority, 76843

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

**Internal Revenue Service**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 76892–76897

**International Trade Administration**
NOTICES
Antidumping and Countervailing Duty Investigations; Results, Extensions, Amendments, etc.:
Non-Oriented Electrical Steel from the People's Republic of China, the Republic of Korea, and Taiwan; Postponement, 76815
Countervailing Duty and Antidumping Determinations; Results, Extensions, Amendments, etc.:
Steel Threaded Rod from India, 76815–76817
Limitations of Duty-Free Imports:
Apparel Articles Assembled in Haiti under the Haitian Hemispheric Opportunity through Partnership for Encouragement Act, 76817–76818
Trade Missions:
Secretarial Infrastructure Business Development Mission to the United Arab Emirates, the Kingdom of Saudi Arabia and Qatar, 76818–76821

U.S.-Turkey Healthcare to Ankara, Istanbul, and Izmir; Amendment, 76821
U.S. Healthcare Education to New Delhi, Hyderabad, and Ahmedabad, India, January 27–February 1, 2014; Correction, 76818

**International Trade Commission**
NOTICES
Antidumping Duty Orders; Results, Extensions, Amendments, etc.:
Silicon Metal from Russia, 76856–76857
Investigations; Terminations, Modifications, Rulings, etc.:
1,1,1,2-Tetrafluoroethane from China, 76857–76858
Hardwood Plywood from China, 76857
Resmed Corp., Resmed Inc., and Resmed Ltd., 76858–76859

**Justice Department**
*See* Alcohol, Tobacco, Firearms, and Explosives Bureau
*See* Justice Programs Office

**Justice Programs Office**
NOTICES
Requests for Information:
Body-Worn Cameras for Criminal Justice Applications, 76861–76862
Contraband Screening for Criminal Justice Applications, 76860–76861

**Land Management Bureau**
NOTICES
Environmental Impact Statements and Resource Management Plans; Availability, etc.:
Tri-County, New Mexico, 76852–76854
Realty Actions:
Non-Competitive (Direct) Sale of Public Land in Campbell County, WY, 76855
Non-Competitive (Direct) Sale of Public Land in Sheridan County, WY, 76854

**National Credit Union Administration**
RULES
Charitable Donation Accounts, 76728–76731

**National Institutes of Health**
NOTICES
Meetings:
National Heart, Lung, and Blood Institute, 76849
National Institute of Allergy and Infectious Diseases, 76847–76848
National Institute of Diabetes and Digestive and Kidney and Diseases, 76849
National Library of Medicine, 76845–76849
National Institute of Biomedical Imaging and Bioengineering Design by Biomedical Undergraduate Teams Challenge; Requirements and Registration, 76843–76845

**National Oceanic and Atmospheric Administration**
RULES
Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic:
Reef Fish Fishery of the Gulf of Mexico; Closure of the 2014 Gulf of Mexico Recreational Season for Red Snapper, 76758–76759
Fisheries of the Northeastern United States:
Annual Catch Limits and Accountability Measures, 76759–76765
Northeast Multispecies Fishery; Trimester Closure for the Common Pool Fishery, 76759
Summer Flounder Fishery; Commercial Quota Harvested for the State of New Jersey, 76766–76767
Summer Flounder Fishery; Quota Transfer, 76765–76766
PROPOSED RULES
Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic:
Revisions to Dealer Permitting and Reporting Requirements for Species Managed by the Gulf of Mexico and South Atlantic Fishery Management Councils, 76807–76809

**National Park Service**
NOTICES
Records of Decisions:
General Management Plan/Wilderness Study, Fort Pulaski National Monument, GA, 76855–76856

**National Science Foundation**
NOTICES
Antarctic Conservation Act Permit Applications, 76862–76863

**Postal Regulatory Commission**
NOTICES
New Postal Products, 76863–76864

**Presidential Documents**
PROCLAMATIONS
Special Observances:
Wright Brothers Day (Proc. 9071), 76969–76972

**Securities and Exchange Commission**
NOTICES
Applications:
Wells Fargo Funds Trust, et al., 76864–76867
Self-Regulatory Organizations; Proposed Rule Changes:
NASDAQ OMX PHLX LLC, 76880–76882
NYSE Arca, Inc., 76867–76880
Topaz Exchange, LLC, 76882–76886

**Small Business Administration**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 76886
Meetings:
National Small Business Development Center Advisory Board, 76886
Small Business Size Standards:
Waiver of the Nonmanufacturer Rule, 76886–76887

**State Department**
NOTICES
Designations as Foreign Terrorist Organizations:
Al-Mulathamun Battalion; a.k.a. al-Mulathamun Brigade; a.k.a. al-Muwaqqi un bil-Dima, et al., 76887
Specially Designated Global Terrorists:
Al-Mulathamun Battalion; a.k.a. al-Mulathamun Brigade; a.k.a. al-Muwaqqi un bil-Dima, et al., 76888

**Transportation Department**
*See* Federal Aviation Administration
*See* Federal Highway Administration
*See* Federal Motor Carrier Safety Administration

**Treasury Department**
*See* Comptroller of the Currency

*See* Internal Revenue Service

**U.S. Customs and Border Protection**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
CBP Regulations Pertaining to Customs Brokers, 76851
Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2006, 76851–76852

**Veterans Affairs Department**
**NOTICES**
Privacy Act; Systems of Records, 76897–76901

**Separate Parts In This Issue**

**Part II**
Energy Department, Federal Energy Regulatory Commission, 76904–76968

**Part III**
Presidential Documents, 76969–76972

**Reader Aids**

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

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## 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**

**Proclamations:**

9071 ....76971

**12 CFR**

344 ....76721
390 ....76721
703 ....76728
721 ....76728

**Proposed Rules:**

346 ....76768
390 ....76768

**14 CFR**

25 (3 documents) ....76731, 76734, 76736

**Proposed Rules:**

25 (2 documents) ....76772, 76775
71 (3 documents) ....76779, 76781, 76784

**15 CFR**

730 (2 documents) ....76738, 76741
732 ....76738
734 ....76738
736 ....76738
738 ....76738
740 (2 documents) ....76738, 76741
742 ....76738
743 ....76738
744 (2 documents) ....76738, 76741
745 ....76738
746 ....76738
747 ....76738
748 ....76738
750 ....76738
752 ....76738
754 ....76738
756 (2 documents) ....76738, 76741
758 (2 documents) ....76738, 76741
760 ....76738
762 (2 documents) ....76738, 76741
764 ....76738
766 ....76738
768 ....76738
770 ....76738
772 ....76738
774 ....76738

**17 CFR**

**Proposed Rules:**

1 ....76787
15 ....76787
17 ....76787
19 ....76787
32 ....76787
37 ....76787
38 ....76787
140 ....76787
150 ....76787

**21 CFR**

10 ....76748

**33 CFR**

117 (2 documents) ....76750
165 ....76751

**40 CFR**

60 ....76753

**Proposed Rules:**

60 ....76788

**47 CFR**

**Proposed Rules:**

54 (2 documents) ....76789, 76791

**49 CFR**

395 ....76757

**50 CFR**

622 ....76758
648 (4 documents) ....76759, 76765, 76766

**Proposed Rules:**

17 ....76795
622 ....76807
640 ....76807

# Rules and Regulations

Federal Register

Vol. 78, No. 244

Thursday, December 19, 2013

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.

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## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Parts 344 and 390

**RIN 3064–AE06**

### Removal of Transferred OTS Regulations Regarding Recordkeeping and Confirmation Requirements for Securities Transactions Effected by State Savings Associations and Other Amendments

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Final rule.

**SUMMARY:** The Federal Deposit Insurance Corporation (''FDIC'') is adopting a final rule (''Final Rule'') to rescind and remove a regulation entitled ''Recordkeeping and Confirmation Requirements for Securities Transactions,'' and to amend another regulation also entitled ''Recordkeeping and Confirmation Requirements for Securities Transactions.'' The rescinded regulation was one of several rules transferred to the FDIC following dissolution of the former Office of Thrift Supervision (''OTS'') in connection with the implementation of applicable provisions of Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''). The Dodd-Frank Act provided that the former OTS rules that were transferred to the FDIC would be enforceable by or against the FDIC until they were modified, terminated, set aside, or superseded in accordance with applicable law by the FDIC, by any court of competent jurisdiction, or by operation of law.

The FDIC received no comments on the Proposed Rule and consequently is adopting the Final Rule as proposed in the NPR without change. As a result, the recordkeeping and confirmation requirements for securities transactions effected on behalf of customers by all FDIC-supervised institutions will be found at the existing regulation entitled ''Recordkeeping and Confirmation Requirements for Securities Transactions.''.

**DATES:** The Final Rule is effective on January 21, 2014.

**FOR FURTHER INFORMATION CONTACT:** Anthony J. DiMilo, Examination Specialist, Trust, Division of Risk Management Supervision, (202) 898–7496; John M. Jackwood, Senior Policy Analyst, Division of Depositor and Consumer Protection, (202) 898–3991; Julia E. Paris, Counsel, Legal Division, (202) 898–3821; Grace Pyun, Senior Attorney, Legal Division, (202) 898–3609.

**SUPPLEMENTARY INFORMATION:**

## I. Background

Beginning July 21, 2011, the transfer date established by section 311 of the Dodd-Frank Act, 12 U.S.C. 5411, the powers, duties and functions of the former OTS were divided among the FDIC as to State savings associations, the Office of the Comptroller of the Currency (''OCC'') as to Federal savings associations, and the Board of Governors of the Federal Reserve System as to savings and loan holding companies.[1] Section 316(b) of the Dodd-Frank Act, 12 U.S.C. 5414(b), provides the manner of treatment for all orders, resolutions, determinations, regulations, and advisory materials that had been issued, made, prescribed, or allowed to become effective by the OTS. The section provides that if such regulatory issuances were in effect on the day before the transfer date, they continue in effect and are enforceable by or against the appropriate successor agency until they are modified, terminated, set aside, or superseded in accordance with applicable law by such successor agency, by any court of competent jurisdiction, or by operation of law.

The Dodd-Frank Act directed the FDIC and OCC to consult with one another and to publish a list of continued OTS regulations to be enforced by each respective agency that would continue to remain in effect until the appropriate successor agency modified or removed the regulations in accordance with the applicable laws. The list was published by the FDIC and OCC as a Joint Notice in the **Federal Register** on July 6, 2011, and shortly thereafter, the FDIC published its transferred OTS regulations as new FDIC regulations in 12 CFR parts 390 and 391. When it republished the transferred OTS regulations as new FDIC regulations, the FDIC specifically noted that its staff would evaluate the transferred OTS rules and might later recommend incorporating the transferred OTS regulations into other FDIC rules, amending them, or rescinding them, as appropriate.

Further, section 312(c) of the Dodd-Frank Act amended the definition of ''appropriate Federal banking agency'' contained in section 3(q) of the FDI Act, to add State savings associations to the list of entities for which the FDIC is designated the ''appropriate Federal banking agency.'' As a result, when the FDIC acts as the designated ''appropriate Federal banking agency'' (or under similar terminology) for State savings associations, as it does today, it has the authority to issue, modify, and rescind regulations involving such associations as well as for State nonmember banks and insured branches of foreign banks.[2]

## II. Proposed Rule

### *A. Removal of Part 390, Subpart K (Former OTS 12 CFR Part 551)*

On September 4, 2013, the FDIC published an NPR regarding the removal of part 390, subpart K (formerly OTS part 551), which governs recordkeeping and confirmation requirements for securities transactions effected for customers by State savings associations.[3] The former OTS rule was transferred to the FDIC with only nominal changes. The NPR proposed removing part 390, subpart K from the CFR in an effort to streamline FDIC regulations for all FDIC-supervised institutions. As discussed in the Proposed Rule, the FDIC carefully reviewed the transferred rule, part 390, subpart K, and compared it with part 344, an FDIC regulation that existed before the transfer of part 390, subpart K and that continues to remain in effect today. Like the transferred rule, part 344 governs recordkeeping and confirmation requirements for securities transactions

[1] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

[2] 12 U.S.C. 5412(b)–(c).

[3] 78 FR 54403, 54408 (Sept. 4, 2013).

effected for customers by insured State nonmember banks and insured branches of foreign banks.[4] Although the two rules were substantively the same, the FDIC noted some distinctions and minor technical differences between the transferred OTS rule and part 344.[5] The primary distinction between part 390, subpart K and part 344 was the scope of the Small Transaction Exception. The Final Rule conforms the interpretations of that exception, as discussed below.

*B. Amendments to Part 344*

The Proposed Rule noted that the key difference between part 344 and part 390, subpart K is the number of transactions permitted under each rule's respective Small Transaction Exception. Specifically, the threshold for part 390, subpart K's Small Transaction Exception is an average of 500 or fewer transactions for customers per year over the three prior calendar years, while the threshold under part 344 is fewer than an average of 200 transactions during the same time period.

To reconcile the difference between the two thresholds, the FDIC's Proposed Rule proposed amending 12 CFR 344.2(a)(1) to increase the threshold for the Small Transaction Exception applicable to all FDIC-supervised institutions effecting securities transactions for customers from an average of 200 transactions to 500 transactions per calendar year over the prior three calendar year period.[6] As stated in the Proposed Rule, the FDIC believes that increasing the number of securities transactions to which the Small Transaction Exception would apply will not only ensure parity for all FDIC-supervised institutions, but recognizes that the securities activities of FDIC-supervised institutions have increased over the three decades since the FDIC established the original scope of the Small Transaction Exception.[7]

In addition, the Proposed Rule included a measure designed to clarify that part 344 applies to all insured depository institutions for which the FDIC has been designated the appropriate Federal banking agency. Specifically, the Proposed Rule proposed amending section 344.3 of part 344 to remove the definition of ''bank'' and add the defined term ''FDIC-supervised institution'' to the list of defined words.[8] ''FDIC-supervised institution'' would mean ''any insured depository institution for which the FDIC is the appropriate Federal banking agency pursuant to section 3(q) of the FDI Act, 12 U.S.C. 1813(q).'' Under the Proposed Rule, the term ''FDIC-supervised institution'' and its plural form would replace ''bank,'' ''banks,'' ''state nonmember insured bank (except a District bank)'' and ''foreign bank having an insured branch'' throughout part 344.[9]

## III. Comments

The FDIC issued the NPR with a 60-day comment period, which closed on November 4, 2013. The FDIC received no comments on its Proposed Rule, and consequently the Final Rule is adopted as proposed without any changes.

## IV. Explanation of the Final Rule

As discussed in the NPR, part 390, subpart K is substantively similar to part 344, and the designation of part 344 as a single authority of recordkeeping requirements for all FDIC-supervised institutions will serve to streamline the FDIC's rules and eliminate unnecessary regulations. To that effect, the Final Rule removes and rescinds 12 CFR part 390, subpart K in its entirety.

Consistent with the Proposed Rule, the Final Rule also amends section 344.2(a)(1) to increase the threshold from an average of fewer than 200 transactions to an average of fewer than 500 transactions for all FDIC-supervised institutions availing themselves of the Small Transaction Exception.

In addition, in the Final Rule, the definition of the term ''bank'' has been deleted from section 344.3 of part 344 and has been replaced with the term ''FDIC-supervised institution.'' As discussed in the Proposed Rule, ''FDIC-supervised institution'' is defined in section 344.3(h) as ''any insured depository institution for which the FDIC is the appropriate Federal banking agency pursuant to section 3(q) of the FDI Act, 12 U.S.C. 1813(q).'' In the Final Rule, the term ''FDIC-supervised institution'' and its plural form have replaced the terms ''bank,'' ''banks,'' ''state nonmember bank (except a District bank)'' and ''foreign bank(s) having an insured branch'' as used in sections 344.1 through 344.9. Section 344.10 of part 344 remains unchanged in the Final Rule.

## V. Administrative Law Matters

*A. Paperwork Reduction Act*

In accordance with the requirements of the Paperwork Reduction Act (''PRA'') of 1995 (44 U.S.C. 3501–3521), the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (''OMB'') control number. The information collections contained in part 344 are cleared by OMB under the FDIC's ''Recordkeeping and Confirmation Requirements for Securities Transactions'' information collection (OMB No. 3064–0028). The FDIC's burden estimates were updated in connection with the collection's 2012 renewal to include State savings associations transferred from the OTS to the FDIC.

The Final Rule rescinds and removes from FDIC regulations part 390, subpart K. Further, with regard to part 344, the Final Rule amends section 344.2(a)(1) to increase the threshold, from an average of 200 transactions to 500 transactions per calendar year over the prior three calendar year period, for the Small Transaction Exception to certain recordkeeping requirements applicable to all FDIC-supervised institutions. The effect of the increased threshold will be to increase the number of institutions that are exempt from more elaborate recordkeeping requirements in part 344 and from the need to have special written management policies and operational procedures relating to the execution of securities transactions for customers. However, the FDIC's burden calculations are based on an estimated average response time across all supervised institutions. Therefore, the nominal increase in exempted institutions will have no significant impact on overall current burden estimates. As such, this provision of the Final Rule will not involve any new collections of information under the PRA.

*B. The Regulatory Flexibility Act*

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601 *et. seq.,* generally requires an agency to consider whether a final rule will have a significant economic impact on a substantial number of small entities (defined in regulations promulgated by the Small Business Administration to include banking organizations with total assets of less than or equal to $500 million).[10] Pursuant to section 605(b) of the RFA, a final regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities, and publishes its certification and a short explanatory statement in the **Federal Register** together with the rule. For the reasons provided below, the FDIC certifies that

[4] *Id.* at 54406.

[5] *Id.*

[6] *Id.*

[7] 78 FR 54406.

[8] *Id.*

[9] *Id.*

[10] 5 U.S.C. 601 *et seq.*

the Final Rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

As discussed previously, part 390, subpart K was transferred from OTS's part 551, which governed recordkeeping and confirmation requirements for Federal and State savings associations that effect securities transactions for customers. OTS's part 551 had been in effect since 2002, and all State savings associations were required to comply with it. Because it is redundant of existing part 344 of the FDIC's Rules, the Final Rule rescinds and removes part 390, subpart K. As a result, all FDIC-supervised institutions—including State savings associations—must comply with part 344 if they effect securities transactions for customers. Consequently, because all State savings associations have been required to comply with substantively similar recordkeeping and confirmation rules when they effected securities transactions for customers since 2002, today's Final Rule will have no significant economic impact on any State savings association.

Further, the Final Rule amends section 344.2(a)(1) to increase the threshold for all FDIC-supervised institutions relying on the Small Transaction Exception from an average of fewer than 200 to 500 transactions for customers per calendar year over the prior three calendar year period. As State savings associations currently comply with a 500-transaction small transaction threshold, the only impact of this portion of the Final Rule is to exempt more State nonmember banks and foreign banks having insured branches from complying with certain recordkeeping and written policy and procedure requirements, thus reducing regulatory burden for these insured depository institutions. There is no existing data that is helpful in determining how many State nonmember banks and foreign banks having insured branches that transact on average between 201 and 500 transactions for customers per calendar year over the prior three calendar year period will take advantage of the increased transaction threshold for the FDIC's Small Transaction Exception in today's Final Rule. Nevertheless, if the Final Rule reduces recordkeeping and written policy procedure requirements for any insured depository institutions, there still is no significant economic impact on a substantial number of small entities.

*C. Small Business Regulatory Enforcement Fairness Act*

The Office of Management and Budget has determined that the Final Rule is not a ''major rule'' within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''), 5 U.S.C. 801 *et seq.*

*D. Plain Language*

Section 722 of the Gramm-Leach-Bliley Act, 12 U.S.C. 4809, requires each Federal banking agency to use plain language in all of its proposed and final rules published after January 1, 2000. In the NPR, the FDIC invited comments on whether the Proposed Rule was clearly stated and effectively organized, and how the FDIC might make it easier to understand. Although the FDIC did not receive any comments, the FDIC sought to present the Final Rule in a simple and straightforward manner.

*E. The Economic Growth and Regulatory Paperwork Reduction Act*

Under section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (''EGRPRA''), the FDIC is required to review all of its regulations, at least once every 10 years, in order to identify any outdated or otherwise unnecessary regulations imposed on insured depository institutions.[11] The FDIC's EGRPRA review is ongoing and is expected to be completed by 2016. The NPR solicited comments on whether the proposed rescission of part 390, subpart K and amendments to part 344 would impose any outdated or unnecessary regulatory requirements on insured depository institutions. No comments on this issue were received. Upon review, the FDIC does not believe that part 344, as amended by the Final Rule, impose any outdated or unnecessary regulatory requirements on any insured depository institutions.

**List of Subjects**

*12 CFR Part 344*

Banks, banking; Reporting and recordkeeping requirements; Savings associations.

*12 CFR Part 390*

Reporting and recordkeeping requirements.

**Authority and Issuance**

For the reasons stated in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation revises part 344 of title 12 of the Code of Federal Regulations and amends part 390 of title 12 of the Code of Federal Regulations as set forth below:

[11] Public Law 104–208 (Sept. 30, 1996).

## PART 344—RECORDKEEPING AND CONFIRMATION REQUIREMENTS FOR SECURITIES TRANSACTIONS

■ 1. Revise part 344 to read as follows:

## PART 344—RECORDKEEPING AND CONFIRMATION REQUIREMENTS FOR SECURITIES TRANSACTIONS

Sec.
344.1 Purpose and scope.
344.2 Exceptions.
344.3 Definitions.
344.4 Recordkeeping.
344.5 Content and time of notification.
344.6 Notification by agreement; alternative forms and times of notification.
344.7 Settlement of securities transactions.
344.8 Securities trading policies and procedures.
344.9 Personal securities trading reporting by officers and employees.
344.10 Waivers.

**Authority:** 12 U.S.C. 1817, 1818, 1819, and 5412.

### § 344.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to ensure that purchasers of securities in transactions effected by FDIC-supervised institutions are provided adequate information regarding transactions. This part is also designed to ensure that FDIC-supervised institutions subject to this part maintain adequate records and controls with respect to the securities transactions they effect.

(b) *Scope; general.* Any security transaction effected for a customer by an FDIC-supervised institution is subject to this part unless excepted by § 344.2. An FDIC-supervised institution effecting transactions in government securities is subject to the notification, recordkeeping, and policies and procedures requirements of this part. This part also applies to municipal securities transactions by an FDIC-supervised institution that is not registered as a ''municipal securities dealer'' with the Securities and Exchange Commission. See 15 U.S.C. 78c(a)(30) and 78o–4.

### § 344.2 Exceptions.

(a) An FDIC-supervised institution effecting securities transactions for customers is not subject to all or part of this part 344 to the extent that they qualify for one or more of the following exceptions:

(1) *Small number of transactions.* The requirements of §§ 344.4(a)(2) through (4) and 344.8(a)(1) through (3) do not apply to an FDIC-supervised institution

effecting an average of fewer than 500 securities transactions per year for customers over the prior three calendar year period. The calculation of this average does not include transactions in government securities.

(2) *Government securities.* The recordkeeping requirements of § 344.4 do not apply to FDIC-supervised institutions effecting fewer than 500 government securities brokerage transactions per year. This exemption does not apply to government securities dealer transactions by FDIC-supervised institutions.

(3) *Municipal securities.* This part does not apply to transactions in municipal securities effected by an FDIC-supervised institution registered with the Securities and Exchange Commission as a ''municipal securities dealer'' as defined in title 15 U.S.C. 78c(a)(30). *See* 15 U.S.C. 78o–4.

(4) *Foreign branches.* Activities of foreign branches of FDIC-supervised institutions shall not be subject to the requirements of this part.

(5) *Transactions effected by registered broker/dealers.* (i) This part does not apply to securities transactions effected for an FDIC-supervised institution's customer by a registered broker/dealer if:

(A) The broker/dealer is fully disclosed to the customer; and

(B) The customer has a direct contractual agreement with the broker/dealer.

(ii) This exemption extends to arrangements with broker/dealers which involve FDIC-supervised institution employees when acting as employees of, and subject to the supervision of, the registered broker/dealer when soliciting, recommending, or effecting securities transactions.

(b) *Safe and sound operations.* Notwithstanding this section, every FDIC-supervised institution effecting securities transactions for customers shall maintain, directly or indirectly, effective systems of records and controls regarding their customer securities transactions to ensure safe and sound operations. The records and systems maintained must clearly and accurately reflect the information required under this part and provide an adequate basis for an audit.

**§ 344.3 Definitions.**

(a) *Asset-backed security* means a security that is serviced primarily by the cash flows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to the security holders.

(b) *Cash management sweep account* means a prearranged, automatic transfer of funds above a certain dollar level from a deposit account to purchase a security or securities, or any prearranged, automatic redemption or sale of a security or securities when a deposit account drops below a certain level with the proceeds being transferred into a deposit account.

(c) *Collective investment fund* means funds held by an FDIC-supervised institution as fiduciary and, consistent with local law, invested collectively:

(1) In a common trust fund maintained by such FDIC-supervised institution exclusively for the collective investment and reinvestment of monies contributed thereto by the FDIC-supervised institution in its capacity as trustee, executor, administrator, guardian, or custodian under the Uniform Gifts to Minors Act; or

(2) In a fund consisting solely of assets of retirement, pension, profit sharing, stock bonus or similar trusts which are exempt from Federal income taxation under the Internal Revenue Code (26 U.S.C.).

(d) *Completion of the transaction* means:

(1) For purchase transactions, the time when the customer pays the FDIC-supervised institution any part of the purchase price (or the time when the FDIC-supervised institution makes the book-entry for any part of the purchase price, if applicable), however, if the customer pays for the security prior to the time payment is requested or becomes due, then the transaction shall be completed when the FDIC-supervised institution transfers the security into the account of the customer; and

(2) For sale transactions, the time when the FDIC-supervised institution transfers the security out of the account of the customer or, if the security is not in its custody, then the time when the security is delivered to it, however, if the customer delivers the security to the FDIC-supervised institution prior to the time delivery is requested or becomes due then the transaction shall be completed when the FDIC-supervised institution makes payment into the account of the customer.

(e) *Crossing of buy and sell orders* means a security transaction in which the same FDIC-supervised institution acts as agent for both the buyer and the seller.

(f) *Customer* means any person or account, including any agency, trust, estate, guardianship, or other fiduciary account for which an FDIC-supervised institution effects or participates in effecting the purchase or sale of securities, but does not include a broker, dealer, insured depository institution acting as a broker or a dealer, issuer of the securities that are the subject of the transaction or a person or account having a direct, contractual agreement with a fully disclosed broker/dealer.

(g) *Debt security* means any security, such as a bond, debenture, note, or any other similar instrument that evidences a liability of the issuer (including any security of this type that is convertible into stock or a similar security) and fractional or participation interests in one or more of any of the foregoing; provided, however, that securities issued by an investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a—1 et seq., shall not be included in this definition.

(h) *FDIC-supervised institution* means any insured depository institution for which the Federal Deposit Insurance Corporation is the appropriate Federal banking agency pursuant to section 3(q) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(q).

(i) *Government security* means:

(1) A security that is a direct obligation of, or obligation guaranteed as to principal and interest by, the United States;

(2) A security that is issued or guaranteed by a corporation in which the United States has a direct or indirect interest and which is designated by the Secretary of the Treasury for exemption as necessary or appropriate in the public interest or for the protection of investors;

(3) A security issued or guaranteed as to principal and interest by any corporation whose securities are designated, by statute specifically naming the corporation, to constitute exempt securities within the meaning of the laws administered by the Securities and Exchange Commission; or

(4) Any put, call, straddle, option, or privilege on a security described in paragraph (i)(1), (2), or (3) of this section other than a put, call, straddle, option, or privilege that is traded on one or more national securities exchanges, or for which quotations are disseminated through an automated quotation system operated by a registered securities association.

(j) *Investment discretion* means that, with respect to an account, an FDIC-supervised institution directly or indirectly:

(1) Is authorized to determine what securities or other property shall be purchased or sold by or for the account; or

(2) Makes decisions as to what securities or other property shall be purchased or sold by or for the account even though some other person may have responsibility for these investment decisions.

(k) *Municipal security* means a security which is a direct obligation of, or an obligation guaranteed as to principal or interest by, a State or any political subdivision, or any agency or instrumentality of a State or any political subdivision, or any municipal corporate instrumentality of one or more States or any security which is an industrial development bond (as defined in 26 U.S.C. 103(c)(2)) the interest on which is excludable from gross income under 26 U.S.C. 103(a)(1) if, by reason of the application of paragraph (4) or (6) of 26 U.S.C. 103(c) (determined as if paragraphs (4)(A), (5) and (7) were not included in 26 U.S.C. 103(c), paragraph (1) of 26 U.S.C. 103(c) does not apply to such security. *See* 15. U.S.C. 78c(a)(29).

(l) *Periodic plan* means any written authorization for an FDIC-supervised institution to act as agent to purchase or sell for a customer a specific security or securities, in a specific amount (calculated in security units or dollars) or to the extent of dividends and funds available, at specific time intervals, and setting forth the commission or charges to be paid by the customer or the manner of calculating them. Periodic plans include dividend reinvestment plans, automatic investment plans, and employee stock purchase plans.

(m) *Security* means any note, stock, treasury stock, bond, debenture, certificate of interest or participation in any profit-sharing agreement or in any oil, gas, or other mineral royalty or lease, any collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, and any put, call, straddle, option, or privilege on any security or group or index of securities (including any interest therein or based on the value thereof), or, in general, any instrument commonly known as a ''security''; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase, any of the foregoing. The term security does not include:

(1) A deposit or share account in a federally or state insured depository institution;

(2) A loan participation;

(3) A letter of credit or other form of insured depository institution indebtedness incurred in the ordinary course of business;

(4) Currency;

(5) Any note, draft, bill of exchange, or bankers acceptance which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited;

(6) Units of a collective investment fund;

(7) Interests in a variable amount (master) note of a borrower of prime credit; or

(8) U.S. Savings Bonds.

**§ 344.4 Recordkeeping.**

(a) *General rule.* An FDIC-supervised institution effecting securities transactions for customers shall maintain the following records for at least three years:

(1) *Chronological records.* An itemized daily record of each purchase and sale of securities maintained in chronological order, and including:

(i) Account or customer name for which each transaction was effected;

(ii) Description of the securities;

(iii) Unit and aggregate purchase or sale price;

(iv) Trade date; and

(v) Name or other designation of the broker/dealer or other person from whom the securities were purchased or to whom the securities were sold;

(2) *Account records.* Account records for each customer, reflecting:

(i) Purchases and sales of securities;

(ii) Receipts and deliveries of securities;

(iii) Receipts and disbursements of cash; and

(iv) Other debits and credits pertaining to transactions in securities;

(3) *A separate memorandum (order ticket)* of each order to purchase or sell securities (whether executed or canceled), which shall include:

(i) The accounts for which the transaction was effected;

(ii) Whether the transaction was a market order, limit order, or subject to special instructions;

(iii) The time the order was received by the trader or other FDIC-supervised institution employee responsible for effecting the transaction;

(iv) The time the order was placed with the broker/dealer, or if there was no broker/dealer, time the order was executed or canceled;

(v) The price at which the order was executed; and

(vi) The broker/dealer utilized;

(4) *Record of broker/dealers.* A record of all broker/dealers selected by the FDIC-supervised institution to effect securities transactions and the amount of commissions paid or allocated to each broker during the calendar year; and

(5) *Notifications.* A copy of the written notification required by §§ 344.5 and 344.6.

(b) *Manner of maintenance.* Records may be maintained in whatever manner, form or format an FDIC-supervised institution deems appropriate, provided however, the records required by this section must clearly and accurately reflect the information required and provide an adequate basis for the audit of the information. Records may be maintained in hard copy, automated or electronic form provided the records are easily retrievable, readily available for inspection, and capable of being reproduced in a hard copy. An FDIC-supervised institution may contract with third party service providers, including broker/dealers, to maintain records required under this part.

**§ 344.5 Content and time of notification.**

Every FDIC-supervised institution effecting a securities transaction for a customer shall give or send, by mail, facsimile or other means of electronic transmission, to the customer at or before completion of the transaction one of the types of written notification identified below:

(a) *Broker/dealer's confirmations.* (1) A copy of the confirmation of a broker/dealer relating to the securities transaction. An FDIC-supervised institution may either have the broker/dealer send the confirmation directly to the FDIC-supervised institution's customer or send a copy of the broker/dealer's confirmation to the customer upon receipt of the confirmation by the FDIC-supervised institution. If an FDIC-supervised institution chooses to send a copy of the broker/dealer's confirmation, it must be sent within one business day from the institution's receipt of the broker/dealer's confirmation; and

(2) If the FDIC-supervised institution is to receive remuneration from the customer or any other source in connection with the transaction, a statement of the source and amount of any remuneration to be received if such would be required under paragraph (b)(6) of this section; or

(b) *Written notification.* A written notification disclosing:

(1) Name of the FDIC-supervised institution;

(2) Name of the customer;

(3) Whether the FDIC-supervised institution is acting as agent for such customer, as agent for both such customer and some other person, as principal for its own account, or in any other capacity;

(4) The date and time of execution, or the fact that the time of execution will

be furnished within a reasonable time upon written request of the customer, and the identity, price, and number of shares or units (or principal amount in the case of debt securities) of the security purchased or sold by the customer;

(5) The amount of any remuneration received or to be received, directly or indirectly, by any broker/dealer from such customer in connection with the transaction;

(6)(i) The amount of any remuneration received or to be received by the FDIC-supervised institution from the customer, and the source and amount of any other remuneration received or to be received by the FDIC-supervised institution in connection with the transaction, unless:

(A) Remuneration is determined pursuant to a prior written agreement between the FDIC-supervised institution and the customer; or

(B) In the case of government securities and municipal securities, the FDIC-supervised institution received the remuneration in other than an agency transaction; or

(C) In the case of open end investment company securities, the FDIC-supervised institution has provided the customer with a current prospectus which discloses all current fees, loads and expenses at or before completion of the transaction;

(ii) If the FDIC-supervised institution elects not to disclose the source and amount of remuneration it has received or will receive from a party other than the customer pursuant to paragraph (b)(6)(i)(A), (B), or (C) of this section, the written notification must disclose whether the FDIC-supervised institution has received or will receive remuneration from a party other than the customer, and that the FDIC-supervised institution will furnish within a reasonable time the source and amount of this remuneration upon written request of the customer. This election is not available, however, if, with respect to a purchase, the FDIC-supervised institution was participating in a distribution of that security; or, with respect to a sale, the FDIC-supervised institution was participating in a tender offer for that security;

(7) Name of the broker/dealer utilized; or where there is no broker/dealer, the name of the person from whom the security was purchased or to whom the security was sold, or a statement that the FDIC-supervised institution will furnish this information within a reasonable time upon written request;

(8) In the case of a transaction in a debt security subject to redemption before maturity, a statement to the effect that the debt security may be redeemed in whole or in part before maturity, that the redemption could affect the yield represented and that additional information is available upon request;

(9) In the case of a transaction in a debt security effected exclusively on the basis of a dollar price:

(i) The dollar price at which the transaction was effected; and

(ii) The yield to maturity calculated from the dollar price, provided however, that this shall not apply to a transaction in a debt security that either has a maturity date that may be extended by the issuer thereof, with a variable interest payable thereon, or is an asset-backed security that represents an interest in or is secured by a pool of receivables or other financial assets that are subject continuously to prepayment;

(10) In the case of a transaction in a debt security effected on the basis of yield:

(i) The yield at which the transaction was effected, including the percentage amount and its characterization (e.g., current yield, yield to maturity, or yield to call) and if effected at yield to call, the type of call, the call date and call price;

(ii) The dollar price calculated from the yield at which the transaction was effected; and

(iii) If effected on a basis other than yield to maturity and the yield to maturity is lower than the represented yield, the yield to maturity as well as the represented yield; provided however, that this paragraph (b)(10) shall not apply to a transaction in a debt security that either has a maturity date that may be extended by the issuer with a variable interest rate payable thereon, or is an asset-backed security that represents an interest in or is secured by a pool of receivables or other financial assets that are subject continuously to prepayment;

(11) In the case of a transaction in a debt security that is an asset-backed security, which represents an interest in or is secured by a pool of receivables or other financial assets that are subject continuously to prepayment, a statement indicating that the actual yield of the asset-backed security may vary according to the rate at which the underlying receivables or other financial assets are prepaid and a statement of the fact that information concerning the factors that affect yield (including at a minimum estimated yield, weighted average life, and the prepayment assumptions underlying yield) will be furnished upon written request of the customer; and

(12) In the case of a transaction in a debt security, other than a government security, that the security is unrated by a nationally recognized statistical rating organization, if that is the case.

**§ 344.6 Notification by agreement; alternative forms and times of notification.**

An FDIC-supervised institution may elect to use the following alternative notification procedures if the transaction is effected for:

(a) *Notification by agreement.* Accounts (except periodic plans) where the FDIC-supervised institution does not exercise investment discretion and the FDIC-supervised institution and the customer agree in writing to a different arrangement as to the time and content of the written notification; provided however, that such agreement makes clear the customer's right to receive the written notification pursuant to § 344.5(a) or (b) at no additional cost to the customer.

(b) *Trust accounts.* Accounts (except collective investment funds) where the FDIC-supervised institution exercises investment discretion in other than in an agency capacity, in which instance it shall, upon request of the person having the power to terminate the account or, if there is no such person, upon the request of any person holding a vested beneficial interest in such account, give or send to such person the written notification within a reasonable time. The FDIC-supervised institution may charge such person a reasonable fee for providing this information.

(c) *Agency accounts.* Accounts where the FDIC-supervised institution exercises investment discretion in an agency capacity, in which instance:

(1) The FDIC-supervised institution shall give or send to each customer not less frequently than once every three months an itemized statement which shall specify the funds and securities in the custody or possession of the FDIC-supervised institution at the end of such period and all debits, credits and transactions in the customer's accounts during such period; and

(2) If requested by the customer, the FDIC-supervised institution shall give or send to each customer within a reasonable time the written notification described in § 344.5. The FDIC-supervised institution may charge a reasonable fee for providing the information described in § 344.5.

(d) *Cash management sweep accounts.* An FDIC-supervised institution effecting a securities transaction for a cash management sweep account shall give or send its customer a written statement, in the same form as required under paragraph (f) of this section, for each month in which a purchase or sale of a security

takes place in the account and not less than once every three months if there are no securities transactions in the account. Notwithstanding the provisions of this paragraph (d), FDIC-supervised institutions that retain custody of government securities that are the subject of a hold-in-custody repurchase agreement are subject to the requirements of 17 CFR 403.5(d).

(e) *Collective investment fund accounts.* The FDIC-supervised institution shall at least annually give or send to the customer a copy of a financial report of the fund, or provide notice that a copy of such report is available and will be furnished upon request to each person to whom a regular periodic accounting would ordinarily be rendered with respect to each participating account. This report shall be based upon an audit made by independent public accountants or internal auditors responsible only to the board of directors of the FDIC-supervised institution.

(f) *Periodic plan accounts.* The FDIC-supervised institution shall give or send to the customer not less than once every three months a written statement showing:

(1) The funds and securities in the custody or possession of the FDIC-supervised institution;

(2) All service charges and commissions paid by the customer in connection with the transaction; and

(3) All other debits and credits of the customer's account involved in the transaction; provided that upon written request of the customer, the FDIC-supervised institution shall give or send the information described in § 344.5, except that any such information relating to remuneration paid in connection with the transaction need not be provided to the customer when the remuneration is paid by a source other than the customer. The FDIC-supervised institution may charge a reasonable fee for providing information described in § 344.5.

**§ 344.7 Settlement of securities transactions.**

(a) An FDIC-supervised institution shall not effect or enter into a contract for the purchase or sale of a security (other than an exempted security as defined in 15 U.S.C. 78c(a)(12), government security, municipal security, commercial paper, bankers' acceptances, or commercial bills) that provides for payment of funds and delivery of securities later than the third business day after the date of the contract unless otherwise expressly agreed to by the parties at the time of the transaction.

(b) Paragraphs (a) and (c) of this section shall not apply to contracts:

(1) For the purchase or sale of limited partnership interests that are not listed on an exchange or for which quotations are not disseminated through an automated quotation system of a registered securities association; or

(2) For the purchase or sale of securities that the Securities and Exchange Commission (SEC) may from time to time, taking into account then existing market practices, exempt by order from the requirements of paragraph (a) of SEC Rule 15c6–1, 17 CFR 240.15c6–1(a), either unconditionally or on specified terms and conditions, if the SEC determines that an exemption is consistent with the public interest and the protection of investors.

(c) Paragraph (a) of this section shall not apply to contracts for the sale for cash of securities that are priced after 4:30 p.m. Eastern time on the date the securities are priced and that are sold by an issuer to an underwriter pursuant to a firm commitment underwritten offering registered under the Securities Act of 1933, 15 U.S.C. 77a et seq., or sold to an initial purchaser by an FDIC-supervised institution participating in the offering. An FDIC-supervised institution shall not effect or enter into a contract for the purchase or sale of the securities that provides for payment of funds and delivery of securities later than the fourth business day after the date of the contract unless otherwise expressly agreed to by the parties at the time of the transaction.

(d) For the purposes of paragraphs (a) and (c) of this section, the parties to a contract shall be deemed to have expressly agreed to an alternate date for payment of funds and delivery of securities at the time of the transaction for a contract for the sale for cash of securities pursuant to a firm commitment offering if the managing underwriter and the issuer have agreed to the date for all securities sold pursuant to the offering and the parties to the contract have not expressly agreed to another date for payment of funds and delivery of securities at the time of the transaction.

**§ 344.8 Securities trading policies and procedures.**

(a) *Policies and procedures.* Every FDIC-supervised institution effecting securities transactions for customers shall establish written policies and procedures providing:

(1) Assignment of responsibility for supervision of all officers or employees who:

(i) Transmit orders to or place orders with broker/dealers; or

(ii) Execute transactions in securities for customers;

(2) Assignment of responsibility for supervision and reporting, separate from those in paragraph (a)(1) of this section, with respect to all officers or employees who process orders for notification or settlement purposes, or perform other back office functions with respect to securities transactions effected for customers;

(3) For the fair and equitable allocation of securities and prices to accounts when orders for the same security are received at approximately the same time and are placed for execution either individually or in combination; and

(4) Where applicable, and where permissible under local law, for the crossing of buy and sell orders on a fair and equitable basis to the parties to the transaction.

**§ 344.9 Personal securities trading reporting by officers and employees of FDIC-supervised institutions.**

(a) *Officers and employees subject to reporting.* FDIC-supervised institution officers and employees who:

(1) Make investment recommendations or decisions for the accounts of customers;

(2) Participate in the determination of such recommendations or decisions; or

(3) In connection with their duties, obtain information concerning which securities are being purchased or sold or recommend such action, must report to the FDIC-supervised institution, within 30-calendar days after the end of the calendar quarter, all transactions in securities made by them or on their behalf, either at the FDIC-supervised institution or elsewhere in which they have a beneficial interest. The report shall identify the securities purchased or sold and indicate the dates of the transactions and whether the transactions were purchases or sales.

(b) *Exempt transactions.* Excluded from this reporting requirement are:

(1) Transactions for the benefit of the officer or employee over which the officer or employee has no direct or indirect influence or control;

(2) Transactions in registered investment company shares;

(3) Transactions in government securities; and

(4) All transactions involving in the aggregate $10,000 or less during the calendar quarter.

(c) *Alternative report.* Where an FDIC-supervised institution acts as an investment adviser to an investment company registered under the

Investment Company Act of 1940, the FDIC-supervised institution's officers and employees may fulfill their reporting requirement under paragraph (a) of this section by filing with the FDIC-supervised institution the ''access persons'' personal securities trading report required by SEC Rule 17j–1, 17 CFR 270.17j–1.

**§ 344.10 Waivers.**

The Board of Directors of the FDIC, in its discretion, may waive for good cause all or any part of this part 344.

## PART 390—REGULATIONS TRANSFERRED FROM THE OFFICE OF THRIFT SUPERVISION

■ 2. The authority citation for part 390 is revised to read as follows:

**Authority:** 12 U.S.C. 1819.

Subpart A also issued under 12 U.S.C. 1820.

Subpart B also issued under 12 U.S.C. 1818.

Subpart C also issued under 5 U.S.C. 504; 554–557; 12 U.S.C. 1464; 1467; 1468; 1817; 1818; 1820; 1829; 3349, 4717; 15 U.S.C. 78*l;* 78o–5; 78u–2; 28 U.S.C. 2461 note; 31 U.S.C. 5321; 42 U.S.C. 4012a.

Subpart D also issued under 12 U.S.C. 1817; 1818; 1820; 15 U.S.C. 78*l.*

Subpart E also issued under 12 U.S.C. 1813; 1831m; 15 U.S.C. 78.

Subpart F also issued under 5 U.S.C. 552; 559; 12 U.S.C. 2901 *et seq.*

Subpart G also issued under 12 U.S.C. 2810 *et seq.,* 2901 *et seq.;* 15 U.S.C. 1691; 42 U.S.C. 1981, 1982, 3601–3619.

Subpart H also issued under 12 U.S.C. 1464; 1831y.

Subpart I also issued under 12 U.S.C. 1831x.

Subpart J also issued under 12 U.S.C. 1831p–1.

Subpart L also issued under 12 U.S.C. 1831p–1.

Subpart M also issued under 12 U.S.C. 1818.

Subpart N also issued under 12 U.S.C. 1821.

Subpart O also issued under 12 U.S.C. 1828.

Subpart P also issued under 12 U.S.C. 1470; 1831e; 1831n; 1831p–1; 3339.

Subpart Q also issued under 12 U.S.C. 1462; 1462a; 1463; 1464.

Subpart R also issued under 12 U.S.C. 1463; 1464; 1831m; 1831n; 1831p–1.

Subpart S also issued under 12 U.S.C. 1462; 1462a; 1463; 1464; 1468a; 1817; 1820; 1828; 1831e; 1831o; 1831p–1; 1881–1884; 3207; 3339; 15 U.S.C. 78b; 78*l;* 78m; 78n; 78p; 78q; 78w; 31 U.S.C. 5318; 42 U.S.C. 4106.

Subpart T also issued under 12 U.S.C. 1462a; 1463; 1464; 15 U.S.C. 78c; 78*l;* 78m; 78n; 78w.

Subpart U also issued under 12 U.S.C. 1462a; 1463; 1464; 15 U.S.C. 78c; 78*l;* 78m; 78n; 78p; 78w; 78d–1; 7241; 7242; 7243; 7244; 7261; 7264; 7265.

Subpart V also issued under 12 U.S.C. 3201–3208.

Subpart W also issued under 12 U.S.C. 1462a; 1463; 1464; 15 U.S.C. 78c; 78*l;* 78m; 78n; 78p; 78w.

Subpart X also issued under 12 U.S.C. 1462; 1462a; 1463; 1464; 1828; 3331 *et seq.*

Subpart Y also issued under 12 U.S.C.1831o.

Subpart Z also issued under 12 U.S.C. 1462; 1462a; 1463; 1464; 1828 (note).

■ 3. Subpart K—[Removed and reserved]

■ Remove and reserve subpart K consisting of §§ 390.200 through 390.214.

Dated at Washington, DC, this 10th day of December, 2013.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 2013–29786 Filed 12–18–13; 8:45 am]

BILLING CODE 6714–01–P

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## NATIONAL CREDIT UNION ADMINISTRATION

## 12 CFR Parts 703 and 721

**RIN 3133–AE17**

## Charitable Donation Accounts

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Final rule.

**SUMMARY:** The NCUA Board (Board) is issuing a final rule to amend its regulations to clarify that federal credit unions are authorized to create and fund a charitable donation account, a hybrid charitable and investment vehicle, as an activity incidental to the business for which the credit union is chartered, provided the account is primarily charitable in nature and meets other regulatory conditions to ensure safety and soundness.

**DATES:** The effective date for this rule is December 19, 2013.

**FOR FURTHER INFORMATION CONTACT:** Rick Mayfield, Senior Capital Markets Specialist, Office of Examination and Insurance, at 1775 Duke Street, Alexandria, VA 22314 or by telephone: (703) 518–6360; or Steven W. Widerman, Senior Staff Attorney, Office of General Counsel, at the above address or by telephone: (703) 518–6540.

**SUPPLEMENTARY INFORMATION:**

I. Background
II. Summary of Comments on Proposed Rule
III. Regulatory Procedures

### I. Background

NCUA is amending parts 703 and 721 of its regulations to clarify that, under certain circumstances, federal credit unions (FCUs) are authorized to fund a charitable donation account (CDA), which may hold investments that are otherwise impermissible, as a charitable contribution or donation under its incidental powers authority.[1] This will help facilitate charitable activities for FCUs. To be considered an incidental powers activity, the rule requires a CDA to be primarily charitable in nature. Any investment feature benefitting the FCU must be incidental to the CDA's primary charitable purpose. The CDA must also be structured to preserve safety and soundness and to limit the FCU's exposure to the risks of otherwise impermissible investments.

*Summary of Proposed Rule*

On September 12, 2013, the Board issued a Notice of Proposed Rulemaking (NPRM)[2] allowing FCUs to invest in CDAs while creating safeguards to ensure the donations are used for their intended charitable purposes. The Board proposed several requirements for FCUs that invest in these accounts, including:

- The primary purpose of a CDA must be to generate funds to donate to tax-exempt charities chosen by FCUs.
- The total investment in all such accounts, in the aggregate, must be limited to three percent of the FCU's net worth for the duration of the accounts.
- A minimum of 51 percent of the total return from such an account must be distributed to one or more qualified charities.
- Distributions must be made to qualified charities no less frequently than every five years, or in the event the account terminates in less than five years.
- Assets of these accounts must be held in segregated custodial accounts or special purpose entities specifically identified as a CDA.
- If the FCU structures its CDA using a trust, the trustee must be an entity regulated by the Office of the Comptroller of the Currency (OCC), the U.S. Securities and Exchange Commission (SEC) or another federal regulatory agency. The regulated trustee or other person who is authorized to make investment decisions for a CDA (manager) must be a Registered Investment Adviser (RIA) with the SEC.
- The terms and conditions controlling the account must be documented in a written agreement.
- An FCU, upon termination of its CDA, may receive a distribution of the remaining assets in cash, or a distribution in kind of the remaining

[1] 12 CFR 721.3(b).

[2] 78 FR 57539 (Sept. 19, 2013).

assets if those assets are permissible investments for FCUs.

*Federal Credit Union Authority To Make Charitable Contributions*

The Federal Credit Union Act (Act) provides that an FCU may ''exercise such incidental powers as shall be necessary or requisite to enable it to carry on effectively the business for which it is incorporated.'' [3] Under this authority, the Board has long recognized that making charitable contributions and donations is among an FCU's incidental powers.[4]

Between 1999 and 2012, FCU donations were limited to two categories of charities: (1) Non-Profit organizations located or active in the community where the donor FCU had a place of business; and (2) tax-exempt organizations that ''operated primarily to promote and develop credit unions.'' [5] An FCU's donation to a charity in these categories was conditioned on a determination by its board of directors that the donation was in the best interests of the FCU and reasonable given its size and financial condition.[6]

In 2012, the Board repealed the restrictions on permissible charities and the conditions for making a donation.[7] The Board then added charitable contributions and donations as a category of activities preapproved by regulation as ''incidental powers necessary and requisite to carry on a credit union's business.'' [8] Activities in this preapproved category include donations to nonprofit organizations and credit union-affiliated causes, and to create charitable foundations.

*Federal Credit Union Investment Authority*

The Act grants FCUs the express power to invest in certain enumerated categories of investments.[9] FCUs may invest only in those investments expressly authorized by the Act. Further, part 703, NCUA's investment regulation, limits or prohibits FCUs from purchasing certain investments, otherwise permitted by the Act, for safety and soundness reasons.[10] Investments authorized by the Act and not prohibited or limited by part 703 constitute the universe of permissible investments for FCUs.

**II. Summary of Comments on Proposed Rule**

NCUA received a total of 26 comments on the NPRM: 13 from credit union leagues, four from FCUs, three from credit union-related foundations, two from credit union trade associations, and one comment each from a federally insured, state-chartered credit union, a corporate credit union, a bank trade association, and a federal savings bank. Of the 26 comments received, 18 commenters supported the proposal expressly, and none opposed it. Most commenters recommended changes, as outlined below.

*1. Net Worth Cap*

Seventeen commenters supported applying the net worth cap only when a CDA is initially and subsequently funded, rather than over the life of the account. One commenter asked to make the rule explicit on whether the net worth cap applies to a CDA's initial funding or its future investment value. The Board believes that applying the net worth cap for the duration of an account will help to preempt unsafe or unsound concentrations in otherwise non-permissible investments. Accordingly, the final rule explicitly clarifies that the aggregate value of an FCU's CDAs must remain within the net worth cap for the life of the accounts.

Thirteen commenters advocated raising the net worth cap on aggregate CDAs from three to five percent of net worth. The Board adopts the suggestion to raise the existing net worth cap, concurring that a modest increase would benefit both FCUs and charities. The final rule increases the existing cap on aggregate funding of CDAs from three to five percent of an FCU's net worth for the duration of the accounts, aligning with the net worth cap that applies to public welfare investments by banks.[11]

*2. Account Fees and Expenses*

Sixteen commenters contended that account fees and expenses should reduce the total return that is apportioned to determine the amount of a CDA's mandatory donations to charity. The Board agrees with the commenters and has adopted this recommendation, with certain conditions. The final rule allows account fees and expenses to be deducted from the actual rate of return to the extent the fees and expenses were *not* paid to the FCU that established the CDA or to its affiliates. An affiliate is an entity in which the FCU has any direct or indirect ownership interest.

*3. Minimum Periods for Distributions*

Four commenters advocated reducing the minimum period for distributions to charity to one year, two commenters supported reducing the period to less than five years, and one commenter proposed eliminating the five-year minimum. The Board maintains that the five-year minimum period is appropriate. The final rule clarifies that FCUs may choose to make CDA distributions more frequently than once in five years, provided there is a final distribution when the account terminates, regardless of the length of the period preceding termination.

*4. Minimum Amount of Distributions*

One commenter asked NCUA to require an FCU to make minimum annual charitable donations equal to one percent of a CDA's market value. The Board has decided against mandating a fixed minimum percentage distribution of a CDA's market value because that could force an FCU to donate at times when its CDA investment is producing negative returns. Another commenter wanted NCUA to allow CDAs to make charitable donations in a fixed dollar amount, rather than as a percent proportion of the total return. The Board finds that charitable donations of a fixed amount, not reflecting a CDA's investment performance, tends to portray a CDA as primarily an investment vehicle benefitting the FCU, representing a breach of one of the guiding principles used in proposing this rule. The final rule requires a CDA to be primarily charitable in structure, thus allowing it to be preapproved as an incidental powers activity. Any investment feature benefitting the FCU must be incidental to the primary, charitable purpose of its CDA.

*5. Regulatory Oversight*

Eighteen commenters supported permitting entities regulated by the OCC to manage CDA funds without also having to register as an RIA with the SEC. Two commenters contended that non-depository, state-chartered trust companies should be permitted to serve as CDA trustees. The Board agrees with both recommendations.

Neither the NPRM nor the final rule requires a CDA to be structured as a trust. As a measure to enhance safety and soundness when a CDA *is* established as a trust, however, the final rule provides that the trustee of a CDA must be regulated by the OCC, the SEC, another federal regulatory agency, or a

[3] 12 U.S.C. 1757(17).

[4] 44 FR 56691 (Oct. 2, 1979); 64 FR 19441 (Apr. 21, 1999); 12 CFR 721.3.

[5] 12 CFR 701.25(a) (2011).

[6] *Id.* 12 CFR 701.25(b).

[7] 77 FR 31981 (May 31, 2012).

[8] 12 CFR 721.3(b); see also 12 CFR 721.2.

[9] 12 U.S.C. 1757(7) & (15).

[10] 12 CFR part 703.

[11] 12 CFR 24.4(a).

state financial regulatory agency. A regulated trustee or other person or entity that is authorized to make investment decisions for a CDA (manager), other than the FCU itself, must either be an RIA or be regulated by the OCC.

*6. Corporate Credit Unions*

Nine commenters requested that corporate credit unions (CCUs) be given authority similar to that of natural person FCUs to create and fund CDAs. They contend that CCUs should have the same flexibility as the final rule gives FCUs to support charitable activities. That request is beyond the scope of this rulemaking.

*7. Miscellaneous Comments*

Eight commenters wanted more explicit confirmation that the NPRM's requirements would not apply to an FCU's other investments that are compliant with part 703. The Board confirms that the final rule does not apply to part 703—compliant investments.

One commenter requested that multiple small FCUs be permitted to form a common trust CDA. Because the final rule does not require a CDA to be held in a trust, FCUs, large or small, do not need to rely on a common trust to participate in funding a CDA.

Another commenter requested that NCUA grandfather existing non-CDA hybrid accounts that invest in otherwise impermissible investments for FCUs until those accounts mature. The final rule does not address such grandfathering in the regulatory text. Rather, NCUA has instructed regional staff not to require divestiture of such accounts as NCUA expects all such accounts will terminate by their own original terms.

Finally, a commenter asked NCUA to amend part 703 to expand the investment authority for all FCUs, regardless of funding a CDA. This request is beyond the scope of this rulemaking.

Except as otherwise discussed above, the Board adopts the rule as proposed.

## III. Regulatory Procedures

*Regulatory Flexibility Act*

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact agency rulemaking may have on a substantial number of small credit unions (primarily those under $50 million in assets). This final rule does not impose any mandatory requirements on small credit unions, and NCUA does not anticipate that many small credit unions will fund CDAs with significant amounts of money. NCUA has determined this rule will not have a significant economic impact on a substantial number of small credit unions.

*Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or modifies an existing burden.[12] For purposes of the PRA, a paperwork burden may take the form of a reporting, recordkeeping, or disclosure requirement, each referred to as an information collection. NCUA identified and described several information collection requirements in the proposed rule. As required by the PRA, NCUA submitted a copy of the proposed rule to the Office of Management and Budget (OMB) for its review and approval. Persons interested in submitting comments with respect to the information collection aspects of the proposed rule were invited to submit them to OMB (with a copy to NCUA) at the addresses noted in the preamble to the proposed rule.

*Executive Order 13132*

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order to adhere to fundamental federalism principles. This final rule applies only to federally chartered credit unions. Accordingly, the rule 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. NCUA has determined that this rule does not constitute a policy that has federalism implications for purposes of the Executive Order.

*Treasury and General Government Appropriations Act, 1999*

NCUA has determined that this final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act.[13]

*Small Business Regulatory Enforcement Act Fairness Act*

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) (SBREFA) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedure Act.[14] NCUA does not believe this final rule is a ''major rule'' within the meaning of the relevant sections of SBREFA. As required by SBREFA, NCUA has filed the appropriate reports so that this final rule may be reviewed.

*Immediate Effective Date*

NCUA is issuing this final rule to be effective upon publication. The Administrative Procedure Act, 5 U.S.C. 553, requires that, once finalized, a rulemaking must have a delayed effective date of 30 days from the date of publication, except for good cause. NCUA invokes this exception for this rule, believing that good cause exists to waive the customary 30-day delayed effective date. The final rule does not impose any regulatory burden; rather, it will help to facilitate the charitable activities of federal credit unions.

**List of Subjects**

*12 CFR Part 703*

Credit unions, investments.

*12 CFR Part 721*

Credit unions, functions, implied powers.

By the National Credit Union Administration Board on December 12, 2013.

**Gerard Poliquin,**

*Secretary of the Board.*

For the reasons set forth above, NCUA amends 12 CFR parts 703 and 721 as follows:

## PART 703—INVESTMENTS

■ 1. The authority citation for part 703 continues to read as follows:

**Authority:** 12 U.S.C. 1757(7), 1757(8), 1757(15).

■ 2. Amend § 703.1 as follows:

■ a. In paragraph (b)(5) by removing the word ''or'';

■ b. In paragraph (b)(6) by removing the period at the end of the paragraph and adding ''; or'' in its place; and

■ c. By adding paragraph (b)(7) to read as follows:

**§ 703.1 Purpose and scope.**

* * * * *

[12] 44 U.S.C. 3507(d).

[13] Public Law 105–277, 112 Stat. 2681 (1998).

[14] 5 U.S.C. 551.

(b) * * *

(7) Funding a Charitable Donation Account pursuant to § 721.3(b) of this chapter.

## PART 721—INCIDENTAL POWERS

■ 3. The authority citation for part 721 continues to read as follows:

**Authority:** 12 U.S.C. 1757(17), 1766, 1789.

■ 4. Amend § 721.3 to redesignate paragraph (b) as paragraph (b)(1) and to add paragraph (b)(2) to read as follows:

### § 721.3 What categories of activities are preapproved as incidental powers necessary or requisite to carry on a credit union's business?

* * * * *

(b) * * *

(2) *Charitable donation accounts.* A charitable donation account (CDA) is a hybrid charitable and investment vehicle, satisfying the conditions in paragraphs (b)(2)(i) through (vii) of this section, that you may fund as a means to provide charitable contributions and donations to qualified charities. If you fund a CDA that satisfies all of the conditions in paragraphs (b)(2)(i) through (vii) of this section, then you may do so free from the investment limitations of the Federal Credit Union Act and part 703 of this chapter.

(i) *Maximum aggregate funding.* The book value of your investments in all CDAs, in the aggregate, as carried on your statement of financial condition prepared in accordance with generally accepted accounting principles, must be limited to 5 percent of your net worth at all times for the duration of the accounts, as measured every quarterly Call Report cycle. This means that regardless of how many CDAs you invest in, the combined book value of all such investments must not exceed 5 percent of your net worth. You must bring your aggregate accounts into compliance with the maximum aggregate funding limit within 30 days of any breach of this limit.

(ii) *Segregated account.* The assets of a CDA must be held in a segregated custodial account or special purpose entity and must be specifically identified as a CDA.

(iii) *Regulatory oversight.* If you choose to establish a CDA using a trust vehicle, the trustee must be regulated by the Office of the Comptroller of the Currency (OCC), the U.S. Securities and Exchange Commission (SEC), another federal regulatory agency, or a state financial regulatory agency. A regulated trustee or other person or entity that is authorized to make investment decisions for a CDA (manager), other than the credit union itself, must be either a Registered Investment Adviser or regulated by the OCC.

(iv) *Account documentation and other written requirements.* The parties to the CDA, typically the funding credit union and trustee or other manager of the account, must document the terms and conditions controlling the account in a written agreement. The terms of the agreement must be consistent with this section. Your board of directors must adopt written policies governing the creation, funding, and management of a CDA that are consistent with this section, must review the policies annually, and may amend them from time to time. Your CDA agreement and policies must at a minimum:

(A) Provide that the CDA will make charitable contributions and donations only to charities you name therein that are exempt from taxation under section 501(c)(3) of the Internal Revenue Code;

(B) Document the investment strategies and risk tolerances the CDA trustee or other manager must follow in administering the account;

(C) Provide that you will account for all aspects of the CDA, including distributions to charities and liquidation of the account, in accordance with generally accepted accounting principles; and

(D) Indicate the frequency with which the trustee or manager of the CDA will make distributions to qualified charities as provided in paragraph (b)(2)(v) of this section;

(v) *Minimum distribution to charities.* You are required to distribute to one or more qualified charities, no less frequently than every 5 years, and upon termination of a CDA regardless of the length of its term, a minimum of 51 percent of the account's total return on assets over the period of up to 5 years. Other than upon termination, you may choose how frequently CDA distributions to charity will be made during each period of up to 5 years. For example, you may choose to make periodic distributions over a period of up to 5 years, or only a single distribution as required at the end of that period. You may choose to donate in excess of the minimum distribution frequency and amount;

(vi) *Liquidation of assets upon CDA termination.* Upon termination of the CDA, you may receive a distribution of the remaining account assets in cash or you may receive a distribution in kind of the remaining account assets but only if those assets are permissible investments for federal credit unions under the Federal Credit Union Act and part 703 of this chapter; and

(vii) *Definitions.* For purposes of this section, the following definitions apply:

(A) *Distribution in kind* is your acceptance of remaining CDA assets, upon termination of the account, in their original form instead of in cash resulting from the liquidation of the assets.

(B) *Qualified charity* is a charitable organization or other non-profit entity recognized as exempt from taxation under section 501(c)(3) of the Internal Revenue Code.

(C) *Registered Investment Adviser* is an investment adviser registered with the SEC pursuant to the Investment Advisers Act of 1940.

(D) *Total return* is the actual rate of return on all investments in a CDA over a given period of up to 5 years, including realized interest, capital gains, dividends, and distributions, but exclusive of account fees and expenses provided they were not paid to the credit union that established the CDA or to any of its affiliates.

(E) *Affiliate* is an entity in which the credit union has any ownership interest directly or indirectly. This would not apply to ownership due to the funding of employee benefits.

* * * * *

[FR Doc. 2013–30103 Filed 12–18–13; 8:45 am]

BILLING CODE 7535–01–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 25

**[Docket No. FAA–2013–0723; Special Conditions No. 25–511–SC]**

## Special Conditions: Boeing Model 777–200, –300, and –300ER Series Airplanes; Rechargeable Lithium Ion Batteries and Battery Systems

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions.

**SUMMARY:** These special conditions are issued for the Boeing Model 777–200, –300, and –300ER series airplanes. These airplanes as modified by the ARINC Aerospace Company will have a novel or unusual design feature, specifically the installation of rechargeable lithium ion batteries and battery system that will be used on an International Communications Group (ICG) ePhone cordless cabin handset. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These 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:** *Effective Date:* January 21, 2014.

**FOR FURTHER INFORMATION CONTACT:** Nazih Khaouly, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–2432; facsimile 425–227–1149.

**SUPPLEMENTARY INFORMATION:**

## Background

On August 10, 2012, the ARINC Aerospace Company applied for a supplemental type certificate for installing equipment that uses rechargeable lithium ion batteries and battery systems in the Boeing Model 777–200, –300, and –300ER series airplanes. The Model 777–200 series airplanes are long-range, wide-body, twin-engine jet airplanes with a maximum capacity of 440 passengers. The Boeing Model 777–300 and 777–300ER series airplanes have a maximum capacity of 550 passengers. The Model 777–200, –300, and –300ER series airplanes have fly-by-wire controls, fully software-configurable avionics, and fiber-optic avionics networks.

Existing airworthiness regulations did not anticipate the use of lithium ion batteries and battery systems on aircraft. Lithium ion batteries and battery systems have new hazards that were not contemplated when the existing regulations were promulgated. In Title 14, Code of Federal Regulations (14 CFR) 25.1353, the FAA provided an airworthiness standard for lead acid batteries and nickel cadmium batteries. These special conditions provide an equivalent level of safety as that of the existing regulation.

## Type Certification Basis

Under the provisions of 14 CFR 21.101, the ARINC Aerospace Company must show that the Boeing Model 777–200, –300, and –300ER series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. T00001SE or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate No. T00001SE are as follows: Part 25, as amended by Amendments 25–1 through 25–82, except for § 25.571(e)(1), which remains at Amendment 25–71 level. In addition, the certification basis includes special conditions and exemptions that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Boeing Model 777–200, –300, and –300ER series airplanes 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 applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate 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 Boeing Model 777–200, –300, and –300ER series airplanes 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.

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 § 21.101.

## Novel or Unusual Design Features

The Boeing Model 777–200, –300, and –300ER series airplanes will incorporate the following novel or unusual design features: An International Communications Group (ICG) ePhone cordless cabin handset that will use a rechargeable lithium ion battery and battery system. Lithium ion batteries and battery systems have certain failure, operational, and maintenance characteristics that differ significantly from those of the nickel cadmium and lead acid rechargeable batteries. Rechargeable lithium ion batteries and battery systems are considered to be a novel or unusual design feature in transport category airplanes, with respect to the requirements in § 25.1353.

## Discussion

The current regulations governing installation of batteries in large transport category airplanes were derived from Civil Air Regulations (CAR) part 4b.625(d) as part of the re-codification of CAR 4b that established 14 CFR part 25 in February 1965. The new battery requirements, § 25.1353(c)(1) through (c)(4), basically reworded the CAR requirements.

Increased use of nickel cadmium batteries in small airplanes resulted in increased incidents of battery fires and failures which led to additional rulemaking affecting large transport category airplanes as well as small airplanes. On September 1, 1977 and March 1, 1978, respectively, the FAA issued § 25.1353(c)(5) and (c)(6), governing nickel cadmium battery installations on large transport-category airplanes.

The proposed use of lithium ion batteries and battery systems for equipment and systems on the Boeing Model 777–200, –300, and –300ER series airplanes has prompted the FAA to review the adequacy of these existing regulations. Our review indicates that the existing regulations do not adequately address several failure, operational, and maintenance characteristics of lithium ion batteries and battery systems that could affect the safety and reliability of the airplanes with the ICG ePhone cordless cabin handset lithium ion battery installations.

At present, there is limited experience with use of rechargeable lithium ion batteries and battery systems in applications involving commercial aviation. However, other users of this technology, ranging from wireless telephone manufacturers to the electric vehicle industry, have noted safety problems with lithium ion batteries and battery systems. These problems include overcharging, over-discharging, and flammability of cell components.

### *1. Overcharging*

In general, lithium ion batteries and battery systems are significantly more susceptible to internal failures that can result in self-sustaining increases in temperature and pressure (i.e., thermal runaway) than their nickel cadmium or lead acid counterparts. This condition is especially true for overcharging, which causes heating and destabilization of the components of the cell, leading to the formation (by plating) of highly unstable metallic lithium. The metallic lithium can ignite, resulting in a self-sustaining fire or explosion. Finally, the severity of thermal runaway due to overcharging increases with increasing battery capacity due to the higher amount of electrolyte in large batteries.

### *2. Over-Discharging*

Discharge of some types of lithium ion batteries and battery systems beyond a certain voltage (typically 2.4 volts) can cause corrosion of the electrodes of the cell, resulting in loss of battery capacity that cannot be reversed by recharging. This loss of capacity may not be detected by the simple voltage measurements commonly available to

flightcrews as a means of checking battery status—a problem shared with nickel cadmium batteries.

*3. Flammability of Cell Components*

Unlike nickel cadmium and lead acid batteries, some types of lithium batteries and battery systems use liquid electrolytes that are flammable. The electrolyte can serve as a source of fuel for an external fire, if there is a breach of the battery container.

These problems experienced by users of lithium ion batteries and battery systems raise concern about the use of these batteries in commercial aviation. The intent of the special conditions is to establish appropriate airworthiness standards for lithium ion battery installations in the Boeing 777–200, –300, and –300ER series airplanes and to ensure, as required by §§ 25.1309 and 25.601, that these lithium ion batteries and battery systems are not hazardous or unreliable. To address these concerns, these special conditions adopt the following requirements:

- Those sections of 14 CFR 25.1353 that are applicable to lithium ion batteries.
- The flammable fluid fire protection requirements of 14 CFR 25.863. In the past, this rule was not applied to batteries of transport category airplanes, since the electrolytes used in lead-acid and nickel-cadmium batteries are not flammable.
- New requirements to address the hazards of overcharging and over-discharging that are unique to lithium ion batteries.
- New maintenance requirements to ensure that batteries used as spares are maintained in an appropriate state of charge.

These special conditions are similar to lithium-ion batteries and battery systems special conditions adopted for the Boeing Model 787 (72 FR 57842; October 11, 2007).

## Discussion of Comments

Notice of proposed special conditions no. 25–13–03–SC, for the Boeing Model 777–200, –300, and –300ER series airplanes, was published in the **Federal Register** on August 22, 2013 (78 FR 52107). No comments were received, and the special conditions are adopted as proposed.

## Applicability

As discussed above, these special conditions are applicable to the Boeing Model 777–200, –300, and –300ER series airplanes. Should the ARINC Aerospace Company apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. T00001SE to incorporate 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 series of airplanes. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

## List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

## The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Boeing Model 777–200, –300, and –300ER series airplanes modified by the ARINC Aerospace Company.

These special conditions require that (1) all characteristics of the rechargeable lithium ion batteries and battery systems and their installation that could affect safe operation of the Boeing Model 777–200, –300, and –300ER series airplanes are addressed, and (2) appropriate instructions for continued airworthiness, which include maintenance requirements, are established to ensure the availability of electrical power from the batteries when needed.

In lieu of the requirements of 14 CFR 25.1353(b)(1) through (b)(4) at Amendment 25–113, the following special conditions apply. Rechargeable lithium ion batteries and battery systems on Boeing Model 777–200, –300, and –300ER series airplanes must be designed and installed as follows:

(1) Safe cell temperatures and pressures must be maintained during any foreseeable charging or discharging condition and during any failure of the charging or battery monitoring system not shown to be extremely remote. The lithium ion batteries and battery systems must preclude explosion in the event of those failures.

(2) Design of the lithium ion batteries and battery systems must preclude the occurrence of self-sustaining, uncontrolled increases in temperature or pressure.

(3) No explosive or toxic gases emitted by any lithium ion batteries and battery systems in normal operation, or as the result of any failure of the battery charging system, monitoring system, or battery installation that is not shown to be extremely remote, may accumulate in hazardous quantities within the airplane.

(4) Installations of lithium ion batteries and battery systems must meet the requirements of § 25.863(a) through (d).

(5) No corrosive fluids or gases that may escape from any lithium ion batteries and battery systems may damage surrounding structure or any adjacent systems, equipment, or electrical wiring of the airplane in such a way as to cause a major or more severe failure condition, in accordance with § 25.1309(b) and applicable regulatory guidance.

(6) Each lithium ion battery and battery system must have provisions to prevent any hazardous effect on structure or essential systems caused by the maximum amount of heat the battery can generate during a short circuit of the battery or of its individual cells.

(7) Lithium ion batteries and battery systems must have a system to control the charging rate of the battery automatically, so as to prevent battery overheating or overcharging, and:

(i) A battery temperature sensing and over-temperature warning system with a means for automatically disconnecting the battery from its charging source in the event of an over-temperature condition, or,

(ii) A battery failure sensing and warning system with a means for automatically disconnecting the battery from its charging source in the event of battery failure.

(8) Any lithium ion battery and battery system whose function is required for safe operation of the airplane must incorporate a monitoring and warning feature that will provide an indication to the appropriate flight crewmembers whenever the state-of-charge of the batteries has fallen below levels considered acceptable for dispatch of the airplane.

(9) The instructions for continued airworthiness required by § 25.1529 must contain maintenance requirements to assure that the lithium ion batteries are sufficiently charged at appropriate intervals specified by the battery manufacturer and the equipment manufacturer. The instructions for continued airworthiness must also contain procedures for the maintenance of batteries in spares storage to prevent the replacement of batteries with batteries that have experienced degraded charge retention ability or other damage due to prolonged storage

at a low state of charge. Replacement batteries must be of the same manufacturer and part number as approved by the FAA. Precautions should be included in the instructions for continued airworthiness maintenance instructions to prevent mishandling of the rechargeable lithium ion batteries and battery systems, which could result in short-circuit or other unintentional impact damage caused by dropping or other destructive means.

**Note 1:** The term ''sufficiently charged'' means that the battery will retain enough of a charge, expressed in ampere-hours, to ensure that the battery cells will not be damaged. A battery cell may be damaged by lowering the charge below a point where there is a reduction in the ability to charge and retain a full charge. This reduction would be greater than the reduction that may result from normal operational degradation.

**Note 2:** These special conditions are not intended to replace § 25.1353(b) at Amendment 25–113 in the certification basis of Boeing Model 777–200, –300, and –300ER series airplanes. These special conditions apply only to rechargeable lithium ion batteries and battery systems and their installations. The requirements of § 25.1353(b) at Amendment 25–113 remain in effect for batteries and battery installations on Boeing Model 777–200, –300, and –300ER series airplanes that do not use rechargeable lithium ion batteries.

Issued in Renton, Washington, on December 10, 2013.

**John P. Piccola, Jr.,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2013–30232 Filed 12–18–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 25

**[Docket No. FAA–2013–1051; Notice No. 25–512–SC]**

## Special Conditions: Bombardier Inc., Models BD–500–1A10 and BD–500–1A11 Series Airplanes; Seats With Non-Traditional, Large, Non-Metallic Panels

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued for the Bombardier Inc. Models BD–500–1A10 and BD–500–1A11 series airplanes. These airplanes will have a novel or unusual design feature associated with seats that include non-traditional, large, non-metallic panels that would affect survivability during a post-crash fire event. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These 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:** The effective date of these special conditions is December 19, 2013. We must receive your comments by February 3, 2014.

**ADDRESSES:** Send comments identified by docket number FAA–2013–1051 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 or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

*Privacy:* The FAA will post all comments it receives, without change, to *http://www.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:** Alan Sinclair, FAA, Airplane and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98057–3356; telephone 425–227–2195; facsimile 425–227–1149.

**SUPPLEMENTARY INFORMATION:** The FAA has determined that notice of, and opportunity for prior public comment on, these special conditions are impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon publication in the **Federal Register**.

### 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 will consider all comments we receive on or before the closing date for comments. We may change these special conditions based on the comments we receive.

### Background

On December 10, 2009, Bombardier Inc. applied for a type certificate for their new Models BD–500–1A10 and BD–500–1A11 series airplanes (hereafter collectively referred to as ''C-series.'' The C-series airplanes are swept-wing monoplanes with a pressurized cabin. They share an identical supplier base and significant common design elements. The fuselage is aluminum alloy material, blended double-bubble fuselage, sized for nominal 5-abreast seating. Each airplane's powerplant consists of two under wing Pratt and Whitney PW1524G ultra-high bypass, geared turbofan engines. Flight controls are fly-by-wire flight with two passive/uncoupled side sticks. Avionics includes five landscape primary cockpit displays. The dimension of the airplanes encompass a wingspan of 115 feet; a height of 37.75 feet; and a length of 114.75 feet for the Model BD–500–1A10 and a length of 127 feet for the Model BD–500–1A11. Passenger capacity is designated as 110 for the Model BD–500–1A10 and 125 for the Model BD–500–1A11. Maximum takeoff weight is 131,000 pounds for the Model BD–500–1A10 and 144,000 pounds for the Model BD–500–1A11. Maximum takeoff thrust is 21,000 pounds for the

Model BD–500–1A10 and 23,300 pounds for the Model BD–500–1A11. Range is 3,394 miles (5,463 kilometers) for both models of airplanes. Maximum operating altitude is 41,000 feet for both model airplanes.

The interior arrangements of the C-series airplanes will include passenger and cabin crew seats in the passenger cabin that incorporate non-traditional, large, non-metallic panels in lieu of traditional metal frame and foam/fabric components.

The applicable airworthiness regulations, Title 14, *Code of Federal Regulations* (14 CFR) part 25, do not require seats to meet the more stringent flammability standards required of large, non-metallic panels in the cabin interior. At the time the applicable rules were written, seats were designed with a metal frame covered by fabric, not with large, non-metallic panels. Seats also met the then recently adopted standards for flammability of seat cushions. With the seat design being mostly fabric and metal, the contribution to a fire in the cabin had been minimized and was not considered a threat. For these reasons, seats did not need to be tested to heat release and smoke emission requirements.

Seat designs have now evolved to occasionally include non-traditional, large, non-metallic panels. Taken in total, the surface area of these panels is on the same order as the sidewall and overhead stowage bin interior panels. To provide the level of passenger protection established by the airworthiness standards, these non-traditional, large, non-metallic panels in the cabin must meet the standards of 14 CFR, part 25, appendix F, parts IV and V, heat release and smoke emission requirements.

**Type Certification Basis**

Under the provisions of 14 CFR 21.17, Bombardier Inc. must show that the C-series airplanes meet the applicable provisions of 14 CFR part 25 as amended by Amendments 25–1 through 25–129 thereto.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the C-series airplanes 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 C-series airplanes 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 C-series airplanes will incorporate the following novel or unusual design features:

These models offer interior arrangements that include passenger seats that incorporate non-traditional, large, non-metallic panels in lieu of the traditional metal frame covered by fabric. The flammability properties of these panels have been shown to significantly affect the survivability of the cabin in the case of fire. These seats are considered a novel design for transport category airplanes that include Amendment 25–61 and Amendment 25–66 in the certification basis, and were not considered when those airworthiness standards were established.

The existing regulations do not provide adequate or appropriate safety standards for seat designs that incorporate non-traditional, large, non-metallic panels in their designs. In order to provide a level of safety that is equivalent to that afforded to the balance of the cabin, additional airworthiness standards, in the form of special conditions, are necessary. These special conditions supplement § 25.853. The requirements contained in these special conditions consist of applying the identical test conditions required of all other large panels in the cabin to seats with non-traditional, large, non-metallic panels.

**Definition of ''Non-Traditional, Large, Non-Metallic Panel''**

A non-traditional large panel, in this case, is defined as a panel with exposed-surface areas greater than 1.5 $ft^2$ installed per seat place. The panel may consist of either a single component or multiple components in a concentrated area. Examples of parts of the seat where these non-traditional panels are installed include, but are not limited to, seat backs, bottoms and leg/foot rests, kick panels, back shells, credenzas and associated furniture. Examples of traditional, exempted parts of the seat include: Arm caps, armrest close-outs such as end bays and center consoles, food trays, video monitors and shrouds.

**Clarification of ''Exposed''**

Exposed is considered to include those panels directly exposed to the passenger cabin in the traditional sense, plus those panels enveloped such as by a dress cover. Traditional fabrics or leathers currently used on seats are excluded from the special conditions. These materials must still comply with § 25.853(a) and (c) if used as a covering for a seat cushion or § 25.853(a) if installed elsewhere on the seat. Large non-metallic panels covered with traditional fabrics or leathers will be tested without their coverings.

**Discussion**

In the early 1980s, the FAA conducted extensive research on the effects of post-crash flammability in the passenger cabin. As a result of this research and service experience, the FAA adopted new standards for interior surfaces associated with large surface area parts. Specifically, the rules require measurement of heat release and smoke emission (part 25, appendix F, parts IV and V) for the affected parts. Heat release has been shown to have a direct correlation with post-crash fire survival time. Materials that comply with the standards (i.e., § 25.853 *Compartment interiors,* as amended by Amendment 25–61 and Amendment 25–66) extend survival time by approximately two minutes over materials that do not comply.

At the time these standards were written, the potential application of the requirements of heat release and smoke emission to seats was explored. The seat frame itself was not a concern because it was primarily made of aluminum, and there were only small amounts of non-metallic materials. It was determined that the overall effect on survivability was negligible, whether or not the food trays met the heat release and smoke requirements. The requirements therefore did not address seats. The preambles to both the Notice of Proposed Rule Making, Notice No. 85–10 (50 FR 15038, April 16, 1985) and the Final Rule at Amendment 25–61 (51 FR 26206, July 21, 1986), specifically note that seats were excluded ''because the recently-adopted standards for flammability of seat cushions will greatly inhibit involvement of the seats.''

Subsequently, the Final Rule at Amendment 25–83 (60 FR 6615, March 6, 1995) clarified the definition of

minimum panel size: ''It is not possible to cite a specific size that will apply in all installations; however, as a general rule, components with exposed-surface areas of 1 ft² or less may be considered small enough that they do not have to meet the new standards. Components with exposed surface areas greater than 2 ft² may be considered large enough that they do have to meet the new standards. Those with exposed-surface areas greater than 1 ft², but less than 2 ft², must be considered in conjunction with the areas of the cabin in which they are installed before a determination could be made.''

In the late 1990s, the FAA issued Policy Memorandum 97–112–39, Guidance for Flammability Testing of Seat/Console Installations, October 17, 1997. That memo was issued when it became clear that seat designs were evolving to include large, non-metallic panels with surface areas that would impact survivability during a cabin fire event, comparable to partitions or galleys. The memo noted that large surface area panels must comply with heat release and smoke emission requirements, even if they were attached to a seat.

If the FAA had not issued such policy, seat designs could have been viewed as a loophole to the airworthiness standards that would result in an unacceptable decrease in survivability during a cabin fire event.

In October 2004, an issue was raised regarding the appropriate flammability standards for passenger seats that incorporated non-traditional, large, non-metallic panels in lieu of the traditional metal covered by fabric. The Seattle Aircraft Certification Office and Transport Standards Staff reviewed this design and determined that it represented the kind and quantity of material that should be required to pass the heat release and smoke emissions requirements. We have determined that special conditions would be promulgated to apply the standards defined in § 25.853(d) to seats with large, non-metallic panels in their design.

## Applicability

As discussed above, these special conditions are applicable to the Bombardier Models BD–500–1A10 and BD–500–1A11 series airplanes. Should Bombardier Inc. 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 two model series of airplanes. It is not a rule of general applicability.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, because a delay would significantly affect the certification of the airplane, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon publication in the **Federal Register**. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

## List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

## The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Bombardier Inc. Models BD–500–1A10 and BD–500–1A11 series airplanes.

## Seats With Non-Traditional, Large, Non-Metallic Panels

1. Compliance with Title 14 CFR part 25, appendix F, parts IV and V, heat release and smoke emission, is required for seats that incorporate non-traditional, large non-metallic panels that may either be a single component or multiple components in a concentrated area in their design.

2. The applicant may designate up to and including 1.5 ft² of non-traditional, non-metallic panel material per seat place that does not have to comply with No. 1. A triple seat assembly may have a total of 4.5 ft² excluded on any portion of the assembly (e.g., outboard seat place 1 ft², middle 1 ft², and inboard 2.5 ft²).

3. Seats need not meet the test requirements of 14 CFR part 25, appendix F, parts IV and V when installed in compartments that are not otherwise required to meet these requirements. Examples include:

a. Airplanes with passenger capacities of 19 or less;

b. Airplanes that do not have smoke and heat release in their certification basis and do not need to comply with the requirements of 14 CFR 121.312; and

c. Airplanes exempted from smoke and heat release requirements.

4. Only airplanes associated with new seat certification programs approved after the effective date of these special conditions will be affected by the requirements in these special conditions. Previously certificated interiors on the existing airplane fleet and follow-on deliveries of airplanes with previously certificated interiors are not affected.

Issued in Renton, Washington, on December 11, 2013.

**John P. Piccola, Jr.,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2013–30234 Filed 12–18–13; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 25

**[Docket No. FAA–2013–1054; Notice No. 25–513–SC]**

## Special Conditions: Bombardier Inc., Models BD–500–1A10 and BD–500–1A11 Series Airplanes; Side Stick Controllers: Pilot Strength, Pilot Control Authority, and Pilot Control

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued for the Bombardier Inc. Models BD–500–1A10 and BD–500–1A11 series airplanes. These airplanes will have a novel or unusual design feature associated with side stick controllers for pitch and roll control instead of conventional wheels and columns. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These 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:** The effective date of these special conditions is December 19,

2013. We must receive your comments by February 3, 2014.

**ADDRESSES:** Send comments identified by docket number FAA–2013–1054 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 or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

*Privacy:* The FAA will post all comments it receives, without change, to *http://www.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:** Joe Jacobsen, FAA, Airplane and Flightcrew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–2011; facsimile 425–227–1149.

**SUPPLEMENTARY INFORMATION:** The substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon publication in the **Federal Register**.

## 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 will consider all comments we receive on or before the closing date for comments. We may change these special conditions based on the comments we receive.

## Background

On December 10, 2009, Bombardier Inc. applied for a type certificate for their new Models BD–500–1A10 and BD–500–1A11 series airplanes (hereafter collectively referred to as ''C-series.'' The C-series airplanes are swept-wing monoplanes with a pressurized cabin. They share an identical supplier base and significant common design elements. The fuselage is aluminum alloy material, blended double-bubble fuselage, sized for nominal 5-abreast seating. Each airplane's powerplant consists of two under wing Pratt and Whitney PW1524G ultra-high bypass, geared turbofan engines. Flight controls are fly-by-wire flight with two passive/uncoupled side sticks. Avionics includes five landscape primary cockpit displays. The dimension of the airplanes encompass a wingspan of 115 feet; a height of 37.75 feet; and a length of 114.75 feet for the Model BD–500–1A10 and a length of 127 feet for the Model BD–500–1A11. Passenger capacity is designated as 110 for the Model BD–500–1A10 and 125 for the Model BD–500–1A11. Maximum takeoff weight is 131,000 pounds for the Model BD–500–1A10 and 144,000 pounds for the Model BD–500–1A11. Maximum takeoff thrust is 21,000 pounds for the Model BD–500–1A10 and 23,300 pounds for the Model BD–500–1A11. Range is 3,394 miles (5,463 kilometers) for both models of airplanes. Maximum operating altitude is 41,000 feet for both model airplanes.

The Bombardier C-series airplanes will use side stick controllers for pitch and roll control. Regulatory requirements pertaining to conventional wheel and column, such as pilot strength and controllability, are not directly applicable for the side stick. In addition, pilot control authority may be uncertain because the side sticks are not mechanically interconnected as with conventional wheel and column controls.

## Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.17, Bombardier Inc. must show that the C-series airplanes meet the applicable provisions of 14 CFR part 25 as amended by Amendments 25–1 through 25–129 thereto.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the C-series airplanes 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 C-series airplanes 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 C-series airplanes will incorporate the following novel or unusual design features: Side stick controllers for pitch and roll control, which are not mechanically interconnected as with conventional wheel and column controls. These airplanes also have a fly-by-wire electronic flight control system. This system provides an electronic interface between the pilot's flight controls and the flight control surfaces for both normal and failure states, and it generates the actual surface commands that provide for stability augmentation and control about all three airplane axes. In addition, pilot control authority may be uncertain, because the side sticks are not mechanically interconnected as with conventional wheel and column controls.

## Discussion

Current FAA regulations do not specifically address the use of side stick controllers for pitch and roll control.

The unique features of the side stick must therefore be demonstrated through flight and simulator tests to have suitable handling and control characteristics when considering the following:

1. The handling qualities tasks/requirements of the C-series airplanes special conditions and other part 25 stability, control, and maneuverability requirements, including the effects of turbulence.

2. General ergonomics: Arm rest comfort and support, local freedom of movement, displacement angle suitability, and axis harmony.

3. Inadvertent input in turbulence.

4. Inadvertent pitch-roll cross talk.

These requirements are elaborated upon in these special conditions, which 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.

The FAA Handling Qualities Rating Method (HQRM) in Appendix 5 of Advisory Circular 25–7C, *Flight Test Guide for Certification of Transport Category Airplanes,* may be used to show compliance.

## Applicability

As discussed above, these special conditions are applicable to the Bombardier Models BD–500–1A10 and BD–500–1A11 series airplanes. Should Bombardier Inc. 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 two model series of airplanes. It is not a rule of general applicability.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, the FAA has determined that prior public notice and comment are unnecessary, and good cause exists for adopting these special conditions upon publication in the **Federal Register**. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

## List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

## The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Bombardier Inc. Models BD–500–1A10 and BD–500–1A11 series airplanes.

In the absence of specific requirements for side stick controllers, the following apply:

1. *Pilot strength:* In lieu of the ''strength of pilots'' limits shown in § 25.143(c) for pitch and roll, and in lieu of specific pitch force requirement of §§ 25.145(b) and 25.175(d), it must be shown that the temporary and maximum prolonged force levels for the side stick controllers are suitable for all expected operating conditions and configurations, whether normal or non-normal.

2. *Pilot control authority:* The electronic side stick controller coupling design must provide for corrective and/or overriding control inputs by either pilot with no unsafe characteristics. Annunciation of the controller status must be provided and must not be confusing to the flightcrew.

3. *Pilot control:* It must be shown by flight tests that the use of side stick controllers does not produce unsuitable pilot-in-the-loop control characteristics when considering precision path control/tasks and turbulence. In addition, pitch and roll control force and displacement sensitivity must be compatible, so that normal inputs on one control axis will not cause significant unintentional inputs on the other.

Issued in Renton, Washington, on December 12, 2013.

**John P. Piccola, Jr.,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2013–30230 Filed 12–18–13; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### 15 CFR Parts 730, 732, 734, 736, 738, 740, 742, 743, 744, 745, 746, 747, 748, 750, 752, 754, 756, 758, 760, 762, 764, 766, 768, 770, 772, and 774

**[Docket No. 131114960–3960–01]**

**RIN 0694–AG01**

## Updated Statements of Legal Authority for the Export Administration Regulations

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Final rule.

**SUMMARY:** This rule updates the Code of Federal Regulations (CFR) legal authority paragraphs in the Export Administration Regulations (EAR) to include the citations to five Presidential notices extending emergencies declared pursuant to the International Emergency Economic Powers Act. This is a procedural rule that only updates authority paragraphs of the EAR. It does not alter any right, obligation or prohibition that applies to any person under the EAR.

**DATES:** The rule is effective December 19, 2013.

**FOR FURTHER INFORMATION CONTACT:** William Arvin, Regulatory Policy Division, Bureau of Industry and Security, Telephone: (202) 482–2440.

**SUPPLEMENTARY INFORMATION:**

## Background

Authority for some provisions of the EAR rests, in part, on executive orders in which the President, using his authority under the International Emergency Economic Powers Act, declares an emergency and on annual notices extending those emergencies. This rule updates the authority citation paragraphs in the Code of Federal Regulations parts that comprise the Export Administration Regulations to cite five such annual notices. The five notices, the executive orders to which they relate, and the EAR parts affected by each notice are set forth below.

The notice of January 17, 2013, 78 FR 4303 (January 22, 2013) extended the emergency declared in Executive Order 12947 of January 23, 1995—National Emergency With Respect to Terrorists Who Threaten to Disrupt the Middle East Process, 60 FR 5079, 3 CFR, 1995 Comp., p. 356. This rule revises the authority paragraphs of parts 730 and 744 to cite that notice.

The notice of May 7, 2013, 78 FR 27301 (May 9, 2013) extended the

emergency declared in Executive Order 13338 of May 11, 2004—National Emergency With Respect to the Actions of the Government of Syria, 69 FR 26751, 3 CFR, 2004 Comp., p 168. This rule revises the authority paragraphs of parts 730, 736 and 746 to cite that notice.

The notice of August 8, 2013, 78 FR 49107 (August 12, 2013) extended the emergency declared in Executive Order 13222 of August 17, 2001—National Emergency with Respect to Export Control Regulations, 66 FR 44025, 3 CFR, 2001 Comp., p. 783. This rule revises the authority paragraphs of parts 730 through 744 and parts 746 through 774 to cite that notice.

The notice of September 18, 2013, 78 FR 58151 (September 20, 2013) extended the emergency declared in Executive Order 13224 of September 23, 2001—National Emergency With Respect to Persons Who Commit, Threaten To Commit, Or Support Terrorism, 66 FR 44025, 3 CFR, 2001 Comp., p. 783. This rule revises the authority paragraphs of parts 730 and 744 to cite that notice.

The notice of November 7, 2013, 78 FR 67289 (November 12, 2013) extended the emergency declared in Executive Order 12939 of November 14, 1994—National Emergency With Respect to Weapons of Mass Destruction, 59 FR 59099, 3 CFR, 1994 Comp., p. 950. This rule revises the authority citation paragraphs of parts 730, 734, 736, 742, 744 and 745 to cite that notice.

This rule is purely procedural, and makes no changes other than to revise CFR authority paragraphs for the purpose of making the authority citations current. It does not change the text of any section of the EAR, nor does it alter any right, obligation or prohibition that applies to any person under the EAR.

**Export Administration Act**

Since August 21, 2001, the Export Administration Act of 1979, as amended, has been in lapse. However, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013), and as extended by the Notice of August 8, 2013, 78 FR 49107 (August 12, 2013) has continued the EAR in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222 as amended by Executive Order 13637.

**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 to be not 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.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule does not involve any collection of information.

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

4. The Department finds that there is good cause under 5 U.S.C. 553(b)(3)(B) to waive the provisions of the Administrative Procedure Act requiring prior notice and the opportunity for public comment because they are unnecessary. This rule only updates legal authority citations. It clarifies information and is non-discretionary. This rule does not alter any right, obligation or prohibition that applies to any person under the EAR. Because these revisions are not substantive changes, it is unnecessary to provide notice and opportunity for public comment. In addition, the 30-day delay in effectiveness required by 5 U.S.C. 553(d) is not applicable because this rule is not a substantive rule. Because neither the Administrative Procedure Act nor any other law requires that notice of proposed rulemaking 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.

**List of Subjects**

*15 CFR Part 730*

Administrative practice and procedure, Advisory committees, Exports, Reporting and recordkeeping requirements, Strategic and critical materials.

*15 CFR Parts 732, 740, 748, 750, 752, and 758*

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

*15 CFR Part 734*

Administrative practice and procedure, Exports, Inventions and patents, Research, Science and technology.

*15 CFR Parts 736, 738, 770, and 772*

Exports.

*15 CFR Part 742*

Exports, Terrorism.

*15 CFR Part 743*

Administrative practice and procedure, Reporting and recordkeeping requirements.

*15 CFR Part 744*

Exports, Reporting and recordkeeping requirements, Terrorism.

*15 CFR Part 745*

Administrative practice and procedure, Chemicals, Exports, Foreign trade, Reporting and recordkeeping requirements

*15 CFR Parts 746 and 774*

Exports, Reporting and recordkeeping requirements.

*15 CFR Part 747*

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

*15 CFR Part 754*

Agricultural commodities, Exports, Forests and forest products, Horses, Petroleum, Reporting and recordkeeping requirements.

*15 CFR Part 756*

Administrative practice and procedure, Exports, Penalties.

*15 CFR Part 760*

Boycotts, Exports, Reporting and recordkeeping requirements.

*15 CFR Part 762*

Administrative practice and procedure, Business and industry, Confidential business information, Exports, Reporting and recordkeeping requirements.

*15 CFR Part 764*

Administrative practice and procedure, Exports, Law enforcement, Penalties.

*15 CFR Part 766*

Administrative practice and procedure, Confidential business information, Exports, Law enforcement, Penalties.

*15 CFR Part 768*

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements, Science and technology.

Accordingly, parts 730, 732, 734, 736, 738, 740, 742, 743, 744, 745, 746, 747, 748, 750, 752, 754, 756, 758, 760, 762, 764, 766, 768, 770, 772 and 774 of the EAR (15 CFR parts 730–774) are amended as follows:

## PART 730—[AMENDED]

■ 1. The authority citation for 15 CFR part 730 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 2151 note; 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 11912, 41 FR 15825, 3 CFR, 1976 Comp., p. 114; E.O. 12002, 42 FR 35623, 3 CFR, 1977 Comp., p. 133; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12214, 45 FR 29783, 3 CFR, 1980 Comp., p. 256; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 179; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 12981, 60 FR 62981, 3 CFR, 1995 Comp., p. 419; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p 168; E.O. 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013); Notice of January 17, 2013, 78 FR 4303 (January 22, 2013); Notice of May 7, 2013, 78 FR 27301 (May 9, 2013); Notice of August 8, 2013, 78 FR 49107 (August 12, 2013); Notice of September 18, 2013, 78 FR 58151 (September 20, 2013); Notice of November 7, 2013, 78 FR 67289 (November 12, 2013).

## PART 732—[AMENDED]

■ 2. The authority citation for 15 CFR part 732 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 8, 2013, 78 FR 49107 (August 12, 2013).

## PART 734—[AMENDED]

■ 3. The authority citation for 15 CFR part 734 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013); Notice of August 8, 2013, 78 FR 49107 (August 12, 2013); Notice of November 7, 2013, 78 FR 67289 (November 12, 2013).

## PART 736—[AMENDED]

■ 4. The authority citation for 15 CFR part 736 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 2151 note; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p. 168; Notice of May 7, 2013, 78 FR 27301 (May 9, 2013); Notice of August 8, 2013, 78 FR 49107 (August 12, 2013); Notice of November 7, 2013, 78 FR 67289 (November 12, 2013).

## PART 738—[AMENDED]

■ 5. The authority citation for 15 CFR part 738 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 8, 2013, 78 FR 49107 (August 12, 2013).

## PART 740—[AMENDED]

■ 6. The authority citation for 15 CFR part 740 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 7201 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 8, 2013, 78 FR 49107 (August 12, 2013).

## PART 742—[AMENDED]

■ 7. The authority citation for 15 CFR part 742 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 8, 2013, 78 FR 49107 (August 12, 2013); Notice of November 7, 2013, 78 FR 67289 (November 12, 2013).

## PART 743—[AMENDED]

■ 8. The authority citation for 15 CFR part 743 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013); 78 FR 16129 ; Notice of August 8, 2013, 78 FR 49107 (August 12, 2013).

## PART 744—[AMENDED]

■ 9. The authority citation for 15 CFR part 744 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of January 17, 2013, 78 FR 4303 (January 22, 2013) Notice of August 8, 2013, 78 FR 49107 (August 12, 2013); Notice of September 18, 2013, 78 FR 58151 (September 20, 2013); Notice of November 7, 2013, 78 FR 67289 (November 12, 2013).

## PART 745—[AMENDED]

■ 10. The authority citation for 15 CFR part 745 is revised to read as follows:

**Authority:** 50 U.S.C. 1701 *et seq.;* E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; Notice of November 7, 2013, 78 FR 67289 (November 12, 2013).

## PART 746—[AMENDED]

■ 11. The authority citation for 15 CFR part 746 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 287c; Sec 1503, Pub. L. 108–11, 117 Stat. 559; 22 U.S.C. 6004; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p. 168; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Presidential Determination 2007–7 of December 7, 2006, 72 FR 1899 (January 16, 2007); Notice of May 7, 2013, 78 FR 27301 (May 9, 2013); Notice of August 8, 2013, 78 FR 49107 (August 12, 2013).

## PART 747—[AMENDED]

■ 12. The authority citation for 15 CFR part 747 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* Sec 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 8, 2013, 78 FR 49107 (August 12, 2013).

## PART 748—[AMENDED]

■ 13. The authority citation for 15 CFR part 748 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 8, 2013, 78 FR 49107 (August 12, 2013).

## PART 750—[AMENDED]

■ 14. The authority citation for 15 CFR part 750 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* Sec 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013); Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 8, 2013, 78 FR 49107 (August 12, 2013).

## PART 752—[AMENDED]

■ 15. The authority citation for 15 CFR part 752 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 8, 2013, 78 FR 49107 (August 12, 2013).

## PART 754—[AMENDED]

■ 16. The authority citation for 15 CFR part 754 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 30 U.S.C. 185(s), 185(u); 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; E.O. 11912, 41 FR 15825, 3 CFR, 1976 Comp., p. 114; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 8, 2013, 78 FR 49107 (August 12, 2013).

## PART 756—[AMENDED]

■ 17. The authority citation for 15 CFR part 756 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 8, 2013, 78 FR 49107 (August 12, 2013).

## PART 758—[AMENDED]

■ 18. The authority citation for 15 CFR part 758 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 8, 2013, 78 FR 49107 (August 12, 2013).

## PART 760—[AMENDED]

■ 19. The authority citation for 15 CFR part 760 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 8, 2013, 78 FR 49107 (August 12, 2013).

## PART 762—[AMENDED]

■ 20. The authority citation for 15 CFR part 762 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 8, 2013, 78 FR 49107 (August 12, 2013).

## PART 764—[AMENDED]

■ 21. The authority citation for 15 CFR part 764 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 8, 2013, 78 FR 49107 (August 12, 2013).

## PART 766—[AMENDED]

■ 22. The authority citation for 15 CFR part 766 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 8, 2013, 78 FR 49107 (August 12, 2013).

## PART 768—[AMENDED]

■ 23. The authority citation for 15 CFR part 768 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 8, 2013, 78 FR 49107 (August 12, 2013).

## PART 770—[AMENDED]

■ 24. The authority citation for 15 CFR part 770 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 8, 2013, 78 FR 49107 (August 12, 2013).

## PART 772—[AMENDED]

■ 25. The authority citation for 15 CFR part 772 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 8, 2013, 78 FR 49107 (August 12, 2013).

## PART 774—[AMENDED]

■ 26. The authority citation for 15 CFR part 774 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 8, 2013, 78 FR 49107 (August 12, 2013).

Dated: December 11, 2013.

**Kevin J. Wolf,**

*Assistant Secretary for Export Administration.*

[FR Doc. 2013–30116 Filed 12–18–13; 8:45 am]

BILLING CODE 3510–33–P

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## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### 15 CFR Parts 730, 740, 744, 756, 758, and 762

**[Docket No. 20524116–3986–02]**

**RIN 0694–AF70**

### Revisions to the Export Administration Regulations (EAR): Unverified List (UVL)

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Final rule.

**SUMMARY:** The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) by: Requiring exporters to file an Automated Export System (AES) record for all exports subject to the EAR involving a party or parties to the transaction who are listed on the Unverified List (the ''Unverified List'' or UVL); suspending the availability of license exceptions for exports, reexports, and transfers (in-country) involving a party or parties to the transaction who are listed on the UVL; requiring exporters, reexporters, and transferors to obtain a UVL statement from a party or parties to the transaction who are listed on the UVL before proceeding with exports, reexports, and transfers (in-country) involving items subject to the EAR, but where the item does not require a license, i.e., No License Required (NLR); publishing the UVL in the EAR; and adding to the EAR the procedures to request removal or modification of a UVL entry.

These changes to the UVL enhance the U.S. Government's ability to verify the *bona fides* of parties to exports,

reexports, or transfers (in-country) of items subject to the EAR and provide the U.S. Government increased visibility into such exports, reexports, and transfers involving persons whose *bona fides* could not be verified.

**DATES:** *Effective Date:* This rule is effective: January 21, 2014.

**FOR FURTHER INFORMATION CONTACT:** Kevin Kurland, Director, Office of Enforcement Analysis, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–2385 or by email at *Kevin.Kurland@bis.doc.gov.*

**SUPPLEMENTARY INFORMATION:**

## Background

On June 14, 2002, the Bureau of Industry and Security (''BIS'') published a notice in the **Federal Register** (67 FR 40910) establishing (the ''Unverified List'' or ''UVL''), a list of persons in foreign countries who were parties to past export transactions with respect to which pre-license checks or post-shipment verifications could not be conducted for reasons outside the control of the U.S. Government, reasons such as lack of cooperation by the host government authority, the end user, or the ultimate consignee. That **Federal Register** notice also indicated that BIS may add to the UVL names of persons that BIS discovers are affiliated with a person on the UVL by virtue of ownership, control, position of responsibility, or other affiliation or connection in the conduct of trade or business. Since that time, BIS has issued subsequent notices that added to or removed persons from the UVL, as circumstances have warranted. Prior to publication of this rule, the UVL was published in the **Federal Register** in its entirety and updated as foreign persons are added to or removed from that list. The UVL is also available on the BIS Web site at *http://www.bis.doc.gov/enforcement/unverifiedlist/unverified_parties.html.*

The participation of a person listed on the UVL in any proposed transaction raises a ''red flag'' for purposes of the ''Know Your Customer'' guidance set forth in Supplement No. 3 to Part 732 of the EAR. *See* 67 FR 40910 (June 14, 2002) and 69 FR 42652 (July 16, 2004). Under that guidance, whenever there is a ''red flag,'' exporters have an affirmative duty to inquire, verify, or otherwise satisfy themselves that the transaction does not involve a proliferation activity prohibited by Part 744 and does not violate other provisions of the EAR.

On July 16, 2004, BIS expanded the criteria for adding persons to the UVL to include situations in which BIS is not able to verify the existence or authenticity of the end user, intermediate consignee, ultimate consignee, or other party to an export transaction.

On August 21, 2008 (73 FR 49311), BIS expanded the scope of reasons to add persons to the Entity List. That rule amended Section 744.11 of the EAR to provide illustrative examples of the types of conduct that the U.S. Government could determine are contrary to U.S. national security or foreign policy interests for purposes of changes to the Entity List. One example listed in that section is, ''[p]reventing accomplishment of an end use check conducted by or on behalf of BIS or the Directorate of Defense Trade Controls of the Department of State by: Precluding access to; refusing to provide information about; or providing false or misleading information about parties to the transaction or the item to be checked.'' That notice also included a discussion of the apparent overlap in criteria for adding foreign persons to the Entity List and the Unverified List based on a lack of cooperation with an end-use check.

End-use checks sometimes cannot be completed for reasons unrelated to the cooperation of the foreign party subject to the end-use check. In such situations, BIS has added parties to the UVL where BIS or federal officials acting on BIS's behalf have been unable to verify a foreign person's *bona fides* (i.e., legitimacy and reliability relating to the end use and end user of items subject to the EAR), where an end-use check, such as a pre-license check (PLC) or a post-shipment verification (PSV), cannot be completed satisfactorily for such purposes for reasons outside the U.S. Government's control. For example, BIS sometimes initiates end-use checks and cannot find a foreign party at the address indicated on export documents, and cannot locate the party by telephone or email. Additionally, BIS sometimes is unable to conduct end-use checks when host government agencies do not respond to requests to conduct end-use checks or refuse to schedule them in a timely manner. Under these circumstances, there may not be a basis to add the foreign persons at issue to the Entity List, particularly if there is no nexus between the foreign person's conduct and the failure to produce a complete, accurate and useful check (see § 744.11(b)(4) of the EAR (Criteria for revising the Entity List)).

Furthermore, BIS sometimes conducts end-use checks but cannot verify the *bona fides* of a foreign party. For example, BIS may be unable to verify *bona fides* if during the conduct of an end-use check a recipient of items subject to the EAR is unable to produce those items for visual inspection or provide sufficient documentation or other evidence to confirm the disposition of those items. The inability of foreign persons subject to end-use checks to demonstrate their *bona fides* raises concerns about the suitability of such persons as participants in future exports, reexports, or transfers (in-country) and indicates a risk that items subject to the EAR may be diverted to prohibited end uses and/or end users. However, BIS may have insufficient information to establish that such persons are involved in activities described in § 744.11 of the EAR, preventing the placement of the persons on the Entity List. In such circumstances, those foreign persons may be added to the Unverified List.

On September 11, 2013 (78 FR 55664), BIS published a proposed rule to address the issues outlined above. The public comment period for the proposed rule closed on October 11, 2013. BIS received one (1) public comment in response. The comment can be found on the BIS Web site at *http://efoia.bis.doc.gov/index.php/electronic-foia/index-of-documents.*

The recommendations set forth in the comment were broken into two categories: ''Suggestions regarding the language of several affected paragraphs'' and ''Clarify the government's position regarding the applicability of this proposed rule to intangible exports of technology and software.'' The first category included recommended changes to clarify or strengthen the proposed rule by modifying proposed: § 744.15(a) to state that exports, reexports, or transfers (in-country) subject to the EAR involving parties to the transaction who are listed on the UVL *must* be made in accordance with the criteria set forth in proposed § 744.15; § 744.15(b)(2) and (b)(2)(i) to require UVL statement signers to provide their titles and all relevant UVL party addresses on the Statement, and sign *and* date the Statement; § 744.15(c)(2) to state that BIS *will* remove persons from the UVL when their *bona fides* are validated; and § 758.1(b)(8) to remove the phrase ''regardless of value or destination.'' BIS accepted the recommendations covering § 744.15(a), (b)(2), (b)(2)(i), and (c)(2). BIS did not accept the suggested change to § 758.1(b)(8). While BIS agrees that ''all exports'' is unlimited in scope, BIS does not believe the modifying phrase ''regardless of value or destination'' is unnecessarily redundant. BIS is including this phrase to avoid confusion with the general Foreign Trade

Regulations exemptions for Automated Export System filings involving low value shipments and exports to Canada not subject to a BIS license. The modifier is included to clarify that the UVL rule requires filings for any shipments to UVL persons, including any low value shipments and exports to Canada. This clarifying language also appears in § 758.1(b)(1) and (b)(2). BIS understands that the removal of the modifier would not change the scope, but it was included to be consistent with other parts of the EAR.

The second public comment category suggested that BIS clarify whether the proposed rule applies to intangible technology and software. BIS intends the provisions of § 744.15 to apply to intangible exports, reexports, and transfers (in-country) of software and technology to persons listed on the UVL. Therefore, BIS made edits to the regulatory text and the preamble to indicate that the newly implemented requirements are applicable to commodities, software, and technology. The term ''item'' is defined in § 772.1 to include technology and software. The only other word in the regulatory text that could have been interpreted as restricted to tangible commodities was ''shipment.'' Therefore, BIS removed ''shipment'' and replaced it with ''export, reexport, and transfer (in-country).'' This, coupled with the general EAR definition of item, should make it clear that these new requirements are applicable to technology and software, as well as commodities. However, the requirement to file an AES record ''for all exports'' cannot be fulfilled in the case of intangible technology or software exports. In any case, these exports are exempt from AES filings. Therefore, while the regulation applies to technology and software, in addition to commodities, the amendment to § 758.1(b)(8) only applies to exports of tangible items.

BIS also amended the proposed text of § 744.15(b)(2)(iv). As proposed, the UVL statement required cooperation with a pre-license check. However, under the terms of paragraph (b) of that section, the UVL statement is only necessary when no license is required. As such, this final rule omits the requirement that the UVL statement include an agreement for a pre-license check because no license is required under these circumstances. The UVL statement does retain the proposed rule's requirement that an end-use check, including a post-shipment verification, must be agreed to and cooperated with.

**Reasons for This Rule**

This rule eliminates ambiguity for listing foreign persons on the UVL and the Entity List by removing lack of cooperation by a foreign party as a basis for revising the UVL. Where the U.S. Government determines that the foreign party's lack of cooperation prevented the accomplishment of an end-use check, BIS may add such parties to the Entity List on the basis of § 744.11(b)(4) of the EAR.

Specifically, BIS is amending the EAR to include the criteria for listing persons in the UVL, including examples of actions that could result in a person being listed on the UVL. These amendments, consistent with past practice, will apply to foreign persons who are parties to an export, reexport, and transfer (in-country) subject to the EAR if BIS, or federal officials acting on BIS's behalf, cannot verify the *bona fides* of such persons because an end-use check, such as a PLC or a PSV, cannot be completed satisfactorily for reasons outside of the U.S. Government's control. Examples of actions that could result in a person being listed on the UVL include: The subject of the check is unable to demonstrate the disposition of items during an end-use check; the existence or authenticity of the subject of an end-use check cannot be verified because, *inter alia,* the subject of the check cannot be located or contacted; or lack of cooperation by the host government authority.

In addition, BIS is no longer considering affiliation with a person on the UVL as a basis for adding foreign persons without further substantiation (e.g., conduct of an end-use check at the affiliate). A determination to list a particular person on the UVL is premised on BIS's inability to evaluate the *bona fides* of that person by conducting an end-use check. The fact that another, separate person is affiliated with a person on the UVL will no longer be considered a dispositive criterion forming the basis for listing the affiliate. If BIS discovers a foreign person may be affiliated with a person listed on the UVL, BIS will initiate an end-use check on an export, reexport, or transfer (in-country) to which that person was a party. That person may be listed on the UVL if BIS is unable to verify that person's *bona fides* through an end-use check in accordance with the criteria described above.

BIS is implementing these changes to the UVL to address concerns raised by the public in the past about how to address a ''red flag'' identified by the U.S. Government. Accordingly, this regulation provides guidance on how exporters can conduct business with a UVL person. Any license requirements for exports, reexports, or transfers (in-country) of items subject to the EAR continue to apply. For items not subject to a license requirement, the exporter, reexporter, or transferor (in-country) must receive from the UVL-listed person a UVL statement prior to the export, reexport, or transfer (in-country), in which the UVL-listed party certifies the end use, end user, and country of ultimate destination of items subject to the EAR and consents to an end-use check by the U.S. Government. The end-use check may include checks to any transaction to which that person was a party for items subject to the EAR exported, reexported, or transferred (in country) in the last five years, to enable the U.S. Government to satisfy earlier concerns with the UVL-listed party as well as its concerns with the current transaction.

*Changes to the EAR*

BIS is amending the EAR by: (1) Requiring exporters to file an AES record for all exports subject to the EAR involving persons listed on the UVL; (2) suspending the availability of license exceptions for exports, reexports, and transfers (in-country) involving persons listed on the UVL; (3) requiring exporters, reexporters and transferors (in-country) to obtain a UVL statement from UVL-listed persons before proceeding with exports, reexports, and transfers (in-country) that are not otherwise subject to a license requirement under the EAR involving such persons; (4) adding the UVL to Supplement No. 6 to Part 744, and (5) adding to the EAR procedures to request removal or modification of a UVL entry.

The first of these changes, requiring the filing of an AES record for all exports to which a person listed on the UVL is a party, as described in § 748.5(d)–(f) of the EAR, increases U.S. Government awareness of exports involving U.S.-origin items to such persons. Under current regulations, an AES filing is only required if an export license is also required or if the transaction is above a certain value. This rule, through a change to § 758.1, implements a requirement to submit an AES filing for all exports, regardless of value or destination, if a person involved in the transaction as described above is listed on the UVL.

Secondly, under § 740.2, this rule suspends license exceptions for exports, reexports, and transfers (in-country) of U.S.-origin items to persons listed on the UVL. The change increases U.S. Government insight into certain

transactions involving such persons of items on the Commerce Control List (set forth in Supplement No. 1 to Part 774 of the EAR) by requiring a license for those transactions. This suspension is also consistent with § 740.2(b) of the EAR, which states, ''all License Exceptions are subject to revision, suspension, or revocation, in whole or in part, without notice.''

Third, this rule requires exporters to obtain a signed and dated UVL statement from UVL-listed persons before proceeding with any export, reexport, or transfer (in-country) involving such persons, when such persons are parties to a transaction as described in § 748.5 of the EAR, and when the item at issue is subject to the EAR but does not require a license under the EAR.

That section also requires that the statement certify the end use, end user, and country of ultimate destination of the items, and set forth the person's consent to an end-use check by the U.S. Government. To facilitate any future end-use checks by the U.S. Government, the UVL-listed person must also include its complete contact information in the UVL statement, including all relevant physical addresses (e.g., shipping address, corporate address, intended end user address, etc.). This statement establishes that the UVL-listed party knows that it is required to comply with the EAR and agrees to an end-use check. The statement also provides the U.S. Government with some assurance that the U.S.-origin item will be delivered to an identified end user and end use and that the transaction will comply with the EAR. In the absence of such compliance, the UVL statement will assist the U.S. Government's ability to take enforcement action.

The suspension of license exceptions, which will allow prior review by the U.S. Government of exports, reexports, and transfers (in-country) of certain controlled items involving persons listed on the UVL, coupled with the requirement for exporters to obtain a UVL statement for exports, reexports, and transfers (in-country) involving such persons of items not subject to a license requirement, provides greater guidance on what steps are necessary in order to undertake an export, reexport, or re-transfer (in-country) of items subject to the EAR involving a party to the transaction who is listed on the UVL.

Specifically, when an export, reexport, or transfer (in-country) is otherwise eligible for a license exception, if a party to the transaction as described in § 748.5 of the EAR is listed on the UVL, the use of license exceptions is not authorized. Under these circumstances, an exporter must apply to BIS for a license. If an export, reexport, or transfer (in-country) involving a person listed on the UVL is not subject to a license requirement under the EAR, the possible availability of a license exception does not arise. In such a case, an exporter may proceed with the export, reexport, or transfer (in-country) once the exporter obtains the signed UVL statement described herein and files an AES record in accordance with § 758.1 of the EAR, as amended. The signed UVL statement is not needed for transactions in which a license is required because BIS oversight of the transaction resulting from the grant of the license renders a UVL statement unnecessary.

Fourth, this rule adds the UVL to the EAR in Supplement No. 6 to Part 744, but removes all persons previously listed on the UVL. BIS will add persons to and remove them from the UVL whenever a decision is made in accordance with the criteria for revising the UVL set forth in § 744.15(c). Henceforth, when adding a person to the UVL, BIS will list the person's name and address, and the date on which the person was added to the UVL by publication in the **Federal Register**. Updates to the UVL will continue to be published in the **Federal Register**, and will remain available on the BIS Web site. The UVL will also continue to be included in the Consolidated Screening List, available at *www.export.gov.*

Supplement No. 6 to Part 744 (''the UVL'') contains the names and addresses of foreign persons who are or have been parties to a transaction, as that term is described in § 748.5 of the EAR, involving the export, reexport, or transfer (in-country) of items subject to the EAR, and whose *bona fides* BIS has been unable to verify through an end-use check. Any changes to the UVL will be published in the **Federal Register** as an amendment to the UVL.

In addition to adding the UVL to Supplement No. 6 to Part 744, this rule adds to the regulations an overview of the UVL, the conditions it imposes with respect to exports, reexports, and transfers (in-country) to listed persons, the criteria for revising the UVL, and the procedures for requesting removal or modification of a UVL entry.

BIS adds a person to the UVL under certain circumstances. For example, in some instances, BIS may not be able to conduct an end-use check, such as a PLC or a PSV, at all because, among other potential reasons, BIS was unable to locate or contact the subject of the check or the host government declined to schedule the check in a timely manner. Alternatively, BIS may not be able to complete a satisfactory end-use check because, *inter alia* the foreign party is unable to demonstrate its *bona fides* or the disposition of the items in question during the end-use check. In either circumstance, BIS may determine to add the foreign person to the UVL.

BIS removes a person listed on the UVL using certain procedures. The successful completion of an end-use check, or, in the limited circumstance where such a check cannot be completed due to lack of host government cooperation, a suitable alternative process to verify the *bona fides* of the foreign party at issue is a prerequisite for removing persons from the UVL. One illustrative example of alternative authentication could involve the U.S. exporter or license applicant visiting the foreign person subject to the end-use check, at that person's request, and providing sufficient information to the U.S. Government to verify the foreign person's *bona fides* and satisfy questions relating to the end use and end user of the items in question. Procedures for requesting an alternative process to verify the *bona fides* of a foreign person in this circumstance are identical to the procedures for requesting removal of a UVL listing, set forth in § 744.15 of the EAR.

If BIS confirms the *bona fides* of a listed person based on the criteria in § 744.15(b)(2) of the EAR, BIS will publish a final rule in the **Federal Register** removing that person from the UVL. A determination to remove a person from the UVL is independent of any determination BIS may make pursuant to § 744.11(b) of the EAR. Once a foreign person is removed from the UVL, the provisions in the EAR regarding persons listed on the Unverified List will no longer apply to that person though other provisions in the EAR will continue to apply as appropriate. BIS will regularly review the UVL for the purpose of identifying and implementing any needed corrections and updates.

Lastly, this rule modifies the procedures for requesting removal of a person listed on the UVL by adding decisions on requests to remove or modify a UVL entry to the list of administrative actions that are not subject to Part 756 appeals. Requests for removal of a UVL entry must be made in accordance with § 744.15(d) of the EAR. Decisions regarding the removal or modification of UVL listings will be made by the Deputy Assistant Secretary for Export Enforcement, based on a demonstration by the listed person of its *bona fides.*

*Amendment to Supplement No. 1 to Part 730*

Due to this rule's addition to the EAR of § 744.15 below, this rule also amends Supplement No. 1 to Part 730 of the EAR to include references to the two additional information collections: (1) The UVL statement and (2) requests to remove or modify listings on the UVL. The collection and retention of the UVL statement by private parties in connection with the export, reexport, or transfer (in-country) to a person listed on the UVL of items not subject to a license requirement under the EAR shall be made under Office of Management and Budget (OMB) control number 0694–0122 (''Licensing Responsibilities and Enforcement''). The submission of information to BIS by persons listed on the UVL in support of an appeal for removal a UVL listing will be made under OMB control number 0694–0134. Accordingly, this rule amends Supplement No. 1 to Part 730 of the EAR by adding a reference to new § 744.15 in connection with existing collection number 0694–0122, and by changing the title of existing collection number 0694–0134 to ''Procedure for parties on the Entity List or Unverified List to Request Removal or Modification of their Listing'' and adding a reference to new § 744.15 in connection with that collection number.

*Amendments to § 740.2*

This rule adds a new paragraph (a)(17) to § 740.2 ''Restrictions on all License Exceptions.'' This paragraph explains that license exceptions may not be used where a party to the transaction as described in § 748.5 of the EAR is listed on the Unverified List.

*New § 744.15 and Amendment to § 756.1*

This rule adds a new section to Part 744 to set forth the new provisions pertaining to persons listed on the UVL. New § 744.15 provides an overview of the UVL, the conditions it imposes with respect to exports, reexports, and transfers (in-country) to listed persons, and the criteria for revising the UVL. This new section also includes the procedures for requesting removal or modification of a person on the UVL.

This rule excludes appeals for removal of Unverified List entries from the provisions of Part 756 of the EAR. Requests for removal instead must made according to the procedures set forth in new § 744.15 of the EAR. Accordingly, paragraph (a)(3) of § 756.1 of the EAR is amended by adding a reference to decisions on requests to remove UVL entries made pursuant to new § 744.15 of the EAR. Although the proposed rule did not include a revision to § 744.1, this rule makes an inconsequential revision to § 744.1(a)(1), by adding a description of the new § 744.15 and a reference to the new Supplement No. 6 to Part 744.

*New Supplement No. 6 to Part 744*

The UVL is added to the EAR in Supplement No. 6 to Part 744. Each listing grouped by country, and accompanied by the person's address(es) as well as the **Federal Register** citation and date the person was added to the UVL. In addition, the UVL includes a citation to § 744.15, indicating that exports, reexports, and transfers (in-country) where parties to the transactions are listed on the Unverified List are subject to the provisions of § 744.15.

*Amendment to § 758.1*

This rule adds a new § 758.1(b)(8) of the EAR, which states that filing an AES record is required for all exports of items subject to the EAR where a party to the transaction as described in § 748.5(d)–(f) is listed on the Unverified List, regardless of value or destination.

*Amendment to § 762.2*

Section 762.2(b) of the EAR contains references to parts, sections, and supplements of the EAR which require the retention of records or contain recordkeeping provisions. New § 744.15 of the EAR contains a recordkeeping requirement related to the retention of UVL statements. Therefore, this rule modifies reserved paragraph § 762.2(b)(13) of the EAR to reference the UVL statement recordkeeping requirement in new § 744.15 of the EAR.

*Export Administration Act*

Since August 21, 2001, the Export Administration Act of 1979, as amended, has been in lapse. However, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013), and as extended by the Notice of August 8, 2013, 78 FR 49107 (August 12, 2013) has continued the EAR in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*). BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222 as amended by Executive Order 13637.

*Rulemaking Requirements*

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a ''significant regulatory action,'' under section 3(f) of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor is subject to a penalty for failure to comply with, a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under the following control numbers: 0694–0088, 0694–0122, 0694–0134, and 0694–0137. Specifically, BIS has requested a revision and extension of existing collection OMB 0694–0134 (Procedure for parties on the Entity List to Request Removal or Modification of their Listing) and non-substantive changes to OMB Control Numbers 0694–0088 (Simplified Network Application Processing and Multipurpose Application Form), 0694–0122 (Licensing Responsibilities and Enforcement), and 0694–0137 (License Exemptions and Exclusions).

This rule slightly increases public burden in a collection of information approved by OMB under control number 0694–0088, which authorizes, among other things, export license applications. The removal of license exceptions for listed parties on the Unverified List will result in increased license applications being submitted to BIS by exporters. Total burden hours associated with the Paperwork Reduction Act and OMB control number 0694–0088 are expected to increase minimally, as the suspension of license exceptions will only affect transactions involving parties listed on the Unverified List and not all export transactions. Since license exceptions are restricted from use, this rule decreases public burden in a collection of information approved by OMB under control number 0694–0137 minimally,

as this will only affect a very small number of individual listed parties. The increased burden under 0694–0088 is reciprocal to the decrease of burden under 0694–0137, and results in no change of burden to the public. This rule also increases public burden in a collection of information under OMB control number 0694–0122, as a result of the exchange of UVL statements between private parties, and under OMB control number 0694–0134 as a result of appeals from persons listed on the UVL for removal of their listing. The total increase in burden hours associated with both of these collections is expected to be minimal, as they involve a limited number of persons listed on the UVL.

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

4. The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities.

Number of Small Entities

Currently, BIS does not collect data on the size of entities that apply for and are issued export licenses. Although BIS is unable to estimate the exact number of small entities that will be impacted by this rule, it acknowledges that this rule will impact some unknown number. This rule will affect exporters and freight forwarders, with obligations to apply for export licenses, obtain and retain UVL statements, and/or file AES records in connection with exports, reexports, or transfers (in-country) in which a person listed on the UVL is a party to the transaction. These requirements apply to all entities proceeding with such transactions, regardless of size.

Economic Impact

BIS is unable to determine whether there are a substantial number of small entities affected by this rule. However, this rule is not expected to affect a disproportionate number of small entities because it is directed at a limited number of foreign persons and will impact all export transactions to these persons, regardless of whether the exports are made or intended to be made by small, medium, or large entities. BIS has administered the UVL based on listing criteria similar to those set forth in this rule since 2002. This rule will impact transactions involving persons listed on the UVL, which currently has 36 persons listed. Due to the limited number of persons expected to be maintained on the UVL, BIS estimates that the number of transactions involving these persons represents only a small fraction of the total number of transactions recorded in AES. BIS estimates that regulated entities will incur minimal economic burdens on transactions involving UVL persons as a result of this rule because there are few transactions involving such persons and for those transactions where they are involved, there is no monetary fee to apply for a BIS license or file a record in AES. Moreover, obtaining a signed UVL statement from UVL persons for items not subject to a license requirement will result in minimal burden to U.S. exporters, as the statement can simply be copied from the EAR and forwarded to the UVL person for review and signature. The maintenance of any such UVL statement also will have minimal burden on U.S. exporters as the EAR already has similar recordkeeping requirements under Section 762.2 of the EAR. As a result, the requirements of this rule will amount to very little economic burden.

For the reasons above, the Chief Counsel for Regulation certified that this rule will not have a significant economic impact on a substantial number of small entities.

No comments were received regarding the economic impact of this final rule. As a result, a final regulatory flexibility analysis is not required and one was not prepared.

**List of Subjects**

*15 CFR Part 730*

Administrative practice and procedure, Advisory committees, Exports, Reporting and recordkeeping requirements, Strategic and critical materials.

*15 CFR Part 740*

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

*15 CFR Part 744*

Exports, Reporting and recordkeeping requirements, Terrorism.

*15 CFR Part 756*

Appeals.

*15 CFR Part 758*

Export clearance requirements.

*15 CFR Part 762*

Recordkeeping.

Accordingly, Parts 730, 740, 744, 756, 758, and 762 of the Export Administration Regulations (15 CFR parts 730–774) are amended as follows:

## PART 730—[AMENDED]

■ 1. The authority citation for 15 CFR Part 730 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 2151 note; 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 11912, 41 FR 15825, 3 CFR, 1976 Comp., p. 114; E.O. 12002, 42 FR 35623, 3 CFR, 1977 Comp., p. 133; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12214, 45 FR 29783, 3 CFR, 1980 Comp., p. 256; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 179; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 12981, 60 FR 62981, 3 CFR, 1995 Comp., p. 419; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p 168; E.O. 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013); Notice of January 17, 2013, 78 FR 4303 (January 22, 2013); Notice of May 7, 2013, 78 FR 27301 (May 9, 2013); Notice of August 8, 2013, 78 FR 49107 (August 12, 2013); Notice of September 18, 2013, 78 FR 58151 (September 20, 2013) ; Notice of November 7, 2013, 78 FR 67289 (November 12, 2013).

■ 2. Supplement No. 1 to Part 730 is amended by:

■ a. Removing the phrase ''Part 758, and § 748.4'' and adding in its place ''§§ 744.15(b) and 748.4 and Part 758'' in the ''Reference in the EAR'' column of 0694–0122 row;

■ b. Removing the Title ''Procedure for parties on the Entity List to Request Removal or Modification of their Listing'' and adding in its place ''Procedure for parties on the Entity List or the Unverified List to Request Removal or Modification of their Listing'' in the Title Column of the 0694–0134 row; and

■ c. Removing the reference ''§ 744.16'' and adding in its place ''§§ 744.15 and 744.16'' in the Reference in the EAR column of the 0694–0134 row.

## PART 740—[AMENDED]

■ 3. The authority citation for 15 CFR Part 740 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 7201 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 8, 2013, 78 FR 49107 (August 12, 2013).

■ 4. Section 740.2 is amended by adding paragraph (a)(17) to read as follows:

**§ 740.2 Restrictions on all license exceptions.**

(a) * * *

(17) A party to the transaction, as described in § 748.5 of the EAR, is listed on the Unverified List in Supplement No. 6 to Part 744, see § 744.15 of the EAR.

* * * * *

## PART 744—[AMENDED]

■ 5. The authority citation for 15 CFR Part 744 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of January 17, 2013, 78 FR 4303 (January 22, 2013); Notice of August 8, 2013, 78 FR 49107 (August 12, 2013); Notice of September 18, 2013, 78 FR 58151 (September 20, 2013) ; Notice of November 7, 2013, 78 FR 67289 (November 12, 2013).

■ 6. Section 744.1 is amended by adding the sentence set forth below after the tenth sentence in paragraph (a)(1).

**§ 744.1 General provisions.**

(a)(1) * * * Section 744.15 sets forth the conditions for exports, reexports, and transfers (in-country) to persons listed on the Unverified List (UVL) in Supplement No. 6 of this part, the criteria for revising the UVL, as well as procedures for requesting removal or modification of a listing on the UVL.

* * *

■ 7. Adding § 744.15 to read as follows:

**§ 744.15 Restrictions on exports, reexports and transfers (in-country) to persons listed on the unverified list.**

(a) *General requirement.* In addition to the requirements set forth elsewhere in the EAR, exports, reexports, or transfers (in-country) subject to the EAR involving parties to the transaction who are listed on the Unverified List (UVL) must be made in accordance with paragraph (b) of this section. The names and addresses of foreign persons subject to end-user controls based on the criteria described in paragraph (c) of this section are identified in the Unverified List found in Supplement No. 6 to this part. Requirements found elsewhere in the EAR also apply, including but not limited to any license requirements, the record filing requirements pursuant to § 758.1(b)(8), and the restrictions on license exceptions described in § 740.2(a)(17) of the EAR.

(b) *UVL statement.* Before proceeding with any export, reexport, or transfer (in-country) subject to the EAR that is not subject to a license requirement, involving a person listed on the Unverified List as a party described in § 748.5 of the EAR, an exporter, reexporter, or transferor (in-country) must obtain a UVL statement from such person, according to the provisions set forth in this section. The statement must be retained in accordance with part 762 of the EAR.

(1) One UVL statement may be used for multiple exports, reexports, and transfers (in-country) of the same items between the same parties, so long as the party names, the description(s) of the items and the ECCNs are correct. If one UVL statement is used for multiple exports, reexports, and transfers (in-country), the exporter, reexporter, and transferor must maintain a log or other record that identifies each export, reexport, and transfer (in-country) made pursuant to this section and the specific UVL statement that is associated with each. The log or record must be retained in accordance with Part 762 of the EAR.

(2) The UVL statement must be in writing, signed and dated by an individual of sufficient authority to legally bind the UVL party, and state the following:

(i) Name of UVL party; complete physical address, to include shipping, corporate, and end user addresses, if different (simply listing a post office box is insufficient); telephone number; fax number; email address; Web site (if available); and name and title of individual signing the UVL statement.

(ii) Agrees not to use the item(s) for any use prohibited by the United States Export Administration Regulations (EAR), 15 CFR Parts 730–772, and agrees not to reexport or transfer (in-country) the item(s) to any destination, use or user prohibited by the EAR.

(iii) Declares that the end use, end user, and country of ultimate destination of the item(s) subject to the EAR are as follows: [INSERT END USE, END USER, AND COUNTRY OF ULTIMATE DESTINATION].

(iv) Agrees to cooperate with end-use checks, including a Post-Shipment Verification, conducted by or on behalf of the Bureau of Industry and Security, U.S. Department of Commerce, for any item subject to the EAR in transactions to which they were a party in the last five years. This cooperation includes facilitating the timely conduct of the check and providing full and accurate information concerning the disposition of items subject to the EAR.

(v) Agrees to provide copies of this document and all other export, reexport or transfer (in-country) records required to be retained in part 762 of the EAR.

(vi) Certifies that the individual signing the UVL statement has sufficient authority to legally bind the party.

(c) *Criteria for revising the Unverified List.* (1) Foreign persons who are parties to an export, reexport, and transfer (in-country) subject to the EAR may be added to the Unverified List if BIS or federal officials acting on BIS's behalf cannot verify the *bona fides* (i.e., legitimacy and reliability relating to the end use and end user of items subject to the EAR) of such persons because an end-use check, such as a pre-license check (PLC) or a post-shipment verification (PSV), cannot be completed satisfactorily for reasons outside of the U.S. Government's control. Examples in paragraphs (c)(1)(i) through (iii) of this section provide an illustrative list of those circumstances.

(i) During the conduct of an end-use check, the subject of the check is unable to demonstrate the disposition of items subject to the EAR.

(ii) The existence or authenticity of the subject of an end-use check cannot be verified (e.g., the subject of the check cannot be located or contacted).

(iii) Lack of cooperation by the host government authority prevents an end-use check from being conducted.

(2) BIS will remove a person from the Unverified List when BIS is able to verify the *bona fides* of the listed person as an end user, consignee, or other party to exports, reexports, or transfers (in-country) involving items subject to the EAR by completing a PLC or PSV. In the limited circumstance involving a PLC or PSV that cannot be completed due to lack of host government cooperation, an alternative *bona fides* verification process may be determined by BIS to be sufficient. A determination to remove a person from the Unverified List based on the criteria in this paragraph is separate from any determination made by BIS pursuant to § 744.11(b) of the EAR, and must be requested through paragraph (d) of this section.

(d) *Procedure for requesting removal of a person on the Unverified List.* Any person listed on the Unverified List may request that its listing be amended or removed.

(1) All such requests, including reasons therefor and information that verifies the *bona fides,* i.e., legitimacy and reliability of the person listed on the Unverified List as an end user, consignee or other party to exports,

reexports, and transfers (in-country) of items subject to the EAR, must be in writing and sent to: Director, Office of Enforcement Analysis, Bureau of Industry and Security, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue NW., Room 4065, Washington, DC 20230, via fax to (202) 482–0971, or by email to *UVLRequest@bis.doc.gov.*

(2) The Deputy Assistant Secretary for Export Enforcement will review such requests and will convey the decision on the request to the requester in writing based on an assessment of the listed person's *bona fides* as a party to exports, reexports, and transfers (in-country) subject to the EAR. That decision will be the final agency action on the request.

■ 8. Supplement No. 6 to Part 744 is added to read as follows:

**Supplement No. 6 to Part 744—Unverified List**

Exports, reexports, and transfers (in-country) involving parties to the transaction who are listed in this supplement are subject to the restrictions outlined in § 744.15 of the EAR.

| Country | Listed person and address | Federal Register citation and date of publication |
|---|---|---|
| Reserved ..... | Reserved ..... | Reserved. |

## PART 756—[AMENDED]

■ 9. The authority citation for 15 CFR Part 756 continues to read as follows:

**Authority:** 50 U.S.C. app 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 8, 2013, 78 FR 49107 (August 12, 2013).

■ 10. Section 756.1 is amended by revising paragraph (a)(3) to read as follows:

**§ 756.1 Introduction.**

(a) * * *

(3) A decision on a request to remove or modify an Entity List entry made pursuant to § 744.16 of the EAR or a decision on a request to remove an Unverified List entry made pursuant to § 744.15 of the EAR.

* * * * *

## PART 758—[AMENDED]

■ 11. The authority citation for 15 CFR Part 758 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 8, 2013, 78 FR 49107 (August 12, 2013).

■ 12. Section 758.1 is amended by adding paragraph (b)(8) to read as follows:

**§ 758.1 The Automated Export System (AES) record.**

* * * * *

(b) * * *

(8) For all exports of tangible items subject to the EAR where parties to the transaction, as described in § 748.5(d)–(f) of the EAR, are listed on the Unverified List (Supplement 6 to Part 744 of the EAR), regardless of value or destination.

* * * * *

## PART 762—[AMENDED]

■ 13. The authority citation for 15 CFR Part 762 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 8, 2013, 78 FR 49107 (August 12, 2013).

■ 14. Section 762.2 is amended by revising paragraph (b)(13) to read as follows:

**§ 762.2 Records to be retained.**

* * * * *

(b) * * *

(13) § 744.15(b), UVL statement as well as any logs or records created for multiple exports, reexports, and transfers (in-country);

* * * * *

Dated: December 12, 2013.

**Kevin J. Wolf,**

*Assistant Secretary for Export Administration.*

[FR Doc. 2013–30117 Filed 12–18–13; 8:45 am]

**BILLING CODE 3510–33–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## 21 CFR Part 10

**[Docket No. FDA 2013–S–0610]**

## Citizen Petition Submission; Technical Amendment

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** The Food and Drug Administration (FDA) is modernizing its administrative regulations regarding submission of citizen petitions to explicitly provide for electronic submission. The current regulation does not recognize electronic methods for submitting citizen petitions; thus, this action will enable efficiency and ease in the filing of citizen petitions.

**DATES:** This final rule is effective December 19, 2013.

**FOR FURTHER INFORMATION CONTACT:** Lisa M. Helmanis, Office of Policy, Regulations Policy Management Staff, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–9135.

**SUPPLEMENTARY INFORMATION:** FDA is updating its administrative regulations in 21 CFR part 10 to include an electronic method for citizen petition submissions and to remove references only to written documents. The Agency still allows for non-electronic submissions, however, electronic submissions of a citizen petition to a specific electronic docket presents a simpler and straightforward approach. FDA has created a single docket on *http://www.regulations.gov,* the U.S. Government's consolidated docket Web site for Federal Agencies, for the initial electronic submission of all citizen petitions. The FDA Electronic Method for Submission of Citizen Petitions Docket, Docket No. FDA 2013–S–0610, allows the petitioner to create an electronic submission through *http://www.regulations.gov* and provides an alternative to the current system of submission for citizen petitions. Electronic submissions through *http://www.regulations.gov* will provide the submitter with an immediate record of the time of submission. FDA's Division of Dockets Management (DDM) (*http://www.fda.gov/RegulatoryInformation/Dockets/default.htm*) will continue to inform the submitter of formal filing; however, tracking will be more easily accomplished through electronic submission.

DDM will receive the electronically submitted citizen petition through the Federal Dockets Management System, the Agency component of *http://www.regulations.gov.* Subsequently, DDM will review the electronic submission and when it accepts the citizen petition for filing, DDM will assign a docket number to that petition, different from the FDA electronic submission docket number. This unique docket number from DDM identifies the docket for that particular citizen petition for all future filings and submissions related only to that citizen petition. Subsequent submissions associated with that citizen petition will refer to the assigned unique docket number. The advantage to this change is that it ensures efficiency and ease in communication, quicker interaction between citizen petitioners and FDA,

and easier access to FDA to seek input through the citizen petition process.

Publication of this document constitutes final action under the Administrative Procedure Act (5 U.S.C. 553). FDA has determined that good cause exists to dispense with prior notice and public comment under 5 U.S.C. 553(b)(3)(B) since such notice and comment are unnecessary because this amendment to the regulation provides only technical and grammatical corrections, modernizes the administrative process to add a simple and electronic method, ensures clarity in the Agency's regulations, and updates obsolete information.

**List of Subjects in 21 CFR Part 10**

Administrative practice and procedure, News media.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 10 is amended as follows:

## PART 10—ADMINISTRATIVE PRACTICES AND PROCEDURES

■ 1. The authority citation for 21 CFR part 10 continues to read as follows:

**Authority:** 5 U.S.C. 551–558, 701–706; 15 U.S.C. 1451–1461; 21 U.S.C. 141–149, 321–397, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201, 262, 236b, 264.

■ 2. Amend § 10.30 by revising paragraphs (b), (c), (d), (e)(3), and (g) to read as follows:

### § 10.30 Citizen petition.

* * * * *

(b) A petition (including any attachments) must be submitted in accordance with the following paragraphs, as applicable:

(1) *Electronic submission.* Petitions (including any attachments) may be electronically submitted in accordance with paragraph (b)(3) of this section and § 10.20 through *http://www.regulations.gov* at Docket No. FDA 2013–S–0610. It is only necessary to submit one copy.

(2) *Mail, delivery services, or other non-electronic submissions.* A petition (including any attachments), that is not electronically submitted under paragraph (b)(1) of this section, must be submitted in accordance with paragraph (b)(3) and § 10.20 and delivered to this address: Division of Dockets Management, Department of Health and Human Services, Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

It is only necessary to submit two copies.

(3) *Petition format.* A petition submitted under paragraphs (b)(1) or (b)(2) of this section must be in accordance with § 10.20 and in the following format:

**Citizen Petition**

Date: _____

The undersigned submits this petition under ____ (relevant statutory sections, if known) of the ____ (Federal Food, Drug, and Cosmetic Act or the Public Health Service Act or any other statutory provision for which authority has been delegated to the Commissioner of Food and Drugs) to request the Commissioner of Food and Drugs to ____ (issue, amend, or revoke a regulation or order or take or refrain from taking any other form of administrative action).

*A. Action Requested*

((1) If the petition requests the Commissioner to issue, amend, or revoke a regulation, the exact wording of the existing regulation (if any) and the proposed regulation or amendment requested.)

((2) If the petition requests the Commissioner to issue, amend, or revoke an order, a copy of the exact wording of the citation to the existing order (if any) and the exact wording requested for the proposed order.)

((3) If the petition requests the Commissioner to take or refrain from taking any other form of administrative action, the specific action or relief requested.)

*B. Statement of Grounds*

(A full statement, in a well-organized format, of the factual and legal grounds on which the petitioner relies, including all relevant information and views on which the petitioner relies, as well as representative information known to the petitioner which is unfavorable to the petitioner's position.)

*C. Environmental Impact*

(A) Claim for categorical exclusion under §§ 25.30, 25.31, 25.32, 25.33, or § 25.34 of this chapter or an environmental assessment under § 25.40 of this chapter.)

*D. Economic Impact*

(The following information is to be submitted only when requested by the Commissioner following review of the petition: A statement of the effect of requested action on: (1) Cost (and price) increases to industry, government, and consumers; (2) productivity of wage earners, businesses, or government; (3) competition; (4) supplies of important materials, products, or services; (5) employment; and (6) energy supply or demand.)

*E. Certification*

The undersigned certifies, that, to the best knowledge and belief of the undersigned, this petition includes all information and views on which the petition relies, and that it includes representative data and information known to the petitioner which are unfavorable to the petition.

(Signature) _____

(Name of petitioner) _____

(Mailing address) _____

(Telephone number) _____

(c) A petition which appears to meet the requirements of paragraph (b)(3) of this section and § 10.20 will be filed by the Division of Dockets Management with the date of filing and assigned a unique docket number. The unique docket number identifies the docket file established by the Division of Dockets Management for all submissions relating to the petition, as provided in this part. Subsequent submissions relating to the matter must refer to the assigned docket number assigned in this paragraph and will be filed in the established docket file. Related petitions may be filed together and given the same docket number. The Division of Dockets Management will promptly notify the petitioner of the filing and unique docket number of the petition.

(d) An interested person may submit comments to the Division of Dockets Management on a filed petition, which comments become part of the docket file. The comments are to specify the docket number of the petition and may support or oppose the petition in whole or in part. A request for alternative or different administrative action must be submitted as a separate petition.

(e) * * *

(3) The Commissioner may grant or deny such a petition, in whole or in part, and may grant such other relief or take other action as the petition warrants. The petitioner is to be notified of the Commissioner's decision. The decision will be placed in the public docket file and may also be in the form of a notice published in the **Federal Register**.

* * * * *

(g) A petitioner may supplement, amend, or withdraw a petition without Agency approval and without prejudice to resubmission at any time until the Commissioner rules on the petition, unless the petition has been referred for a hearing under parts 12, 13, 14, or 15 of this chapter. After a ruling or referral, a petition may be supplemented, amended, or withdrawn only with the

approval of the Commissioner. The Commissioner may approve withdrawal, with or without prejudice against resubmission of the petition.

* * * * *

Dated: December 13, 2013.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2013–30150 Filed 12–18–13; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 117

**[Docket No. USCG–2013–1008]**

## Drawbridge Operation Regulation; Upper Mississippi River, Clinton, IA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of deviation from drawbridge regulations.

**SUMMARY:** The Coast Guard has issued a temporary deviation from the operating schedule that governs the Clinton Railroad Drawbridge across the Upper Mississippi River, mile 518.0, at Clinton, Iowa. The deviation is necessary to allow the bridge owner time to perform preventive maintenance that is essential to the continued safe operation of the drawbridge. This deviation allows the bridge to open on signal if at least 24 hours advance notice is given.

**DATES:** This deviation is effective from December 19, 2013 through 9 a.m., March 4, 2014, and has been enforced with actual notice since 12:01 a.m., December 15, 2013.

**ADDRESSES:** The docket for this deviation, (USCG–2013–1008) is available at *http://www.regulations.gov*. Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation, West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

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

**SUPPLEMENTARY INFORMATION:** The Union Pacific Railroad requested a temporary deviation for the Clinton Railroad Drawbridge, across the Upper Mississippi River, mile 518.0, at Clinton, Iowa to open on signal if at least 24 hours advance notice is given from 12:01 a.m., December 15, 2013 to 9 a.m., March 15, 2014 to allow the bridge owner time for preventive maintenance. The Clinton Railroad Drawbridge will resume its normal operating schedule at 9 a.m., March 4, 2014 to align with the opening of Locks on the Upper Mississippi River.

Winter conditions on the Upper Mississippi River coupled with the closure of Army Corps of Engineer's Lock No. 16 (Mile 457.2 UMR), Lock No. 17 (Mile 437.1 UMR), and Lock No. 18 (Mile 410.5 UMR) until 11:00 a.m., March 4, 2014 will preclude any significant navigation demands for the drawspan opening.

The Clinton Railroad Drawbridge currently operates in accordance with 33 CFR 117.5, which states the general requirement that drawbridge shall open promptly and fully for the passage of vessels when a request to open is given in accordance with the subpart.

There are no alternate routes for vessels transiting this section of the Upper Mississippi River.

The Clinton Railroad Drawbridge, in the closed-to-navigation position, provides a vertical clearance of 18.7 feet above normal pool. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. The drawbridge will open if at least 24 hours advance notice is given. This temporary deviation has been coordinated with waterway users. No objections were received.

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

Dated: December 5, 2013.

**Eric A. Washburn,**

*Bridge Administrator, Western Rivers.*

[FR Doc. 2013–30215 Filed 12–18–13; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 117

**[Docket No. USCG–2013–0990]**

## Drawbridge Operation Regulation; Chambers Creek, Steilacoom, 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 Burlington Northern Santa Fe (BNSF) Chambers Creek Railway Bridge across Chambers Creek, mile 0.0, at Steilacoom, WA. The deviation is necessary to allow BNSF to perform maintenance and upgrade items to this vertical lift bridge in support of Positive Train Control requirements per the Rail Safety Improvement Act of 2008. This will require locking the bridge in the closed position and locking out the power to the drive system while the work is conducted. This deviation allows the bridge to remain in the closed position for 45 days during the maintenance and upgrade work.

**DATES:** This deviation is effective from 8 a.m. on January 6, 2014 to 5 p.m. on February 19, 2014.

**ADDRESSES:** The docket for this deviation, [USCG–2013–0990], 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 Fischer, Thirteenth District Bridge Program Administrator, Coast Guard; telephone 206–220–7282, *Steven.M.Fischer3@uscg.mil*. If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:** Burlington Northern Santa Fe (BNSF) will be performing lift bridge maintenance and upgrades for the BNSF Chambers Creek Railway Bridge across Chambers Creek, mile 0.0, near Steilacoom, WA. The

bridge provides 50 feet of vertical clearance in the raised position, 10 feet of vertical clearance in the closed position and 80 feet of horizontal clearance. Reference plan is mean high water elevation of 12.2 feet. The normal operation schedule falls under 33 CFR § 117.5 which states ''Except as otherwise authorized or required by this part, drawbridges must open promptly and fully for the passage of vessels when a request or signal to open is given in accordance with this subpart.''

This deviation period is effective from 8 a.m. on January 6, 2014 to 5 p.m. on February 19, 2014. The deviation is necessary for BNSF to perform maintenance and upgrade items to this vertical lift bridge including replacement of a link pin bearing in the lift system, replacing lower racks for the counterweight and conducting signal system upgrades in support of Positive Train Control requirements per the Rail Safety Improvement Act of 2008. This will require locking the bridge in the closed position and locking out the power to the drive system while the work is conducted.

Vessels able to pass through the bridge in the closed positions may do so at anytime. The bridge will not be able to open for emergencies 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: December 9, 2013.

**Steven M. Fischer,**

*Thirteenth Coast Guard District, Bridge Administrator.*

[FR Doc. 2013–30219 Filed 12–18–13; 8:45 am]

BILLING CODE 9110–04–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG–2013–1012]**

**RIN 1625–AA00**

## Safety Zone; Vessel Launch; Menominee River; Marinette, WI

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the Menominee River in Marinette, Wisconsin. This zone is intended to restrict vessels from a portion of the Menominee River during the launching of a 400-foot vessel from Marinette Marine Corporation on December 18, 2013. This temporary safety zone is necessary to protect the surrounding public and vessels from the hazards associated with the launching of a large vessel.

**DATES:** This rule is effective and will be enforced from 12:45 p.m. until 3:15 p.m. on December 18, 2013.

**ADDRESSES:** Documents mentioned in this preamble are part of docket USCG–2013–1012. 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 temporary rule, contact or email MST1 Joseph McCollum, U.S. Coast Guard Sector Lake Michigan, at 414–747–7148 or *Joseph.P.McCollum@uscg.mil*. If you have questions on viewing the docket, call Barbara Hairston, 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
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 an 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 the launch of a large vessel, which are discussed further below.

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 and contrary to the public interest.

### B. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and limited access areas: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

On December 18, 2013 a 400-foot vessel will be launched from Marinette Marine Corporation to the waters of the Menominee River. This event will take place in Marinette, WI. The Captain of the Port, Lake Michigan, has determined that this launching will pose a significant risk to public safety and property. Such hazards include the creation of a large wake as the vessel enters the water, and the collision of the launched vessel with other vessels in the water.

### C. Discussion of the Final Rule

With the aforementioned hazards in mind, the Captain of the Port, Lake Michigan, has determined that this temporary safety zone is necessary to ensure the safety of spectators and vessels during the launch. This zone

will be effective and enforced from 12:45 p.m. until 3:15 p.m. on December 18, 2013. The safety zone will encompass all waters of the Menominee River in the vicinity of Marinette Marine Corporation, between the Bridge Street Bridge located in position 45°06′12″ N, 087°37′34″ W and a line crossing the Menominee River perpendicularly passing through position 45°05′57″ N, 087°36′43″ W, in the vicinity of the Ansul Company (NAD 83).

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Lake Michigan, 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. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

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 small and enforced for a limited time on one day in December, 2013. 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 temporary 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. 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 Menominee River, Marinette, WI, on December 18, 2013.

This safety zone will not have a significant economic impact on a substantial number of small entities for the reasons cited in the *Regulatory Planning and Review* section. Additionally, before the enforcement of this zone, we would issue local Broadcast Notice to Mariners so vessel owners and operators can plan accordingly.

*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 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. 1231; 46 U.S.C. Chapters 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09–1012 to read as follows:

**§ 165.T09–1012 Safety Zone; Vessel Launch; Menominee River; Marinette, WI.**

(a) *Location.* All waters of the Menominee River in the vicinity of Marinette Marine Corporation, between the Bridge Street Bridge located in position 45°06′12″ N, 087°37′34″ W and a line crossing the river perpendicularly passing through position 45°05′57″ N, 087°36′43″ W, in the vicinity of the Ansul Company (NAD 83).

(b) *Effective and Enforcement Period.* This zone will be effective and enforced from 12:45 p.m. until 3:15 p.m. on December 18, 2013.

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

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

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

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port, Lake Michigan, or his on-scene representative to obtain permission to do so. The Captain of the Port, Lake Michigan, 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, Lake Michigan, or his on-scene representative.

Dated: December 9, 2013.

**M.W. Sibley,**

*Captain, U.S. Coast Guard, Captain of the Port, Lake Michigan.*

[FR Doc. 2013–30173 Filed 12–18–13; 8:45 am]

BILLING CODE 9110–04–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 60

**[EPA–HQ–OAR–2007–0011; FRL–9904–06–OAR]**

**RIN 2060–AS03**

## Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking direct final action to amend the Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007. This direct final rule amends the definition of ''delayed coking unit'' by removing process piping and associated equipment (pumps, valves, and connectors) from the definition. This final rule also removes a redundant definition of ''delayed coking unit'' from the rule text.

**DATES:** This rule is effective on March 19, 2014 without further notice, unless the EPA receives adverse comment by February 3, 2014. If the EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that some or all of the amendments in the final rule will not take effect.

**ADDRESSES:** *Comments.* Submit your comments, identified by Docket ID Number EPA–HQ–OAR–2007–0011, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.* Attention Docket ID Number EPA–HQ–OAR–2007–0011.
- *Fax:* (202) 566–9744. Attention Docket ID Number EPA–HQ–OAR–2007–0011.
- *Mail:* U.S. Postal Service, send comments to: EPA Docket Center, EPA West (Air Docket), Attention Docket ID Number EPA–HQ–OAR–2007–0011, U.S. Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* U.S. Environmental Protection Agency, EPA West (Air Docket), Room 3334, 1301 Constitution Ave. NW., Washington, DC 20004. Attention Docket ID Number EPA–HQ–OAR–2007–0011. 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 Number EPA–HQ–OAR–2007–0011. 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 not include special characters or any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at: *http://www.epa.gov/dockets.*

We request that you also send a separate copy of each comment to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

**FOR FURTHER INFORMATION CONTACT:** Ms. Brenda Shine, Sector Policies and Programs Division (E143–01), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (919) 541–3608; fax number: (919) 541–0246; and email address: *shine.brenda@epa.gov.* For information about the applicability of the New Source Performance Standards (NSPS) to a particular entity, contact Maria Malave, Office of Enforcement and Compliance Assurance (OECA), U.S. Environmental Protection Agency, telephone number: (202) 564–7027; fax number: (202) 564–0050; and email address: *malave.maria@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

*Organization of This Document.* The information in this preamble is organized as follows:

I. Why is the EPA using a direct final rule?
II. Does this direct final rule apply to me?
III. What should I consider as I prepare my comments for the EPA?
IV. What are the amendments made by this direct final rule?
V. 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
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
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

## I. Why is the EPA using a direct final rule?

The EPA is publishing this direct final rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register,** we are publishing a separate document that will serve as the proposed rule to the Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction or Modification Commenced After May 14, 2007 (40 CFR part 60 subpart Ja), if adverse comments are received on this direct final rule. If EPA receives adverse comment on all or a distinct portion of this rule, we will publish a timely withdrawal in the **Federal Register** informing the public that some of this rule or this entire direct final rule will not take effect. The rule provisions that are not withdrawn will become effective on the date set out above, notwithstanding adverse comment on any other provision, unless we determine that it would not be appropriate to promulgate those provisions due to their being affected by the provision for which we receive adverse comments. We would address all public comments in any subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

## II. Does this direct final rule apply to me?

Categories and entities potentially regulated by this final rule include:

| Category | NAICS Code [1] | Examples of regulated entities |
|---|---|---|
| Industry | 32411 | Petroleum refiners. |
| Federal government | | Not affected. |
| State/local/tribal government | | Not affected. |

[1] North American Industry Classification System

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this direct final rule. To determine whether your facility would be regulated by this direct final rule, you should examine the applicability criteria in 40 CFR 60.100a. If you have any questions regarding the applicability of this direct final rule to a particular entity, contact the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

## III. What should I consider as I prepare my comments for the EPA?

*Submitting CBI.* Do not submit information containing CBI to the EPA through *http://www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD–ROM that you mail to the EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI for inclusion in the public docket. If you submit a CD–ROM or disk that does not contain CBI, mark the outside of the disk or CD–ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2. Send or deliver information identified as CBI

only to the following address: Roberto Morales, OAQPS Document Control Officer (C404–02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, and Attention Docket ID Number EPA–HQ–OAR–2007–0011.

## IV. What are the amendments made by this direct final rule?

Presently, ''delayed coking unit'' is defined as follows:

*Delayed coking unit* means a refinery process unit in which high molecular weight petroleum derivatives are thermally cracked and petroleum coke is produced in a series of closed, batch system reactors. A *delayed coking unit* includes, but is not limited to, all of the coke drums associated with a single fractionator; the fractionator, including the bottoms receiver and the overhead condenser; the coke drum cutting water and quench system, including the jet pump and coker quench water tank; process piping and associated equipment such as pumps, valves and connectors; and the coke drum blowdown recovery compressor system.

40 CFR 60.101a. This direct final rule amends the definition of ''delayed coking unit'' by removing the phrase ''process piping and associated equipment such as pumps, valves and connectors.'' Emissions from process piping and associated equipment (pumps, valves and connectors) are already covered under 40 CFR part 60, subparts GGG or GGGa; the controls required under this rule (40 CFR part 60, subpart Ja) do not address the emissions from such equipment. Rather, this rule addresses emissions from the delayed coking unit's process vent.

Although we included process piping and associated equipment in the definition of ''delayed coking unit'' because it is necessary to operate the delayed coking unit, the inclusion of this equipment within the definition results in very minor changes, such as adding a few valves and connectors for a new sample point or pressure gauge, to be considered a ''modification'' of the delayed coking unit. This is because, under the definition above, these additional valves would increase emissions from the delayed coking unit even though the increase would not occur at emissions points regulated under this rule. *See* 40 CFR 60.14. This was an inadvertent result as the EPA did not intend for such small changes to process piping and associated equipment (such as pumps, valves and connectors, which, as noted above, are regulated elsewhere), to constitute a modification of the delayed coking unit under 40 CFR part 60, subpart Ja. As a result, this modification would require immediate compliance with the coke drum vent control requirements in 40 CFR 60.103a(i). Thus, we are removing this phrase from the definition.

This direct final rule also removes a redundant definition of ''delayed coking unit'' from 40 CFR 60.101a. When 40 CFR part 60, subpart Ja, was amended on September 12, 2012 (77 FR 56422), we added new definitions that preceded the old definition of ''delayed coking unit'' alphabetically, and we amended the then-existing definition of ''delayed coking unit.'' However, the old definition of ''delayed coking unit'' was not removed from the CFR when these other changes were made. Therefore, this direct final rule removes the old definition of ''delayed coking unit,'' as it is no longer accurate and may be confusing to stakeholders.

Comments on this direct final rule are to be limited to issues directly associated with the amended definition of ''delayed coking unit.''

## V. 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 a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

### *B. Paperwork Reduction Act*

This action does not impose any new information collection burden because it does not change the information collection requirements. However, OMB has previously approved the information collection requirements contained in the existing rule (40 CFR part 60, subpart Ja) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.,* and has assigned OMB control number 2060–0602. The OMB control numbers for the EPA's regulations are listed in 40 CFR part 9.

### *C. Regulatory Flexibility Act*

The Regulatory Flexibility Act generally requires an agency 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 would 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 impact of this final action on small entities, small entity is defined as: (1) a small business whose parent company has no more than 1,500 employees, that is primarily engaged in refining crude petroleum into refined petroleum as defined by NAICS code 32411 (as defined by Small Business Administration size standards); (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.

After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This rule will not impose any requirements on small entities, and no small entities are expected to incur annualized costs as a result of the amendments. The amendments may reduce burden for small entities with delayed coking units. We have determined that the amendments will not result in any ''significant'' adverse economic impact for small entities. This amendment does not create any new requirements or burdens, and no costs are associated with this amendment. We have, therefore, concluded that this final rule will relieve regulatory burden for all affected small entities.

### *D. Unfunded Mandates Reform Act*

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. The costs of the final amendments would not increase costs associated with the final rule. Thus, this rule is not subject to the requirements of sections 202 or 205 of the 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. The final amendments contain no requirements that apply to such governments and impose no obligations upon them.

*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, as specified in Executive Order 13132. This action does not modify existing responsibilities or create new responsibilities among EPA Regional offices, states or local enforcement agencies. Thus, Executive Order 13132 does not apply to this action.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). The final amendments impose no requirements on tribal governments. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying 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 Executive Order 13045 because it is based solely on technology performance.

*H. Executive Order 13211: Actions Concerning Regulations 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 under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards (VCS) in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (*e.g.,* materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by VCS bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable VCS.

This direct final rule does not involve technical standards. Therefore, the EPA did not consider the use of any VCS.

*J. 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.

The EPA has determined that this direct final rule 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. The final amendments are either clarifications or compliance alternatives which will neither increase or decrease environmental protection.

*K. Congressional Review Act*

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 Congress and to the Comptroller General of the United States. The EPA will submit a report containing these final rules and other required information to the United States Senate, the United States House of Representatives and the Comptroller General of the United States prior to publication of the final rules 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 direct final rule will be effective on March 19, 2014.

**List of Subjects in 40 CFR Part 60**

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 4, 2013.

**Gina McCarthy,**

*Administrator.*

For the reasons stated in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

## PART 60—[AMENDED]

■ 1. The authority citation for part 60 continues to read as follows:

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

## Subpart Ja—[AMENDED]

■ 2. Section 60.101a is amended by:

■ a. Removing the first definition of ''delayed coking unit'' that occurs out of alphabetical order between the terms ''contact material'' and ''corrective action'' and

■ b. Revising the second definition of ''delayed coking unit.'' The revisions read as follows:

**§ 60.101a Definitions.**

* * * * *

*Delayed coking unit* means a refinery process unit in which high molecular weight petroleum derivatives are thermally cracked and petroleum coke is produced in a series of closed, batch system reactors. A *delayed coking unit* includes, but is not limited to, all of the coke drums associated with a single fractionator; the fractionator, including the bottoms receiver and the overhead condenser; the coke drum cutting water and quench system, including the jet pump and coker quench water tank; and the coke drum blowdown recovery compressor system.

* * * * *

[FR Doc. 2013–29731 Filed 12–18–13; 8:45 am]

BILLING CODE 6560–50–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Motor Carrier Safety Administration**

**49 CFR Part 395**

## Regulatory Guidance on Hours of Service of Drivers Rest Break Requirement; Drivers Who Become Ineligible for the ''Short-Haul'' Exception During the Duty Day

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Regulatory guidance.

**SUMMARY:** This regulatory guidance addresses application of the 30-minute break rule to interstate drivers of commercial motor vehicles (CMVs) who begin their duty days as ''short haul'' drivers exempt from the break rule, but who occasionally exceed the short haul distance or time limits. Such drivers are then subject to the break requirement and must prepare a record-of-duty-status (RODS) for the day. The intent of the break rule would be satisfied if drivers in these situations take a break at the earliest safe opportunity after exceeding the short haul limits and explain in a RODS annotation why the rest break was not taken within the required 8 hours of the last off-duty break of at least 30 minutes.

**DATES:** *Effective Date:* This regulatory guidance is effective December 19, 2013.

**FOR FURTHER INFORMATION CONTACT:** Thomas L. Yager, Chief, Driver and Carrier Operations Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave. SE., Washington, DC 20590. Email: *MCPSD@dot.gov*. Phone (202) 366–4325.

**SUPPLEMENTARY INFORMATION:**

### Legal Basis

The Motor Carrier Act of 1935 provides that ''The Secretary of Transportation may prescribe requirements for (1) qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier; and (2) qualifications and maximum hours of service of employees of, and standards for equipment of, a motor private carrier, when needed to promote safety of operation'' [49 U.S.C. 31502(b)]. This guidance is based on the Secretary's authority to regulate maximum hours of service.

The Motor Carrier Safety Act of 1984 (MCSA) requires the Secretary to prescribe safety standards for CMVs. At a minimum, the regulations must ensure that (1) CMVs are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of CMVs do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of CMVs is adequate to enable them to operate the vehicles safely; and (4) the operation of CMVs does not have a deleterious effect on the physical condition of the operator [49 U.S.C. 31136(a)(1)–(4)]. Section 32911 of the Moving Ahead for Progress in the 21st Century Act (MAP–21) [Pub. L. 112–141, 126 Stat. 405, 818, July 6, 2012] enacted a fifth requirement, i.e., that the regulations ensure that (5) an operator of a CMV is not coerced by a motor carrier, shipper, receiver, or transportation intermediary to operate a CMV in violation of a regulation promulgated under § 31136, Chapter 51 [Transportation of Hazardous Material], or chapter 313 [Commercial Vehicle Operators]. This guidance clarifies the applicability of a portion of the hours-of-service (HOS) regulations based on authority of § 31136(a)(1), (2) and (4); it is unrelated to § 31136(a)(5) and only peripherally related to § 31136(a)(3).

The MCSA also gives the Secretary broad power to ''prescribe recordkeeping and reporting requirements'' and to ''perform other acts the Secretary considers appropriate'' [49 U.S.C. 31133(a)(8) and (10)]. Clarification of the regulations is an ''appropriate'' act. The functions vested in the Secretary by the Motor Carrier Act of 1935 and the MCSA have been delegated to the FMCSA Administrator by 49 CFR 1.87(i) and (f), respectively.

### Background

On December 27, 2011 (76 FR 81133), FMCSA published a final rule amending its HOS regulations for drivers of property-carrying commercial motor vehicles (CMVs). The final rule adopted several changes to the HOS regulations, including a new provision requiring drivers to take a rest break during the work day under certain circumstances. Drivers may drive a CMV only if 8 hours or less have passed since the end of the driver's last off-duty or sleeper-berth period of at least 30 minutes. FMCSA did not specify when drivers must take the 30-minute break, but the rule requires that they wait no longer than 8 hours after the last off-duty or sleeper-berth period of that length or longer to take the break. Drivers who already take shorter breaks during the work day could comply with the rule by taking one of the shorter breaks and extending it to 30 minutes. The new requirement took effect on July 1, 2013.

On August 2, 2013, the U.S. Court of Appeals for the District of Columbia Circuit issued its opinion on petitions for review of the 2011 HOS rule filed by the American Trucking Associations, Public Citizen, and others [*American Trucking Associations, Inc.,* v. *Federal Motor Carrier Safety Administration,* No. 12–1092 (D.C. Cir. Aug. 2, 2013)]. The Court upheld the 2011 HOS regulations in all respects except for the 30-minute break provision as it applies to short haul drivers. By guidance effective August 2, 2013, FMCSA has declared that it would no longer enforce the break rule against any driver that qualifies for either of the ''short-haul operation'' exceptions in 49 CFR 395.1(e)(1) or (2) [*See www.fmcsa.dot.gov/documents/HOS/30-minute-guidance.pdf*]. Section 395.1(e) defines two categories of drivers who qualify as being engaged in short-haul operations: the ''100 air-mile radius driver'' and ''operators of property-carrying CMVs not requiring a commercial driver's license (CDL).'' To qualify for the exception, the 100 air-mile radius driver must remain within a 100 air-mile radius of the normal work reporting location, return to that location at the end of the duty day, and be released from duty within 12 consecutive hours of the beginning of the duty day. The operator of a property-carrying CMV not requiring a CDL must remain within a 150 air-mile radius of the normal work reporting location and must return to that location at the end of the duty day.

Drivers meeting the requirements to qualify for the short haul exception in § 395.1(e) are not required to maintain the standard RODS (''logbooks'') described in § 395.8.

### Reason for This Guidance

Occasionally, a CMV driver will begin the duty day fully expecting to meet all the requirements of ''short-haul operations'' as defined by § 395.1(e). Nevertheless, circumstances beyond the driver's control may arise and result in operations that do not meet those requirements. For example, a driver engaged in short-haul operations would no longer qualify for that exception if he or she is unable to remain within the required radius of operation (100 or 150 air-miles), or, in the case of the 100 air-mile radius driver, when a CMV driver cannot complete the duty day within 12 hours of its start.

When the driver first learns of the changes to his or her itinerary and subsequent ineligibility for the short-haul exemption, the driver may have already missed the first mandatory rest break of the break rule; i.e., more than 8 hours may have elapsed since the driver was last off duty, or in the sleeper

berth, for at least 30 minutes. To address this issue, FMCSA advises that in such situations, the driver should not be considered to be in violation of the break rule. The driver should annotate the RODS to indicate why the required rest break was not taken earlier, and should take the break at the earliest safe opportunity. Ideally, this would be prior to preparing the RODS or immediately following the preparation of the RODS. Under FMCSA's existing HOS requirements and guidance, drivers would begin preparing the RODS as soon as they determine they are no longer eligible for the RODS exemption.

**Guidance**

For the reasons explained above, FMCSA issues Regulatory Guidance Question 33 to § 395.1 of the FMCSRs:

## PART 395—HOURS OF SERVICE OF DRIVERS

### § 395.1 Scope of rules in this part.

*Question 33.* If a driver using either short-haul exception in § 395.1(e) finds it necessary to exceed the exception limitations for unforeseen reasons, is the driver in violation of the § 395.3 rest break provision if more than 8 hours have passed without having taken the required rest break?

*Guidance.* No. A driver using a § 395.1(e) short-haul exception who finds it necessary to exceed the exception limitations for unforeseen reasons, is not in violation of the § 395.3 rest-break requirements if 8 or more hours have passed at the time the driver becomes aware of the inability to use the short-haul exception. The driver should annotate the record-of-duty-status to indicate why the required rest break was not taken earlier, and should take the break at the earliest safe opportunity.

Issued on: December 12, 2013.

**Anne S. Ferro,**

*Administrator.*

[FR Doc. 2013–30205 Filed 12–18–13; 8:45 am]

BILLING CODE 4910–EX–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 622

**[Docket No. 130212129–3474–02]**

**RIN 0648–XC967**

## Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Closure of the 2014 Gulf of Mexico Recreational Season for Red Snapper

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS announces the closure date of the recreational season for red snapper in the exclusive economic zone (EEZ) of the Gulf of Mexico (Gulf) for the 2014 fishing season through this temporary rule. Federal waters of the Gulf will close to red snapper recreational harvest at 12:01 a.m., July 11, 2014. This closure is necessary to prevent the recreational sector from exceeding its quota for the fishing year and prevent overfishing of the Gulf red snapper resource.

**DATES:** The closure is effective 12:01 a.m., local time, July 11, 2014, until 12:01 a.m., local time, January 1, 2015. The recreational sector will reopen on June 1, 2015, the beginning of the 2015 recreational fishing season, unless superseding notification is published in the **Federal Register**.

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

**SUPPLEMENTARY INFORMATION:** The Gulf reef fish fishery, which includes red snapper, is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The season length analysis for 2014 used a tiered projection approach for forecasting recreational red snapper average weight and in-season catch rates in the Gulf. The results of retrospective analyses indicate improvements in projection methodologies have occurred over time. Average weight estimates were historically underestimated, but in 2013 projected and observed average weights were within 3 percent of one another, and well within the range of average weights considered for projections. Similarly, estimates of season length improved from 2009 through 2012 with season estimates at or near the lower end of the range of season lengths projected. Past overages have occurred for a variety of reasons, including challenges with predicting angler behavior and landing rates, inconsistent state regulations, and rapidly increasing fish sizes. As a result, projection assumptions in more recent years, including the analysis used for 2014, have been refined to better account for increases in landings per day and changes in average weights.

To encompass the uncertainty inherent in projection modeling, ten models were selected to estimate the 2014 Federal season length. These models incorporated: (1) Upper/lower confidence limits of landings per day; (2) upper/lower confidence limits of average weights; (3) recent average weights (2011–13 or 2013 only); and (4) 2013 Louisiana Creel survey landings per day and average weights. The average season length predicted by all model runs was 39 days (± 2 days) and the median season length for all projections was 40 days. For additional details about the calculation of the projection please see *http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/red_snapper/documents/pdfs/2014/2014_rs_rec_season.pdf.*

Based on the analysis summarized above, NMFS projects the recreational red snapper quota of 5.390 million lb (2.445 million kg), round weight (50 CFR 622.39(a)(2)(i)), to be harvested in 40 days in 2014. This projection assumes Alabama, Mississippi, and Florida will implement consistent regulations in their state waters, and that Louisiana and Texas will continue the same regulations in their state waters as were implemented for the 2013 season. Therefore, Federal waters of the Gulf will open to red snapper recreational harvest at 12:01 a.m., June 1, 2014, and close at 12:01 a.m., July 11, 2014. The recreational sector will reopen on June 1, 2015, the beginning of the 2015 recreational fishing season, unless superseding notification is published in the **Federal Register**.

During the closure, the bag and possession limit for red snapper in or from the Gulf EEZ is zero. In addition, a person aboard a vessel for which a Federal charter vessel/headboat permit for Gulf reef fish has been issued must also abide by these closure provisions in state waters. NMFS has determined this action is necessary to prevent the

recreational sector for red snapper from exceeding its quota for the fishing year.

**Classification**

The Regional Administrator, Southeast Region, NMFS, (RA) has determined this temporary rule is necessary for the conservation and management of Gulf red snapper and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.39(a)(2)(i) and is exempt from review under Executive Order 12866.

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

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive the requirements to provide prior notice and opportunity for public comment on this temporary rule. Such procedures are unnecessary because the rule implementing the recreational red snapper quota and the rule implementing the requirement to close the recreational sector when the quota is reached or projected to be reached have already been subject to notice and comment, and NMFS must now notify the public of the closure.

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

Dated: December 16, 2013.

**Sean F. Corson,**

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

[FR Doc. 2013–30194 Filed 12–16–13; 11:15 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 648

**[Docket No. 120109034–2171–01]**

**RIN 0648–XD024**

## Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Trimester Closure for the Common Pool Fishery

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** This action closes the Gulf of Maine (GOM) haddock Trimester Total Allowable Catch (TAC) Area for Trimester 3, from January 1, 2014, through April 30, 2014, to common pool vessels, because the Trimester 3 TAC for GOM haddock has already been exceeded due to an overage in Trimester 1. This action is intended to prevent the overharvest of the common pool's allocation of GOM haddock.

**DATES:** The closure of the GOM haddock Trimester TAC Area is effective January 1, 2014, through April 30, 2014.

**FOR FURTHER INFORMATION CONTACT:** Liz Sullivan, Fishery Management Specialist, 978–282–8493, Fax 978–281–9135.

**SUPPLEMENTARY INFORMATION:** Regulations governing the Northeast (NE) multispecies fishery are found at 50 CFR part 648, subpart F. The regulations require the NMFS Regional Administrator (RA) to close the Trimester TAC Area for a stock when 90 percent of the Trimester TAC is projected to be caught. The Trimester TAC Area for a stock will close to all common pool vessels fishing with gear capable of catching that stock for the remainder of the trimester. Any overages of a trimester TAC will be deducted from Trimester 3, and any overages of the common pool's sub-annual catch limit (ACL) at the end of the fishing year (FY) will be deducted from the common pool's sub-ACL the following FY.

The FY 2013 common pool sub-ACL for GOM haddock is 2 metric tons (mt; 4,409 lb). In Trimester 1, the common pool caught 1.9 mt (4,260 lb) of GOM haddock, causing the common pool to exceed its Trimester 1 TAC of 0.54 mt (1,190 lb) by 1.4 mt (3,070 lb). Pursuant to regulations, this overage is deducted from Trimester 3, which has a TAC of 0.94 mt (2,072 lb). Because the overage from Trimester 1 was greater than the allowable catch for Trimester 3, Trimester 3 has no allowable catch. Therefore, effective January 1, 2014, the GOM haddock Trimester TAC Area identified in § 648.82(n)(2)(ii)(D) is closed for all of Trimester 3, through April 30, 2014, to all common pool vessels fishing with trawl gear, sink gillnet gear, and longline/hook gear. The GOM haddock Trimester TAC Area will reopen to common pool vessels fishing with trawl, sink gillnet, and longline/hook gear at the beginning of Trimester 1 of FY 2014, on May 1, 2014.

Catch will continue to be monitored through vessel trip reports, dealer-reported landings, vessel monitoring system catch reports, and other available information, and if necessary, additional adjustments to common pool management measures may be made.

**Classification**

This action is required by 50 CFR part 648, and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be impracticable and contrary to the public interest. Pursuant to 5 U.S.C. 553(d)(3), the AA also finds good cause to waive the 30-day delayed effectiveness period.

The regulations at § 648.82(n)(2)(ii) requires the RA to close a trimester TAC area when 90 percent of the respective Trimester TAC has been caught by common pool vessels. The catch data show that the common pool fishery has already exceeded its Trimester 3 TAC for GOM haddock due to an overage in Trimester 1. As a result, this action reduces the extent of the common pool fishery overage of its sub-ACLs for GOM haddock. Any overages of the common pools sub-ACL for this stock would undermine conservation objectives and trigger the implementation of accountability measures that would have negative economic impacts on the common pool vessels. The catch data supporting this action only recently became available. As a result, the time necessary to provide for prior notice and comment, and a 30-day delay in effectiveness, would prevent NMFS from implementing the necessary Trimester TAC closure in a timely manner, which could undermine conservation objectives of the NE Multispecies Fishery Management Plan, and cause negative economic impacts to the common pool fishery.

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

Dated: December 12, 2013.

**Sean F. Corson,**

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

[FR Doc. 2013–30114 Filed 12–17–13; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 648

**[Docket No. 130702583–3999–02]**

**RIN 0648–BD40**

## Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Annual Catch Limits and Accountability Measures

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

**ACTION:** Final rule.

**SUMMARY:** NMFS is implementing the approved measures in an omnibus amendment to three of the Mid-Atlantic Fishery Management Council's fishery management plans. The omnibus amendment changes the accountability measures for the Atlantic mackerel, Atlantic bluefish, summer flounder, scup, and black sea bass recreational fisheries. These measures are intended to more appropriately address accountability in the recreational fisheries.

**DATES:** Effective January 21, 2014.

**ADDRESSES:** The Mid-Atlantic Fishery Management Council prepared an environmental assessment (EA) for the Recreational Accountability Measures (AM) Omnibus Amendment that describes the proposed action and other considered alternatives, and provides a thorough analysis of the impacts of the proposed measures and alternatives. Copies of the Recreational AM Omnibus Amendment, including the EA, are available on request from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901. These documents are also available online at *http://www.mafmc.org.*

**FOR FURTHER INFORMATION CONTACT:** Moira Kelly, Fishery Policy Analyst, (978) 281–9218.

**SUPPLEMENTARY INFORMATION:**

## Background

In 2011, the Council adopted, and NMFS implemented, an Omnibus Annual Catch Limit (ACL) and AM Amendment (76 FR 60606) to establish AMs for the commercial and recreational fisheries that catch Atlantic mackerel, butterfish, Atlantic bluefish, summer flounder, scup, black sea bass, golden tilefish, ocean quahog, and Atlantic surfclams. The AMs for the recreational fisheries included an in-season closure requirement for the Regional Administrator when landings were known to have reached the recreational harvest limit (RHL), and pound-for-pound payback of any overage. In 2012, the recreational black sea bass fishery significantly exceeded its RHL. The pound-for-pound payback requirement in place under the 2011 amendment would drastically limit the recreational black sea bass fishery in fishing year 2014. As a result, the Council decided to review the recreational fishery AMs to determine whether a different approach to recreational accountability would be more appropriate. Specifically, the Council wanted to develop AMs that take into account the status of the stock and the biological consequences, if any, resulting from a recreational sector overage.

Beginning in 2012, the Council developed a second omnibus amendment to its FMPs, specifically to revise the recreational AMs. The Council adopted this amendment in June 2013, and submitted it to NMFS for review. NMFS published a Notice of Availability (NOA) for the amendment on September 4, 2013 (78 FR 54442), and a proposed rule on September 18, 2013 (78 FR 57341). The comment periods ended on November 4, 2013, and October 18, 2013, respectively.

## Disapproved Measure

The Council recommended comparing the 3-yr moving average of the lower confidence limit of the recreational catch estimate to the 3-yr moving average of the recreational ACL to determine whether an ACL overage has occurred. NMFS has disapproved this measure because it is inconsistent with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) National Standard 2 requirement to use the best scientific information available in developing management measures. While there is some uncertainty in the recreational catch point estimate, it is just as likely that the true value of the catch is above the point estimate as it is below it. In the proposed rule, we expressed concern that using the lower confidence limit may not meet the National Standard 2 requirement to use the best scientific information available, and we specifically requested comments on the issue.

The public comments received were split on the topic—members of the public who identified themselves as recreational participants supported the Council's recommendation and members of the public who identified themselves as commercial fishermen or conservationists did not. The public comments in support of the lower confidence limit approach discussed it as a more ''appropriate'' use of statistics, as the Marine Resource Information Program (MRIP) provides a measure of uncertainty (the PSE, or proportional standard error) that should be considered when using the data. The public comments that supported the use of the point estimate stated that the lower confidence limit has an approximately 84-percent chance of being below the true recreational catch value, and would likely result in persistent underestimation of the true recreational catch.

The Council, which also submitted a comment during the proposed rule comment period, suggested that the overall structure of the catch limits provides enough assurance that even chronic underestimating of recreational catch could not lead to overfishing or cause the stock to become overfished. However, even if the catch limit structure would prevent overfishing, as it is defined, chronic underestimating of catch and the resultant reduced stock size could lead to reduced overall catch limits that would reduce the commercial fishing limits, even if the commercial fishery stayed within its required limits.

Because of the concerns expressed in the proposed rule, as well as those expressed in several public comments, NMFS disapproved the Council's preferred approach to determine whether a recreational ACL has been exceeded. Although the Council and public comments supporting using the lower confidence limit expressed valid concerns regarding the accuracy of the MRIP data and the confidence in the overall structure of the Council's catch limits, NMFS does not concur that using the lower confidence limit meets the National Standard 2 requirement to use the best available science.

By disapproving this measure, the status quo approach of using the 3-yr moving average of the point estimate from MRIP for the summer flounder, scup, and black sea bass and a single-year point estimate from MRIP for the Atlantic bluefish and mackerel fisheries remains as the mechanism to determine whether the recreational fishing ACL was exceeded.

## Approved Measures

1. *In-Season Closure Authority.* This rule removes the in-season closure requirement for the affected recreational fisheries. The delay in receiving recreational landings information, combined with regional differences in the recreational fisheries and the resultant disproportional impacts of an in-season closure, led the Council to recommend removing this requirement.

2. *Incorporate stock status in AM determination.* This rule implements a system of AMs that would result in a payback if: (1) The stock is overfished (i.e., the most recent estimate of biomass (B) is below the threshold, or $B/B_{MSY} < ½$), under a rebuilding plan, or if stock status is unknown, *and* the ACL is exceeded; or (2) biomass is below the target, but above the threshold (i.e., $½ < B/B_{MSY} < 1$), *and* the acceptable biological catch (ABC) is exceeded. Otherwise, adjustments to the management measures will be used as

an AM. This adjustment would be in addition to any necessary adjustments needed to meet that year's new catch limits.

The Council currently adjusts its management measures to achieve, but not exceed, the next year's catch limit based largely on what the fishery caught in the current year. If the next year's catch limit is higher than this year's catch, then measures may be liberalized. Conversely, if the next year's catch limit is lower than this year's catch, then measures must be tightened. These adjustments happen independently of any catch limit overage. The Council intends for the overage to result in a ''performance review,'' such that if an overage does occur, an adjustment to the expectations associated with how well those measures would be likely achieve, but not exceed, the target would be incorporated into the coming year's measures determination. This would result in measures potentially being less liberal, or tightened more, than they otherwise would have been, had the overage not occurred.

3. *Scaled payback calculation.* The amount of a payback (if determined to be appropriate under 2, above) will be scaled relative to the biomass. That is, the payback will be the product of the difference between the catch and the ACL (i.e., the overage amount) and the payback coefficient. The payback coefficient is equal to the difference between the most recent estimates of $B_{MSY}$ and current biomass, divided by ½ $B_{MSY}$.

This will result in a smaller payback, the closer the estimated biomass is to the target, and a larger payback the farther away the estimated biomass is from the target. This scaling is intended to minimize the economic impacts of a payback for healthy stocks, while still accounting for the biological consequences of the overage. This scaling will not be used if the stock is overfished (i.e., if $B/B_{MSY} < ½$), or if the stock status is unknown. In those cases, the payback will be equal to the full amount of the overage. In addition, if the stock is above the target (i.e., $B/B_{MSY} > 1$), then the payback will be zero.

The regulations implementing these measures were deemed by the Council to be consistent with the amendment, and necessary to implement such provisions pursuant to section 303(c) of the Magnuson-Stevens Act through a letter, dated August 20, 2013, from the Council Chairman to the NMFS Regional Administrator.

**Public Comments**

Fifteen public comments were received during the public comment periods. Nine comments were received on the proposed rule, and six comments were received on the NOA.

*Comment 1:* One commenter expressed frustration that the Council and NMFS were considering revising the recreational AMs as a result of the black sea bass recreational overage, but did not comment specifically on the proposed measures.

*Response:* NMFS supported the Council in reviewing the recreational AMs to determine whether measures more appropriate for the unique aspects of these recreational fisheries were available. After determining that more suitable approaches were available, NMFS supported the Council in modifying these AMs and avoiding unnecessary consequences in the recreational black sea bass fishery, and has approved most of the Omnibus Amendment.

*Comment 2:* One commenter expressed general frustration with the differences between management of the recreational and commercial fisheries, but did not specifically comment on the proposed measures. The commenter focused primarily on the difference between the commercial and recreational minimum sizes.

*Response:* The management of the commercial fishery is not the subject of this amendment. Comments on appropriate minimum sizes are more applicable to the rules that implement those minimum sizes for each recreational fishery.

*Comment 3:* One commenter expressed concern over the ability to overfish a species into extinction. The commenter also stated that we need to do everything possible to prevent overfishing, and that we should hold commercial fisheries accountable to prevent the extinction of any fish species.

*Response:* The management of the commercial fisheries is not the subject of this amendment, and comments related to the commercial fisheries are more appropriately directed to the rules specific to those fisheries. In addition, none of the subject fisheries are overfished or experiencing overfishing at this time, nor are they in any danger of becoming extinct. Further, the management programs for these species are intended to maintain healthy population levels.

*Comment 4:* Four comments directly, and three comments generally, supported the Council's recommended approach to determining whether the recreational harvest has exceeded the ACL. These commenters included recreational fishermen, a recreational fisheries organization, and the Council. These commenters stated that using the lower confidence limit value was a more statistically valid approach to addressing the uncertainty in the recreational catch estimates, and that treating the recreational estimate the same as the commercial data is inappropriate.

*Response:* NMFS disagrees, for the reasons stated above. Each of the commenters mentioned the ''uncertainty'' in the recreational harvest estimates from MRIP as the basis for supporting the idea of using the lower confidence limit value. There is uncertainty in the recreational harvests estimates; however, using the lower confidence limit value would significantly increase the chances of underestimating recreational catch. The Council, in its comment, stated that recreational fisheries management has routinely ignored the uncertainty in the catch estimate. There is a roughly 84-percent chance that the value at the lower confidence limit is below the true value, as opposed to the 50-percent chance that the true value is below the point estimate. Using the lower confidence limit value continues to ignore the uncertainty that recreational catch is just as likely higher than the point estimate as it is less than the point estimate.

Further, while the overall catch limit structure may provide some assurance that a stock would not be overfished as a result of routinely underestimating recreational catch, the overall catch limits, and consequently, the commercial catch limits, would likely need to be reduced as a result of a reduced stock size. This would be required even if the commercial fishery had not exceeded its catch limits. This would seemingly hold the commercial fishery accountable for the recreational fishery's overage, and for summer flounder, scup, and black sea bass, as described in comment 9, shift the allocation of landings between the commercial and recreational sectors, contrary to the FMP requirements.

For these reasons, NMFS has determined that the point estimate, as derived by MRIP, is the best available estimate of recreational harvest, and that using a different value would violate National Standard 2.

*Comment 5:* Two commenters directly, and three commenters generally, who identified themselves as commercial fishermen or conservationists, shared NMFS' concerns with the Council's recommendation to use the lower confidence limit value, and recommended that NMFS disapprove that measure.

*Response:* NMFS agrees, for the reasons stated above, and did disapprove that measure.

*Comment 6:* The commenters who supported using the lower confidence limit approach also supported eliminating the in-season closure requirement and the pound-for-pound payback, in favor of the proposed approach that would only result in a payback in certain conditions.

*Response:* NMFS agrees, for the reasons stated above.

*Comment 7:* The commenters who opposed using the lower confidence limit approach also supported maintaining the in-season closure requirement and the pound-for-pound payback as they are currently implemented, generally.

*Response:* NMFS disagrees, for the reasons stated above. The continuation of the in-season closure requirement would likely result in disproportionate impacts on states whose recreational fisheries occur later in the year, when an in-season closure would be applied. NMFS also supports the Council's proposed AM structure, as it better addresses the operational issues that may have led to the overage (i.e., by further refining the management measures in the subsequent year) as well as mitigating the potential biological consequences resulting from an overage.

*Comment 8:* Two commenters disagreed with the Council's recommendation to maintain the existing annual catch target (ACT) setting process because it is ''flawed and produces highly inaccurate results,'' but did not recommend a different approach.

*Response:* NMFS concurs with the Council's decision to maintain the existing ACT process because the alternatives considered would have reduced the Council's flexibility in setting ACTs.

*Comment 9:* Two commenters, who identified themselves as commercial fishermen, commented on the change in the distribution in landings between the commercial and recreational fisheries, primarily as a result of the recreational fishery landing more than its allocation. The commenters said this was particularly an issue in the black sea bass fishery, and suggested that additional quota be made available to the commercial fishery to compensate.

*Response:* The black sea bass quota is allocated according to the FMP (51 percent to the recreational fishery and 49 percent to the commercial fishery) during the annual specifications process. NMFS concurs with the Council that the approved modifications to the recreational AMs will help ensure better management of the recreational fisheries and prevent chronic overharvesting in the recreational fishery. NMFS does not have the legal authority to redistribute quota in subsequent years because of the over- or under-harvest of one sector of the fishery.

**Classification**

Except for the measure identified as disapproved, the Administrator, Northeast Region, NMFS, determined that the Recreational AM Omnibus Amendment is necessary for the conservation and management of the recreational Atlantic bluefish, Atlantic mackerel, summer flounder, scup, and black sea bass fisheries and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

The Office of Management and Budget has determined that this final rule is not significant for the purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

**List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: December 12, 2013.

**Alan D. Risenhoover,**

*Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons stated in the preamble, 50 CFR part 648 is amended as follows:

## PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.24, paragraph (b)(6) is removed and paragraphs (b)(2) through (b)(5) are revised to read as follows:

### § 648.24 Fishery closures and accountability measures.

* * * * *

(b) * * *

(2) *Mackerel commercial landings overage repayment.* If the mackerel ACL is exceeded and commercial fishery landings are responsible for the overage, then landings in excess of the DAH will be deducted from the DAH the following year, as a single-year adjustment to the DAH.

(3) *Non-landing AMs.* In the event that the ACL is exceeded, and that the overage has not been accommodated through the landing-based AM described in paragraph (b)(2) of this section, but is attributable to the commercial sector, then the exact amount, in pounds, by which the commercial ACT was exceeded will be deducted from the following year's commercial ACT, as a single-year adjustment.

(4) *Mackerel recreational AMs.* If the mackerel ACL is exceeded and the recreational fishery landings are responsible for the overage, then the following procedure will be followed:

(i) *If biomass is below the threshold, the stock is under rebuilding, or biological reference points are unknown.* If the most recent estimate of biomass is below the $B_{MSY}$ threshold (i.e., $B/B_{MSY}$ is less than 0.5), the stock is under a rebuilding plan, or the biological reference points (B or $B_{MSY}$) are unknown, and the ACL has been exceeded, then the exact amount, in pounds, by which the most recent year's recreational catch estimate caused the most recent year's ACL to be exceeded will be deducted from the following year's recreational ACT, as a single-year adjustment.

(ii) *If biomass is above the threshold, but below the target, and the stock is not under rebuilding.* If the most recent estimate of biomass is above the biomass threshold ($B/B_{MSY}$ is greater than 0.5), but below the biomass target ($B/B_{MSY}$ is less than 1.0), and the stock is not under a rebuilding plan, then the following AMs will apply:

(A) *If the ACL has been exceeded.* If the ACL has been exceeded, then adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(B) *If the ABC has been exceeded.* If the ABC has been exceeded, then a single-year adjustment to the following year's recreational ACT will be made, as described below. In addition, adjustments to the recreational management measures, taking into account the performance of the

measures and conditions that precipitated the overage, will be made in the following year.

(*1*) *Adjustment to ACT.* If an adjustment to the following year's ACT is required, then the recreational ACT will be reduced by the exact amount, in pounds, of the product of the recreational overage, defined as the difference between the recreational contribution to the catch above the ACL, and the payback coefficient specified in paragraph (b)(4)(ii)(B)(*2*) of this section.

(*2*) *Payback coefficient.* The payback coefficient is the difference between the most recent estimates of $B_{MSY}$ and biomass (i.e., $B_{MSY} - B$) divided by one-half of $B_{MSY}$.

(iii) *If biomass is above* $B_{MSY}$. If the most recent estimate of biomass is above $B_{MSY}$ (i.e., $B/B_{MSY}$ is greater than 1.0), then adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(5) *Mackerel ACL overage evaluation.* The ACL will be evaluated based on a single-year examination of total catch (landings and discards). Both landings and dead discards will be evaluated in determining if the ACL has been exceeded. NMFS shall make determinations about overages and implement any changes to the ACL, in accordance with the Administrative Procedure Act, through notification in the **Federal Register**, by May 15 of the fishing year in which the deductions will be made.

* * * * *

■ 3. In § 648.103, paragraph (b)(3) is added and paragraphs (c), (d), and (e) are revised to read as follows:

**§ 648.103 Summer flounder accountability measures.**

* * * * *

(b) * * *

(3) *Non-landing accountability measure.* In the event that the commercial ACL is exceeded and that the overage has not been accommodated through the landings-based AM, then the exact amount by which the commercial ACL was exceeded, in pounds, will be deducted, as soon as possible, from the applicable subsequent single fishing year commercial ACL.

(c) *Recreational ACL Evaluation.* The recreational sector ACL will be evaluated based on a 3-year moving average comparison of total catch (landings and dead discards). Both landings and dead discards will be evaluated in determining if the 3-year average recreational sector ACL has been exceeded. The 3-year moving average will be phased in over the first 3 years, beginning with 2012: Total recreational catch from 2012 will be compared to the 2012 recreational sector ACL; the average total catch from both 2012 and 2013 will be compared to the average of the 2012 and 2013 recreational sector ACLs; the average total catch from 2012, 2013, and 2014 will be compared to the average of the 2012, 2013, and 2014 recreational sector ACLs; and for all subsequent years, the preceding 3-year average recreational total catch will be compared to the preceding 3-year average recreational sector ACL.

(d) *Recreational AMs.* If the recreational ACL is exceeded, then the following procedure will be followed:

(1) *If biomass is below the threshold, the stock is under rebuilding, or biological reference points are unknown.* If the most recent estimate of biomass is below the $B_{MSY}$ threshold (i.e., $B/B_{MSY}$ is less than 0.5), the stock is under a rebuilding plan, or the biological reference points (B or $B_{MSY}$) are unknown, and the recreational ACL has been exceeded, then the exact amount, in pounds, by which the most recent year's recreational catch estimate exceeded the most recent year's recreational ACL will be deducted, in the following fishing year, or as soon as possible, thereafter, once catch data are available, from the recreational ACT, as a single-year adjustment.

(2) *If biomass is above the threshold, but below the target, and the stock is not under rebuilding.* If the most recent estimate of biomass is above the biomass threshold ($B/B_{MSY}$ is greater than 0.5), but below the biomass target ($B/B_{MSY}$ is less than 1.0), and the stock is not under a rebuilding plan, then the following AMs will apply:

(i) *If the Recreational ACL has been exceeded.* If the Recreational ACL has been exceeded, then adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(ii) *If the ABC has been exceeded.* If the ABC has been exceeded, then a single-year adjustment to the recreational ACT will be made, in the following fishing year, or as soon as possible thereafter, once catch data are available, as described in paragraph (d)(2)(ii)(A) of this section. In addition, adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following year.

(A) *Adjustment to Recreational ACT.* If an adjustment to the following year's Recreational ACT is required, then the ACT will be reduced by the exact amount, in pounds, of the product of the overage, defined as the difference between the recreational catch and the recreational ACL, and the payback coefficient, as specified in paragraph (d)(2)(ii)(B) of this section.

(B) *Payback coefficient.* The payback coefficient is the difference between the most recent estimate of biomass and $B_{MSY}$ (i.e., $B_{MSY} - B$) divided by one-half of $B_{MSY}$.

(3) *If biomass is above* $B_{MSY}$. If the most recent estimate of biomass is above $B_{MSY}$ (i.e., $B/B_{MSY}$ is greater than 1.0), then adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(e) *State/Federal disconnect AM.* If the total catch, allowable landings, commercial quotas, and/or RHL measures adopted by the ASMFC Summer Flounder, Scup and Black Sea Bass Management Board and the MAFMC differ for a given fishing year, administrative action will be taken as soon as possible to revisit the respective recommendations of the two groups. The intent of this action shall be to achieve alignment through consistent state and Federal measures such that no differential effects occur on Federal permit holders.

■ 4. In § 648.123, paragraphs (b), (c), and (d) are revised and paragraph (e) is added to read as follows:

**§ 648.123 Scup accountability measures.**

* * * * *

(b) *Non-landing accountability measure.* In the event that the commercial ACL has been exceeded and the overage has not been accommodated through the landings-based AM, then the exact amount by which the commercial ACL was exceeded, in pounds, will be deducted, as soon as possible, from the applicable subsequent single fishing year commercial ACL.

(c) *Recreational ACL.* The recreational sector ACL will be evaluated based on a 3-year moving average comparison of

total catch (landings and dead discards). Both landings and dead discards will be evaluated in determining if the 3-year average recreational sector ACL has been exceeded. The 3-year moving average will be phased in over the first 3 years, beginning with 2012: Total recreational total catch from 2012 will be compared to the 2012 recreational sector ACL; the average total catch from both 2012 and 2013 will be compared to the average of the 2012 and 2013 recreational sector ACLs; the average total catch from 2012, 2013, and 2014 will be compared to the average of 2012, 2013, and 2014 recreational sector ACLs; and for all subsequent years, the preceding 3-year average recreational total catch will be compared to the preceding 3-year average recreational sector ACL.

(d) *Recreational AMs.* If the recreational ACL is exceeded, then the following procedure will be followed:

(1) *If biomass is below the threshold, the stock is under rebuilding, or biological reference points are unknown.* If the most recent estimate of biomass is below the $B_{MSY}$ threshold (i.e., $B/B_{MSY}$ is less than 0.5), the stock is under a rebuilding plan, or the biological reference points (B or $B_{MSY}$) are unknown, and the recreational ACL has been exceeded, then the exact amount, in pounds, by which the most recent year's recreational catch estimate exceeded the most recent year's recreational ACL will be deducted in the following fishing year, or as soon as possible, thereafter, once catch data are available, from the recreational ACT, as a single-year adjustment.

(2) *If biomass is above the threshold, but below the target, and the stock is not under rebuilding.* If the most recent estimate of biomass is above the biomass threshold ($B/B_{MSY}$ is greater than 0.5), but below the biomass target ($B/B_{MSY}$ is less than 1.0), and the stock is not under a rebuilding plan, then the following AMs will apply:

(i) *If the Recreational ACL has been exceeded.* If the Recreational ACL has been exceeded, then adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(ii) *If the ABC has been exceeded.* If the ABC has been exceeded, then a single year adjustment to the recreational ACT will be made, in the following fishing year, or as soon as possible thereafter, once catch data are available, as described in paragraph (d)(2)(ii)(A) of this section. In addition, adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following year.

(A) *Adjustment to Recreational ACT.* If an adjustment to the following year's Recreational ACT is required, then the ACT will be reduced by the exact amount, in pounds, of the product of the overage, defined as the difference between the recreational catch and the recreational ACL, and the payback coefficient, as specified in paragraph (d)(2)(ii)(B) of this section.

(B) *Payback coefficient.* The payback coefficient is the difference between the most recent estimate of biomass and $B_{MSY}$ (i.e., $B_{MSY} - B$) divided by one-half of $B_{MSY}$.

(3) *If biomass is above $B_{MSY}$.* If the most recent estimate of biomass is above $B_{MSY}$ (i.e., $B/B_{MSY}$ is greater than 1.0), then adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(e) *State/Federal disconnect AM.* If the total catch, allowable landings, commercial quotas, and/or RHL measures adopted by the ASMFC Summer Flounder, Scup and Black Sea Bass Management Board and the MAFMC differ for a given fishing year, administrative action will be taken as soon as possible to revisit the respective recommendations of the two groups. The intent of this action shall be to achieve alignment through consistent state and Federal measures such that no differential effects occur on Federal permit holders.

■ 5. In § 648.143, paragraphs (b), (c), and (d) are revised and paragraph (e) is added to read as follows:

**§ 648.143 Black sea bass accountability measures.**

* * * * *

(b) *Non-landing accountability measure.* In the event that the commercial ACL has been exceeded and the overage has not been accommodated through the landings-based AM, then the exact amount by which the commercial ACL was exceeded, in pounds, will be deducted, as soon as possible, from the applicable subsequent single fishing year commercial ACL.

(c) *Recreational ACL Evaluation.* The recreational sector ACL will be evaluated based on a 3-year moving average comparison of total catch (landings and dead discards). Both landings and dead discards will be evaluated in determining if the 3-year average recreational sector ACL has been exceeded. The 3-year moving average will be phased in over the first 3 years, beginning with 2012: Total recreational total catch from 2012 will be compared to the 2012 recreational sector ACL; the average total catch from both 2012 and 2013 will be compared to the average of the 2012 and 2013 recreational sector ACLs; the average total catch from 2012, 2013, and 2014 will be compared to the average of the 2012, 2013, and 2014 recreational sector ACLs and, for all subsequent years, the preceding 3-year average recreational total catch will be compared to the preceding 3-year average recreational sector ACL.

(d) *Recreational AMs.* If the recreational ACL is exceeded, then the following procedure will be followed:

(1) *If biomass is below the threshold, the stock is under rebuilding, or biological reference points are unknown.* If the most recent estimate of biomass is below the $B_{MSY}$ threshold (i.e., $B/B_{MSY}$ is less than 0.5), the stock is under a rebuilding plan, or the biological reference points (B or $B_{MSY}$) are unknown, and the recreational ACL has been exceeded, then the exact amount, in pounds, by which the most recent year's recreational catch estimate exceeded the most recent year's recreational ACL will be deducted in the following fishing year, or as soon as possible thereafter, once catch data are available, from the recreational ACT, as a single-year adjustment.

(2) *If biomass is above the threshold, but below the target, and the stock is not under rebuilding.* If the most recent estimate of biomass is above the biomass threshold ($B/B_{MSY}$ is greater than 0.5), but below the biomass target ($B/B_{MSY}$ is less than 1.0), and the stock is not under a rebuilding plan, then the following AMs will apply:

(i) *If the Recreational ACL has been exceeded.* If the Recreational ACL has been exceeded, then adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(ii) *If the ABC has been exceeded.* If the ABC has been exceeded, then a single-year adjustment to the recreational ACT will be made in the following fishing year, or as soon as

possible thereafter, once catch data are available, as described in paragraph (d)(2)(ii)(A) of this section. In addition, adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following year.

(A) *Adjustment to Recreational ACT.* If an adjustment to the following year's Recreational ACT is required, then the ACT will be reduced by the exact amount, in pounds, of the product of the overage, defined as the difference between the recreational catch and the recreational ACL, and the payback coefficient, as specified in paragraph (d)(2)(ii)(B) of this section.

(B) *Payback coefficient.* The payback coefficient is the difference between the most recent estimate of biomass and $B_{MSY}$ (i.e., $B_{MSY} - B$) divided by one-half of $B_{MSY}$.

(3) *If biomass is above $B_{MSY}$.* If the most recent estimate of biomass is above $B_{MSY}$ (i.e., $B/B_{MSY}$ is greater than 1.0), then adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(e) *State/Federal disconnect AM.* If the total catch, allowable landings, commercial quotas, and/or RHL measures adopted by the ASMFC Summer Flounder, Scup and Black Sea Bass Management Board and the MAFMC differ for a given fishing year, administrative action will be taken as soon as possible to revisit the respective recommendations of the two groups. The intent of this action shall be to achieve alignment through consistent state and Federal measures such that no differential effects occur to Federal permit holders.

■ 6. In § 648.163, paragraphs (d) and (e) are revised to read as follows:

**§ 648.163 Bluefish accountability measures (AMs).**

* * * * *

(d) *Recreational landings AM when the ACL is exceeded and no sector-to-sector transfer of allowable landings has occurred.* If the fishery-level ACL is exceeded and landings from the recreational fishery are determined to be the sole cause of the overage, and no transfer between the commercial and recreational sector was made for the fishing year, as outlined in § 648.162(b)(2), then the following procedure will be followed:

(1) *If biomass is below the threshold, the stock is under rebuilding, or biological reference points are unknown.* If the most recent estimate of biomass is below the $B_{MSY}$ threshold (i.e., $B/B_{MSY}$ is less than 0.5), the stock is under a rebuilding plan, or the biological reference points (B or $B_{MSY}$) are unknown, and the ACL has been exceeded, then the exact amount, in pounds, by which the most recent year's recreational catch estimate exceeded the most recent year's ACL will be deducted from the following year's recreational ACT, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(2) *If biomass is above the threshold, but below the target, and the stock is not under rebuilding.* If the most recent estimate of biomass is above the biomass threshold ($B/B_{MSY}$ is greater than 0.5), but below the biomass target ($B/B_{MSY}$ is less than 1.0), and the stock is not under a rebuilding plan, then the following AMs will apply:

(i) *If the ACL has been exceeded.* If the ACL has been exceeded, then adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(ii) *If the ABC has been exceeded.* If the ABC has been exceeded, then a single-year adjustment to the following year's recreational ACT will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as described in paragraph (d)(2)(ii)(A) of this section. In addition, adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following year.

(A) *Adjustment to Recreational ACT.* If an adjustment to the following year's Recreational ACT is required, then the ACT will be reduced by the exact amount, in pounds, of the product of the recreational overage, defined as the difference between the recreational contribution to the catch above the ACL, and the payback coefficient, as specified in paragraph (d)(2)(ii)(B) of this section.

(B) *Payback coefficient.* The payback coefficient is the difference between the most recent estimates of $B_{MSY}$ and biomass (i.e., $B_{MSY} - B$) divided by one-half of $B_{MSY}$.

(3) *If biomass is above $B_{MSY}$.* If the most recent estimate of biomass is above $B_{MSY}$ (i.e., $B/B_{MSY}$ is greater than 1.0), then adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(e) *AM for when the ACL is exceeded and a sector-to-sector transfer of allowable landings has occurred.* If the fishery-level ACL is exceeded and landings from the recreational fishery and/or the commercial fishery are determined to have caused the overage, and a transfer between the commercial and recreational sector has occurred for the fishing year, as outlined in § 648.162(b)(2), then the amount transferred between the recreational and commercial sectors may be reduced by the ACL overage amount (pound-for-pound repayment) in a subsequent, single fishing year if the Bluefish Monitoring Committee determines that the ACL overage was the result of too liberal a landings transfer between the two sectors. If the Bluefish Monitoring Committee determines that the ACL overage was not the result of the landings transfer, the recreational AMs described in paragraph (d) of this section will be implemented.

* * * * *

[FR Doc. 2013–30133 Filed 12–18–13; 8:45 am]

BILLING CODE 3510–22–P

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**[Docket No. 121009528–2729–02]**

**RIN 0648–XD025**

## Fisheries of the Northeastern United States; Summer Flounder Fishery; Quota Transfer

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

**ACTION:** Temporary rule; quota transfer.

**SUMMARY:** NMFS announces that the State of Maryland is transferring a portion of its 2013 commercial summer flounder quota to the State of Connecticut. NMFS is adjusting the quotas and announcing the revised commercial quota for each state involved.

**DATES:** Effective December 17, 2013, through December 31, 2013.

**FOR FURTHER INFORMATION CONTACT:** Carly Bari, Fishery Management Specialist, 978–281–9224.

**SUPPLEMENTARY INFORMATION:** Regulations governing the summer flounder fishery are in 50 CFR part 648, and require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.100.

The final rule implementing Amendment 5 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, which was published on December 17, 1993 (58 FR 65936), provided a mechanism for summer flounder quota to be transferred from one state to another. Two or more states, under mutual agreement and with the concurrence of the Administrator, Northeast Region, NMFS (Regional Administrator), can transfer or combine summer flounder commercial quota under § 648.102(c)(2). The Regional Administrator is required to consider the criteria in § 648.102(c)(2)(i) to evaluate requests for quota transfers or combinations.

Maryland has agreed to transfer 10,000 lb (4,536 kg) of its 2013 commercial quota to Connecticut. This transfer was prompted by the diligent efforts of state officials in Connecticut not to exceed the commercial summer flounder quota. The Regional Administrator has determined that the criteria set forth in § 648.102(c)(2)(i) have been met. The revised summer flounder commercial quotas for calendar year 2013 are: Maryland, 223,269 lb (101,273 kg); and Connecticut, 273,605 lb (125,105 kg).

## Classification

This action is taken under 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: December 16, 2013.

**Sean F. Corson,**

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

[FR Doc. 2013–30217 Filed 12–17–13; 11:15 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**[Docket No. 111220786–1781–01]**

**RIN 0648–XD030**

## Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for the State of New Jersey

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS announces that the 2013 summer flounder commercial quota allocated to the State of New Jersey has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in New Jersey for the remainder of calendar year 2013, unless additional quota becomes available through a transfer from another state. Regulations governing the summer flounder fishery require publication of this notification to advise New Jersey that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no Federal commercial quota is available for landing summer flounder in New Jersey.

**DATES:** Effective December 17, 2013, through December 31, 2013.

**FOR FURTHER INFORMATION CONTACT:** Carly Bari, (978) 281–9224, or *Carly.Bari@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned on a percentage basis among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.102.

The initial total commercial quota for summer flounder for the 2013 fishing year is 11,793,596 lb (5,349,575 kg) (77 FR 76942, December 31, 2012). The percent allocated to vessels landing summer flounder in New Jersey is 16.72499 percent, resulting in a commercial quota of 1,972,478 lb (894,716 kg). The 2013 allocation was adjusted to 1,972,066 lb (894,514 kg) after deduction of research set-aside, adjustment for 2012 quota overages, and adjustments for quota transfers between states.

The Administrator, Northeast Region, NMFS (Regional Administrator), monitors the state commercial landings and determines when a state's commercial quota has been harvested. NMFS is required to publish notification in the **Federal Register** advising and notifying commercial vessels and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. The Regional Administrator has determined, based upon dealer reports and other available information, that New Jersey has harvested its quota for 2013.

Section 648.4(b) provides that Federal permit holders agree, as a condition of the permit, not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective December 17, 2013, landings of summer flounder in New Jersey by vessels holding summer flounder commercial Federal fisheries permits are prohibited for the remainder of the 2013 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective December 17, 2013, federally permitted dealers are also notified that they may not purchase summer flounder in New Jersey for the remainder of the calendar year, or until additional quota becomes available through a transfer from another state.

## Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be contrary to the public interest. This action closes the summer flounder fishery for New Jersey until January 1, 2014, under current regulations. The regulations at § 648.103(b) require such action to ensure that summer flounder vessels do not exceed quotas allocated to the states. If implementation of this closure was delayed to solicit prior public comment, the quota for this fishing year will be exceeded, thereby undermining the conservation objectives of the Summer Flounder Fishery Management Plan. The AA further finds, pursuant to 5 U.S.C. 553(d)(3), good cause to waive the 30-day delayed effectiveness period for the reason stated above.

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

Dated: December 16, 2013.

**Sean F. Corson,**

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

[FR Doc. 2013–30216 Filed 12–17–13; 11:15 am]

BILLING CODE 3510–22–P

# Proposed Rules

Federal Register

Vol. 78, No. 244

Thursday, December 19, 2013

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.

## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Parts 346 and 390

**RIN 3064–AE09**

### Removal of Transferred OTS Regulations Regarding Disclosure and Reporting of CRA-Related Agreements and Amendments to Other Rules and Regulations

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** In this notice of proposed rulemaking, the Federal Deposit Insurance Corporation (''FDIC'') proposes to rescind and remove a regulation entitled ''Disclosure and Reporting of CRA-Related Agreements.'' This regulation was included in the regulations that were transferred to the FDIC from the Office of Thrift Supervision (''OTS'') on July 21, 2011, in connection with the implementation of applicable provisions of Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''). The requirements for State savings associations in the rescinded regulation are substantively similar to those in another regulation also entitled ''Disclosure and Reporting of CRA-Related Agreements,'' which is applicable for all insured depository institutions (''IDIs'') for which the FDIC has been designated the appropriate Federal banking agency.

Upon removal of the rescinded regulation entitled ''Disclosure and Reporting of CRA-Related Agreements,'' regulations applicable for all IDIs for which the FDIC has been designated the appropriate Federal banking agency will be found at the regulation also entitled ''Disclosure and Reporting of CRA-Related Agreements.''

**DATES:** Comments must be received on or before February 18, 2014.

**ADDRESSES:** You may submit comments by any of the following methods:

- *FDIC Web site: http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow instructions for submitting comments on the agency Web site.
- *FDIC Email: Comments@fdic.gov.* Include RIN 3064–AE09 on the subject line of the message.
- *FDIC Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery to FDIC:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street building (located on F Street) on business days between 7 a.m. and 5 p.m.

Please include your name, affiliation, address, email address, and telephone number(s) in your comment. Where appropriate, comments should include a short Executive Summary consisting of no more than five single-spaced pages. All statements received, including attachments and other supporting materials, are part of the public record and are subject to public disclosure. You should submit only information that you wish to make publicly available.

**Please note:** All comments received will be posted generally without change to *http://www.fdic.gov/regulations/laws/federal/propose.html,* including any personal information provided. Paper copies of public comments may be requested from the Public Information Center by telephone at 1–877–275–3342 or 1–703–562–2200.

**FOR FURTHER INFORMATION CONTACT:** Patience Singleton, Division of Depositor and Consumer Protection, (202) 898–6859; Martha L. Ellett, Legal Division, (202) 898–6765; Richard M. Schwartz, Legal Division, (202) 898–7424; Jennifer Maree, Legal Division, (202) 898–6543.

**SUPPLEMENTARY INFORMATION:**

## I. Background

### *The Dodd-Frank Act*

The Dodd-Frank Act [1] provided for a substantial reorganization of the regulation of State and Federal savings associations and their holding companies. Beginning July 21, 2011, the transfer date established by section 311 of the Dodd-Frank Act, codified at 12 U.S.C. 5411, the powers, duties, and functions formerly performed by the OTS were divided among the FDIC, as to State savings associations, the Office of the Comptroller of the Currency (''OCC''), as to Federal savings associations, and the Board of Governors of the Federal Reserve System (''FRB''), as to savings and loan holding companies. Section 316(b) of the Dodd-Frank Act, codified at 12 U.S.C. 5414(b), provides the manner of treatment for all orders, resolutions, determinations, regulations, and advisory materials that had been issued, made, prescribed, or allowed to become effective by the OTS. The section provides that if such materials were in effect on the day before the transfer date, they continue to be in effect and are enforceable by or against the appropriate successor agency until they are modified, terminated, set aside, or superseded in accordance with applicable law by such successor agency, by any court of competent jurisdiction, or by operation of law.

Section 316(c) of the Dodd-Frank Act, codified at 12 U.S.C. 5414(c), further directed the FDIC and the OCC to consult with one another and to publish a list of the continued OTS regulations that would be enforced by the FDIC and the OCC, respectively. On June 14, 2011, the FDIC's Board of Directors approved a ''List of OTS Regulations to be Enforced by the OCC and the FDIC Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act.'' This list was published by the FDIC and the OCC as a Joint Notice in the **Federal Register** on July 6, 2011.[2]

Although section 312(b)(2)(B)(i)(II) of the Dodd-Frank Act, codified at 12 U.S.C. 5412(b)(2)(B)(i)(II), granted the OCC rulemaking authority relating to both State and Federal savings associations, nothing in the Dodd-Frank Act affected the FDIC's existing authority to issue regulations under the FDI Act and other laws as the ''appropriate Federal banking agency'' or under similar statutory terminology. Section 312(c) of the Dodd-Frank Act amended the definition of ''appropriate Federal banking agency'' contained in section 3(q) of the FDI Act, 12 U.S.C. 1813(q), to add State savings associations to the list of entities for which the FDIC is designated as the ''appropriate Federal banking agency.''

[1] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

[2] 76 FR 39247 (July 6, 2011).

As a result, when the FDIC acts as the designated ''appropriate Federal banking agency'' (or under similar terminology) for State savings associations, as it does here, the FDIC is authorized to issue, modify and rescind regulations involving such associations, as well as for State nonmember banks and insured branches of foreign banks.

As noted, on June 14, 2011, pursuant to this authority, the FDIC's Board of Directors reissued and redesignated certain transferring regulations of the former OTS. These transferred OTS regulations were published as new FDIC regulations in the **Federal Register** on August 5, 2011.[3] When it republished the transferred OTS regulations as new FDIC regulations, the FDIC specifically noted that its staff would evaluate the transferred OTS rules and might later recommend incorporating the transferred OTS regulations into other FDIC rules, amending them, or rescinding them, as appropriate.

One of the OTS rules transferred to the FDIC governed OTS oversight of disclosure and reporting of CRA-related agreements in the context of State savings associations. The OTS rule, formerly found at 12 CFR part 533, was transferred to the FDIC with only minor nonsubstantive changes and is now found in the FDIC's rules at part 390, subpart H, entitled ''Disclosure and Reporting of CRA-Related Agreements.'' Before the transfer of the OTS rules and continuing today, the FDIC's rules contained part 346, also entitled ''Disclosure and Reporting of CRA-Related Agreements,'' a rule governing FDIC oversight of disclosure and reporting of CRA-related agreements with respect to IDIs for which the FDIC has been designated the appropriate Federal banking agency. After careful review and comparison of part 390, subpart H and part 346, the FDIC proposes to rescind part 390, subpart H, because, as discussed below, it is substantively redundant to existing part 346 and simultaneously we propose to make technical conforming edits to our existing rule.

*FDIC's Existing 12 CFR Part 346 and Former OTS's Part 533 (Transferred, in Part, to FDIC's Part 390, Subpart H)*

Section 711 of the Gramm-Leach-Bliley Act (''GLB Act'')[4] added section 48 to the FDI Act,[5] entitled ''CRA Sunshine Requirements.'' Section 48 applies to written agreements that (1) are made in fulfillment of the Community Reinvestment Act of 1977 (''CRA''),[6] (2) involve funds or other resources of an IDI or affiliate with an aggregate value of more than $10,000 in a year, or loans with an aggregate principal value of more than $50,000 in a year, and (3) are entered into by an IDI or affiliate of an IDI and a nongovernmental entity or person (''NGEP''). The provisions of section 48 of the FDI Act require NGEPs, IDIs, and affiliates of IDIs that are parties to certain agreements that are in fulfillment of the CRA to make the agreements available to the public and the appropriate agency and to file annual reports concerning the agreements with the appropriate agency.

On January 10, 2001, pursuant to section 711 of the GLB Act,[7] the FDIC, the OTS, the OCC, and the FRB, published a joint final rule[8] to implement the CRA sunshine provisions of section 48 of the FDI Act. The joint final rule identifies the types of written agreements that are covered by section 48 (referred to as ''covered agreements'') and defines many of the terms used in the statute. The rule also describes how the parties to a covered agreement must make the agreements available to the public and the appropriate agencies and explains the type of information that must be included in the annual report filed by a party to a covered agreement.[9]

Section 48 of the FDI Act, created by section 711 of the GLB Act, instructs the FDIC, OTS, OCC, and FRB (collectively, the ''Federal banking agencies'') to consult and coordinate with one another ''for the purposes of assuring, to the extent possible, that the regulations prescribed by each such agency are consistent and comparable with the regulations prescribed by the other such agencies.''[10] The Federal banking agencies consulted and coordinated with respect to this rulemaking and on an interagency basis jointly issued rules that are substantively identical with regard to their reporting and disclosure requirements,[11] including an identical definition of ''covered agreement.''[12] Accordingly, the portion of the OTS regulations that applied to State savings associations and their subsidiaries, originally codified at 12 CFR part 533 and subsequently transferred to FDIC's part 390, subpart H, is substantively similar to the current FDIC regulations codified at 12 CFR part 346. Specifically, part 346 of the FDIC regulations applies to State nonmember insured banks and their subsidiaries,[13] while part 390, subpart H applies to State savings associations, their subsidiaries and their affiliates.[14] Therefore, by amending Part 346 to cover State savings associations and rescinding part 390, subpart H, the FDIC will streamline its regulations and reduce redundancy.

Although the former OTS rule and part 390, subpart H covers savings and loan holding companies that are affiliated with savings associations as well as the savings associations, the FDIC does not supervise savings and loan or bank holding companies for purposes of this rule. Section 312 of the Dodd-Frank Act[15] divides and transfers the functions of the former OTS to the FDIC, OCC, and FRB by amending section 1813(q) of the FDI Act. Specifically, section 312 transfers the former OTS's power to regulate State savings associations to the FDIC, while it transfers the power to regulate savings and loan *holding companies* to the FRB.[16] As a result, whereas the former OTS part 533 applied to State savings associations, their subsidiaries and their affiliates as well as to savings and loan holding companies,[17] upon transfer of part 533 to FDIC's part 390, subpart H, only the authority over State savings associations and their subsidiaries was transferred to the FDIC for purposes of this rule.[18] The FRB currently has jurisdiction over the regulation and supervision of disclosure and reporting of CRA-related agreements as it applies to affiliates, including savings and loan holding companies of State savings associations.[19] For this reason, the existing reference to affiliates in part 390, subpart H is not proposed to be added to part 346 of the FDIC rules.

After careful comparison of the FDIC's part 346 with the transferred OTS rule in part 390, subpart H, the FDIC has concluded that, with the exception of the scope of the two sections which changed as a result of the Dodd-Frank Act, the transferred OTS rules governing disclosure and reporting of CRA-related agreements are substantively redundant. Therefore, based on the foregoing, the FDIC proposes to rescind and remove

[3] 76 FR 47652 (Aug. 5, 2011).

[4] Gramm-Leach-Bliley Act, Public Law 106–102, 113 Stat. 1338 (1999).

[5] 12 U.S.C. 1831y (1999).

[6] Community Reinvestment Act of 1977, Public Law 95–128, 91 Stat. 1147 (1977) (codified at 12 U.S.C. 2901 *et seq.*).

[7] 12 U.S.C. 1831y(h)(1).

[8] 66 FR 2052 (Jan. 10, 2001).

[9] *Id.*

[10] 12 U.S.C. 1831y(h)(4).

[11] 66 FR 2099 (Jan. 10, 2001).

[12] *See* 12 CFR 346.2; 12 CFR 390.161; 12 CFR 533.2.

[13] 12 CFR 346.1.

[14] 12 CFR 390.160.

[15] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law. 111–203, 124 Stat. 1376 (2010) (codified at 12 U.S.C. 5412).

[16] 12 U.S.C. 5412.

[17] 12 CFR 533.1.

[18] 12 CFR 390.160.

[19] 12 CFR 207.1.

from the Code of Federal Regulations the rules located at part 390, subpart H and to make minor conforming changes to part 346 to incorporate State savings associations.

## II. The Proposal

Regarding the functions of the former OTS that were transferred to the FDIC, section 316(b)(3) of the Dodd-Frank Act, 12 U.S.C. 5414(b)(3), in pertinent part, provides that the former OTS's regulations will be enforceable by the FDIC until they are modified, terminated, set aside, or superseded in accordance with applicable law. After reviewing the rules currently found in part 390, subpart H, the FDIC, as the appropriate Federal banking agency for State savings associations, proposes to rescind part 390, subpart H in its entirety. The FDIC also proposes (1) to modify to the scope of part 346 to include State savings associations and their subsidiaries to conform to and reflect the scope of FDIC's current supervisory responsibilities as the appropriate Federal banking agency, and (2) to add a new subsection (m), which would define ''State savings association'' as having the same meaning as in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3)). If the proposal is finalized, oversight of disclosure and reporting of CRA-related agreements in part 346 would apply to all FDIC-supervised institutions, including State savings associations, and part 390, subpart H would be removed because it is largely redundant of those rules found in part 346. Rescinding part 390, subpart H will serve to streamline the FDIC's rules and eliminate unnecessary regulations.

## III. Request for Comments

The FDIC invites comments on all aspects of this proposed rulemaking, and specifically requests comments on the following:

(1) Are there any specific provisions of part 346 that are outdated or obsolete, or are behind industry standards? If so, please describe and recommend alternate disclosure and reporting methodology.

(2) Are the provisions of proposed part 346 sufficient to provide adequate disclosure and reporting of CRA-related agreements? Are the provisions of proposed part 346 overly burdensome? Please substantiate your answer.

(3) What impacts, positive or negative, can you foresee in the FDIC's proposal to rescind part 390, subpart H?

Written comments must be received by the FDIC no later than February 18, 2014.

## IV. Regulatory Analysis and Procedure

### *A. The Paperwork Reduction Act*

In accordance with the requirements of the Paperwork Reduction Act (''PRA'') of 1995, 44 U.S.C. 3501–3521, the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (''OMB'') control number.

The Proposed Rule would rescind and remove from FDIC regulations part 390, subpart H. This rule was transferred with only nominal changes to the FDIC from the OTS when the OTS was abolished by Title III of the Dodd-Frank Act. Part 390, subpart H is largely redundant of the FDIC's existing part 346 regarding disclosure and reporting of CRA-related agreements. The information collections contained in part 346 are cleared by OMB under the FDIC's ''CRA Sunshine'' information collection (OMB No. 3064–0139). The FDIC reviewed its burden estimates for the collection at the time it assumed responsibility for supervision of State savings associations transferred from the OTS and determined that no changes to the burden estimates were necessary. This Proposed Rule will not modify the FDIC's existing collection and does not involve any new collections of information pursuant to the PRA.

Finally, the Proposed Rule would amend sections 346.1 and 346.11 to include State savings associations and their subsidiaries within the scope of part 346 and to define ''State savings association,'' respectively. These measures clarify that State savings associations, as well as State nonmember banks are subject to part 346. Thus, these provisions of the Proposed Rule will not involve any new collections of information under the PRA or impact current burden estimates. Based on the foregoing, no information collection request has been submitted to the OMB for review.

### *B. The Regulatory Flexibility Act*

The Regulatory Flexibility Act (''RFA''), requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of the proposed rule on small entities (defined in regulations promulgated by the Small Business Administration to include banking organizations with total assets of less than or equal to $500 million).[20] However, a regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities, and publishes its certification and a short explanatory statement in the **Federal Register** together with the rule. For the reasons provided below, the FDIC certifies that the Proposed Rule, if adopted in final form, would not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

As discussed in this notice of proposed rulemaking, part 390, subpart H was transferred from OTS part 533, which governed disclosure and reporting of CRA-related agreements. OTS part 533 had been in effect since 2001, and all State savings associations were required to comply with it. Because it is redundant of existing part 346 of the FDIC's rules, the FDIC proposes rescinding and removing part 390, subpart H. As a result, all FDIC-supervised institutions—including State savings associations and their subsidiaries—would be required to comply with part 346 if they are in CRA-related agreements. Because all State savings associations and their subsidiaries have been required to comply with substantially similar disclosure and reporting rules if they engaged in CRA-related agreements since 2001, today's Proposed Rule would have no significant economic impact on any State savings association.

### *C. Plain Language*

Section 722 of the GLB Act, codified at 12 U.S.C. 4809, requires each Federal banking agency to use plain language in all of its proposed and final rules published after January 1, 2000. The FDIC invites comments on whether the Proposed Rule is clearly stated and effectively organized, and how the FDIC might make it easier to understand. For example:

- Has the FDIC organized the material to suit your needs? If not, how could it present the rule more clearly?
- Have we clearly stated the requirements of the rule? If not, how could the rule be more clearly stated?
- Does the rule contain technical jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes would make the regulation easier to understand?
- What else could we do to make the regulation easier to understand?

[20] 5 U.S.C. 601 *et seq.*

*D. The Economic Growth and Regulatory Paperwork Reduction Act*

Under section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (''EGRPRA''), the FDIC is required to review all of its regulations, at least once every 10 years, in order to identify any outdated or otherwise unnecessary regulations imposed on insured institutions.[21] The FDIC completed the last comprehensive review of its regulations under EGRPRA in 2006 and is commencing the next decennial review. The action taken on this rule will be included as part of the EGRPRA review that is currently in progress. As part of that review, the FDIC invites comments concerning whether the Proposed Rule would impose any outdated or unnecessary regulatory requirements on insured depository institutions. If you provide such comments, please be specific and provide alternatives whenever appropriate.

**List of Subjects**

*12 CFR Part 346*

Banks, banking; Disclosure and reporting of CRA-related agreements; Savings associations.

*12 CFR Part 390*

Disclosure and reporting of CRA-related agreements.

**Authority and Issuance**

For the reasons stated in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation proposes to amend part 346 of title 12 of the Code of Federal Regulations and part 390 of title 12 of the Code of Federal Regulations as set forth below:

## PART 346—DISCLOSURE AND REPORTING OF CRA-RELATED AGREEMENTS

■ 1. The authority citation for part 346 continues to reads as follows:

**Authority:** 12 U.S.C. 1831y.

■ 2. Revise § 346.1 to read as follows:

### § 346.1 Purpose and scope of this part.

(a) *General.* This part implements section 711 of the Gramm-Leach-Bliley Act (12 U.S.C. 1831y). That section requires any nongovernmental entity or person, insured depository institution, or affiliate of an insured depository institution that enters into a covered agreement to—

(1) Make the covered agreement available to the public and the appropriate Federal banking agency; and

(2) File an annual report with the appropriate Federal banking agency concerning the covered agreement.

(b) *Scope of this part.* The provisions of this part apply to—

(1) State nonmember insured banks;

(2) Subsidiaries of state nonmember insured banks;

(3) Nongovernmental entities or persons that enter into covered agreements with any company listed in paragraph (b)(1), (2), (4) and (5) of this section.

(4) State savings associations; and

(5) Subsidiaries of State savings associations.

(c) *Relation to Community Reinvestment Act.* This part does not affect in any way the Community Reinvestment Act of 1977 (12 U.S.C. 2901 *et seq.*) or the FDIC's Community Reinvestment regulation found at 12 CFR part 345, or the FDIC's interpretations or administration of that Act or regulation.

(d) *Examples.* (1) The examples in this part are not exclusive. Compliance with an example, to the extent applicable, constitutes compliance with this part.

(2) Examples in a paragraph illustrate only the issue described in the paragraph and do not illustrate any other issues that may arise in this part.

&3. Revise § 346.11 to read as follows:

### § 346.11 Other definitions and rules of construction used in this part.

(a) *Affiliate.* ''Affiliate'' means—

(1) Any company that controls, is controlled by, or is under common control with another company; and

(2) For the purpose of determining whether an agreement is a covered agreement under § 346.2, an ''affiliate'' includes any company that would be under common control or merged with another company on consummation of any transaction pending before a Federal banking agency at the time—

(i) The parties enter into the agreement; and

(ii) The NGEP that is a party to the agreement makes a CRA communication, as described in § 346.3.

(b) *Control.* ''Control'' is defined in section 2(a) of the Bank Holding Company Act (12 U.S.C. 1841(a)).

(c) *CRA affiliate.* A ''CRA affiliate'' of an insured depository institution is any company that is an affiliate of an insured depository institution to the extent, and only to the extent, that the activities of the affiliate were considered by the appropriate Federal banking agency when evaluating the CRA performance of the institution at its most recent CRA examination prior to the agreement. An insured depository institution or affiliate also may designate any company as a CRA affiliate at any time prior to the time a covered agreement is entered into by informing the NGEP that is a party to the agreement of such designation.

(d) *CRA public file.* ''CRA public file'' means the public file maintained by an insured depository institution and described in 12 CFR 345.43.

(e) *Executive officer.* The term ''executive officer'' has the same meaning as in § 215.2(e)(1) of the Board of Governors of the Federal Reserve System's Regulation O (12 CFR 215.2(e)(1)).

(f) *Federal banking agency; appropriate Federal banking agency.* The terms ''Federal banking agency'' and ''appropriate Federal banking agency'' have the same meanings as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(g) *Fiscal year.* (1) The fiscal year for a NGEP that does not have a fiscal year shall be the calendar year.

(2) Any NGEP, insured depository institution, or affiliate that has a fiscal year may elect to have the calendar year be its fiscal year for purposes of this part.

(h) *Insured depository institution.* ''Insured depository institution'' has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(i) *NGEP.* ''NGEP'' means a nongovernmental entity or person.

(j) *Nongovernmental entity or person*—(1) *General.* A ''nongovernmental entity or person'' is any partnership, association, trust, joint venture, joint stock company, corporation, limited liability corporation, company, firm, society, other organization, or individual.

(2) *Exclusions.* A nongovernmental entity or person does not include—

(i) The United States government, a state government, a unit of local government (including a county, city, town, township, parish, village, or other general-purpose subdivision of a state) or an Indian tribe or tribal organization established under Federal, state or Indian tribal law (including the Department of Hawaiian Home Lands), or a department, agency, or instrumentality of any such entity;

(ii) A federally-chartered public corporation that receives Federal funds appropriated specifically for that corporation;

(iii) An insured depository institution or affiliate of an insured depository institution; or

(iv) An officer, director, employee, or representative (acting in his or her capacity as an officer, director, employee, or representative) of an entity

[21] Public Law 104–208, 110 Stat. 3009 (1996).

listed in paragraphs (j)(2)(i) through (iii) of this section.

(k) *Party.* The term ''party'' with respect to a covered agreement means each NGEP and each insured depository institution or affiliate that entered into the agreement.

(l) *Relevant supervisory agency.* The ''relevant supervisory agency'' for a covered agreement means the appropriate Federal banking agency for—

(1) Each insured depository institution (or subsidiary thereof) that is a party to the covered agreement;

(2) Each insured depository institution (or subsidiary thereof) or CRA affiliate that makes payments or loans or provides services that are subject to the covered agreement; and

(3) Any company (other than an insured depository institution or subsidiary thereof) that is a party to the covered agreement.

(m) *State savings association.* ''State savings association'' has the same meaning as in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3)).

(n) *Term of agreement.* An agreement that does not have a fixed termination date is considered to terminate on the last date on which any party to the agreement makes any payment or provides any loan or other resources under the agreement, unless the relevant supervisory agency for the agreement otherwise notifies each party in writing.

## PART 390—REGULATIONS TRANSFERRED FROM THE OFFICE OF THRIFT SUPERVISION

### Subpart H —Disclosure and Reporting of CRA-Related Agreements

■ 4. The authority citation for part 390 is revised to read as follows:

**Authority:** 12 U.S.C. 1819.

Subpart A also issued under 12 U.S.C. 1820.

Subpart B also issued under 12 U.S.C. 1818.

Subpart C also issued under 5 U.S.C. 504; 554–557; 12 U.S.C. 1464; 1467; 1468; 1817; 1818; 1820; 1829; 3349, 4717; 15 U.S.C. 78*l*; 78o–5; 78u–2; 28 U.S.C. 2461 note; 31 U.S.C. 5321; 42 U.S.C. 4012a.

Subpart D also issued under 12 U.S.C. 1817; 1818; 1820; 15 U.S.C. 78*l*.

Subpart E also issued under 12 U.S.C. 1813; 1831m; 15 U.S.C. 78.

Subpart F also issued under 5 U.S.C. 552; 559; 12 U.S.C. 2901 *et seq.*

Subpart G also issued under 12 U.S.C. 2810 *et seq.*, 2901 *et seq.*; 15 U.S.C. 1691; 42 U.S.C. 1981, 1982, 3601–3619.

Subpart I also issued under 12 U.S.C. 1831x.

Subpart J also issued under 12 U.S.C. 1831p–1.

Subpart K also issued under 12 U.S.C. 1817; 1818; 15 U.S.C. 78c; 78*l*.

Subpart L also issued under 12 U.S.C. 1831p–1.

Subpart M also issued under 12 U.S.C. 1818.

Subpart N also issued under 12 U.S.C. 1821.

Subpart O also issued under 12 U.S.C. 1828.

Subpart P also issued under 12 U.S.C. 1470; 1831e; 1831n; 1831p–1; 3339.

Subpart Q also issued under 12 U.S.C. 1462; 1462a; 1463; 1464.

Subpart R also issued under 12 U.S.C. 1463; 1464; 1831m; 1831n; 1831p–1.

Subpart S also issued under 12 U.S.C. 1462; 1462a; 1463; 1464; 1468a; 1817; 1820; 1828; 1831e; 1831o; 1831p–1; 1881–1884; 3207; 3339; 15 U.S.C. 78b; 78*l*; 78m; 78n; 78p; 78q; 78w; 31 U.S.C. 5318; 42 U.S.C. 4106.

Subpart T also issued under 12 U.S.C. 1462a; 1463; 1464; 15 U.S.C. 78c; 78*l*; 78m; 78n; 78w.

Subpart U also issued under 12 U.S.C. 1462a; 1463; 1464; 15 U.S.C. 78c; 78*l*; 78m; 78n; 78p; 78w; 78d–1; 7241; 7242; 7243; 7244; 7261; 7264; 7265.

Subpart V also issued under 12 U.S.C. 3201–3208.

Subpart W also issued under 12 U.S.C. 1462a; 1463; 1464; 15 U.S.C. 78c; 78*l*; 78m; 78n; 78p; 78w.

Subpart X also issued under 12 U.S.C. 1462; 1462a; 1463; 1464; 1828; 3331 *et seq.*

Subpart Y also issued under 12 U.S.C. 1831o.

Subpart Z also issued under 12 U.S.C. 1462; 1462a; 1463; 1464; 1828 (note).

### Subpart H—[Removed and Reserved]

■ 5. Remove and reserve subpart H consisting of §§ 390.160 through 390.170.

Dated at Washington, DC, this 10th day of December, 2013.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 2013–29787 Filed 12–18–13; 8:45 am]

**BILLING CODE 6741–01–P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 25

**[Docket No. FAA–2013–0801; Notice No. 25–13–41–SC]**

### Special Conditions: Airbus Model A350–900 Airplanes; Permanently Installed Rechargeable Lithium-Ion Batteries and Battery Systems

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed special conditions.

**SUMMARY:** This action proposes special conditions for Airbus Model A350–900 series airplanes. These airplanes will have a novel or unusual design feature associated with permanently installed rechargeable lithium-ion batteries and battery systems. These batteries have certain failure, operational, and maintenance characteristics that differ significantly from those of the nickel-cadmium and lead-acid rechargeable batteries currently approved for installation on large transport-category airplanes. 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 January 21, 2014.

**ADDRESSES:** Send comments, identified by docket number FAA–2013–0801, 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 or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 8 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://www.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://Dockets Info.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:** Nazih Khaouly, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98057–3356; telephone 425–227–2432; facsimile 425–227–1149.

**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 will consider all comments we receive on or before the closing date for comments. We may change these special conditions based on the comments we receive.

## Background

On August 25, 2008, Airbus applied for a type certificate for their new Model A350–900 series airplane. Later, Airbus requested, and the FAA approved, an extension to the application for FAA type certification to June 28, 2009. The Model A350–900 series has a conventional layout with twin wing-mounted Rolls-Royce Trent XWB engines. It features a twin aisle, 9-abreast, economy-class layout, and accommodates side-by-side placement of LD–3 containers in the cargo compartment. The basic Model A350–900 series configuration accommodates 315 passengers in a standard two-class arrangement. The design cruise speed is Mach 0.85 with a maximum take-off weight of 602,000 lbs. Airbus proposes the Model A350–900 series to be certified for extended operations (ETOPS) beyond 180 minutes at entry into service for up to a 420-minute maximum diversion time.

Existing airworthiness regulations did not anticipate the use of lithium-ion batteries and battery systems on aircraft. Lithium-ion batteries and battery systems have new hazards that were not contemplated when the existing regulations were issued. In Title 14, Code of Federal Regulations (14 CFR) 25.1353, the FAA provided an airworthiness standard for lead-acid batteries and nickel-cadmium batteries. These special conditions provide an equivalent level of safety as that of the existing regulation. The current regulations are not adequate for rechargeable lithium-battery and battery system installations. Additional lithium-battery and battery system special conditions are required to ensure the same level of safety as set forth by the existing regulation intended for other battery technology.

## Type Certification Basis

Under the provisions of 14 CFR 21.17, Airbus must show that the Model A350–900 series meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–128.

The FAA has determined that Airbus Model A350–900 series airplanes must comply with the following sections: § 25.863(a) through (d), Amendment 25–61 and Amendment 25–66.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model A350–900 series because of a novel or unusual design feature, special conditions are prescribed under § 21.16.

Special conditions are initially applicable to the model or series 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 Airbus Model A350–900 airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, 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 § 11.19, under § 11.38, and they become part of the type-certification basis under § 21.17(a)(2).

## Novel or Unusual Design Features

The Airbus Model A350–900 airplane will incorporate the following novel or unusual design features: permanently installed rechargeable lithium batteries and lithium battery systems.

## Discussion

The current regulations governing installation of batteries in large transport-category airplanes were derived from Civil Air Regulations (CAR) part 4b.625(d) as part of the re-codification of CAR 4b that established 14 CFR part 25 in February 1965. The new battery requirements, § 25.1353(c)(1) through (c)(4), basically reworded the CAR requirements.

Increased use of nickel-cadmium batteries in small airplanes resulted in increased incidents of battery fires and failures which led to additional rulemaking affecting large transport-category airplanes as well as small airplanes. On September 1, 1977 and March 1, 1978, the FAA issued § 25.1353(c)(5) and (c)(6), respectively, governing nickel-cadmium battery installations on large transport-category airplanes.

The proposed use of lithium-ion batteries and battery systems for equipment and systems on Airbus Model A350 airplanes has prompted the FAA to review the adequacy of these existing regulations. Our review indicates that the existing regulations do not adequately address several failure, operational, and maintenance characteristics of lithium-ion batteries and battery systems that could affect the safety and reliability of the Airbus model A350–900 airplane rechargeable lithium batteries and rechargeable lithium-battery-system installations.

At present, commercial aviation has limited experience with use of rechargeable lithium-ion batteries and battery systems in applications involving commercial aviation. However, other users of this technology, ranging from wireless telephone manufacturers to the electric-vehicle industry, have noted potential hazards with lithium-ion batteries and battery systems. These problems include overcharging, over-discharging, and flammability of cell components.

*1. Overcharging*

In general, lithium-ion batteries and battery systems are significantly more susceptible to internal failures that can result in self-sustaining increases in temperature and pressure (i.e., thermal runaway) than their nickel-cadmium or lead-acid counterparts. This condition is especially true for overcharging, which causes heating and destabilization of the components of the cell, leading to the formation (by plating) of highly unstable metallic lithium. The metallic lithium can ignite, resulting in a self-sustaining fire or explosion. Finally, the severity of thermal runaway, due to overcharging, increases with increasing battery capacity due to the higher amount of electrolyte in large batteries.

*2. Over-Discharging*

Discharge of some types of lithium-ion batteries and battery systems, beyond a certain voltage (typically 2.4 volts), can cause corrosion of the

electrodes of the cell, resulting in loss of battery capacity that cannot be reversed by recharging. This loss of capacity may not be detected by the simple voltage measurements commonly available to flightcrews as a means of checking battery status—a problem shared with nickel-cadmium batteries.

*3. Flammability of Cell Components*

Unlike nickel-cadmium and lead-acid batteries, some types of lithium-ion batteries and battery systems use liquid electrolytes that are flammable. The electrolyte can serve as a source of fuel for an external fire if there is a breach of the battery container.

The problems lithium-ion battery and battery-system users experience raise concern about the use of these batteries in commercial aviation. The intent of the proposed special conditions is to establish appropriate airworthiness standards for lithium-ion battery installations in Airbus Model A350–900 airplanes and to ensure, as required by §§ 25.1309 and 25.601, that these lithium-ion batteries and battery systems will not result in an unsafe condition. To address these concerns, these special conditions adopt the following requirements:

- Those sections of 14 CFR 25.1353 that are applicable to lithium ion batteries.
- The flammable fluid fire protection requirements of 14 CFR 25.863. In the past, this rule was not applied to batteries of transport category airplanes, since the electrolytes used in lead-acid and nickel-cadmium batteries are not flammable.
- New requirements to address the hazards of overcharging and over-discharging that are unique to lithium ion batteries.
- New maintenance requirements to ensure that batteries used as spares are maintained in an appropriate state of charge.

These special conditions are similar to lithium-ion batteries and battery systems special conditions adopted for the Boeing Model 787 (72 FR 57842; October 11, 2007).

## Applicability

As discussed above, these special conditions are applicable to the Airbus Model A350–900 series airplanes. Should Airbus apply later 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 Airbus Model A350–900 series airplanes. It is not a rule of general applicability.

## List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

**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 Airbus Model A350–900 airplanes.

These proposed special conditions require that (1) all characteristics of the rechargeable lithium-ion batteries and battery systems, and their installation, that could affect safe operation of Airbus Model A350–900 airplanes, are addressed, and (2) appropriate Instructions for Continued Airworthiness, which include maintenance requirements, are established to ensure the availability of electrical power, when needed, from the batteries.

The FAA proposes that the following special conditions apply to all rechargeable lithium-ion batteries and battery systems on Airbus Model A350–900 airplanes, in lieu of the requirements of § 25.1353(b)(1) through (b)(4) at Amendment 25–113:

Rechargeable lithium-ion batteries and battery systems on Airbus Model A350–900 airplanes must be designed and installed as follows:

1. Safe cell temperatures and pressures must be maintained during any foreseeable charging or discharging condition, and during any failure of the charging or battery monitoring system not shown to be extremely remote. The rechargeable lithium-ion batteries and battery systems must preclude explosion in the event of those failures.

2. Design of the rechargeable lithium-ion batteries and battery systems must preclude the occurrence of self-sustaining, uncontrolled increases in temperature or pressure.

3. No explosive or toxic gases emitted by any rechargeable lithium-ion batteries and battery systems in normal operation, or as the result of any failure of the battery charging system, monitoring system, or battery installation that is not shown to be extremely remote, may accumulate in hazardous quantities within the airplane.

4. Installations of rechargeable lithium-ion batteries and battery systems must meet the requirements of § 25.863(a) through (d).

5. No corrosive fluids or gases that may escape from any lithium-ion batteries and battery systems may damage surrounding structure or any adjacent systems, equipment, or electrical wiring of the airplane in such a way as to cause a major or more severe failure condition, in accordance with § 25.1309 (b) and applicable regulatory guidance.

6. Each lithium-ion battery and battery system must have provisions to prevent any hazardous effect on structure or essential systems caused by the maximum amount of heat the battery can generate during a short circuit of the battery or of its individual cells.

7. Rechargeable lithium-ion batteries and battery systems must have a system to automatically control the charging rate of the battery, so as to prevent battery overheating or overcharging, and:

i. A battery-temperature sensing and over-temperature warning system with a means for automatically disconnecting the battery from its charging source in the event of an over-temperature condition, or,

ii. A battery-failure sensing and warning system with a means for automatically disconnecting the battery from its charging source in the event of battery failure.

8. Any rechargeable lithium-ion batteries and battery systems, the function of which are required for safe operation of the airplane, must incorporate a monitoring and warning feature that will provide an indication to the appropriate flight crewmembers whenever the state-of-charge of the batteries has fallen below levels considered acceptable for dispatch of the airplane.

9. The Instructions for Continued Airworthiness required by § 25.1529 must contain maintenance requirements to assure that the lithium-ion batteries are sufficiently charged at appropriate intervals specified by the battery manufacturer and the equipment manufacturer of the rechargeable lithium-ion battery or rechargeable lithium-ion battery system. This is required to ensure that rechargeable lithium-ion batteries and battery systems will not degrade below specified ampere-hour levels sufficient to power the aircraft system, for intended applications. The Instructions for Continued Airworthiness must also contain procedures for the maintenance of batteries in spares storage to prevent

the replacement of batteries with batteries that have experienced degraded charge-retention ability or other damage due to prolonged storage at a low state of charge. Replacement batteries must be of the same manufacturer and part number as approved by the FAA. Precautions should be included in the Instructions for Continued Airworthiness maintenance instructions to prevent mishandling of the rechargeable lithium-ion batteries and battery systems, which could result in short-circuit or other unintentional impact damage caused by dropping or other destructive means.

**Note 1:** The term ''sufficiently charged'' means that the battery will retain enough of a charge, expressed in ampere-hours, to ensure that the battery cells will not be damaged. A battery cell may be damaged by lowering the charge below a point where the battery experiences a reduction in the ability to charge and retain a full charge. This reduction would be greater than the reduction that may result from normal operational degradation.

**Note 2:** These special conditions are not intended to replace § 25.1353(b) at Amendment 25–113 in the certification basis for Airbus Model A350–900 airplanes. These special conditions apply only to rechargeable lithium-ion batteries and battery systems and their installations. The requirements of § 25.1353(b) at Amendment 25–113 remain in effect for batteries and battery installations on Airbus Model A350–900 airplanes that do not use rechargeable lithium-ion batteries.

Issued in Renton, Washington, on December 10, 2013.

**John P. Piccola, Jr.,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2013–30231 Filed 12–18–13; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 25

**[Docket No. FAA–2013–1002; Notice No. 25–13–36–SC]**

## Special Conditions: Airbus, Model A350–900 Series Airplane; Lightning Protection of Fuel Tank Structure To Prevent Fuel Tank Vapor Ignition

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed special conditions.

**SUMMARY:** This action proposes special conditions for the Airbus Model A350–900 series airplanes. These airplanes will have a novel or unusual design feature(s) that will incorporate a nitrogen generation system (NGS) for all fuel tanks that actively reduce flammability exposure within the fuel tanks significantly below that required by the fuel tank flammability regulations. Among other benefits, the NGS significantly reduces the potential for fuel vapor ignition caused by lightning strikes. 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 February 3, 2014.

**ADDRESSES:** Send comments identified by docket number FAA–2013–1002 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 or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 8 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://www.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:** Doug Bryant, Propulsion/Mechanical Systems, ANM–112, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98057–3356; telephone (425) 227–2384; facsimile (425) 227–1320.

**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 will consider all comments we receive on or before the closing date for comments. We may change these special conditions based on the comments we receive.

### Background

On August 25, 2008, Airbus applied for a type certificate for their new Airbus Model A350–900 series airplane. Later, Airbus requested and the FAA approved an extension to the application for FAA type certification to June 28, 2009. The Model A350–900 series has a conventional layout with twin wing-mounted Rolls-Royce Trent XWB engines. It features a twin aisle 9-abreast economy class layout, and accommodates side-by-side placement of LD–3 containers in the cargo compartment. The basic Model A350–900 series configuration will accommodate 315 passengers in a standard two-class arrangement. The design cruise speed is Mach 0.85 with a Maximum Take-Off Weight of 602,000 lbs. Airbus proposes the Model A350–900 series to be certified for extended operations (ETOPS) beyond 180 minutes at entry into service for up to a 420-minute maximum diversion time.

### Type Certification Basis

Under Title 14, Code of Federal Regulations (14 CFR) 21.17, Airbus must show that the Model A350–900 series meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–129.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model A350–900 series because of a novel or unusual design feature, special conditions are prescribed under § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model A350–900 series 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, under § 11.38, and they become part of the type-certification basis under § 21.17(a)(2).

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 novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

**Novel or Unusual Design Features**

The Airbus Model A350–900 series will incorporate the following novel or unusual design features: fuel tank NGS that is intended to control fuel tank flammability for all fuel tanks. This NGS is designed to provide a level of performance that applies the more stringent standard for warm day flammability performance applicable to normally emptied tanks within the fuselage contour from § 25.981(b) and 14 CFR part 25 appendix M, to all fuel tanks of the Model A350–900 series. This high level of NGS performance for all fuel tanks is an unusual design feature not envisioned at the time the regulations in the Model A350–900 series certification basis were promulgated.

**Discussion**

The certification basis of the Airbus Model A350–900 series includes § 25.981, as amended by Amendment 25–125, as required by 14 CFR 26.37. This amendment includes the ignition prevention requirements in § 25.981(a), as amended by Amendment 25–102, and it includes revised flammability limits for all fuel tanks and new specific limitations on flammability for all fuel tanks as defined in § 25.981(b), as amended by Amendment 25–125.

*Ignition Source Prevention*

Section 25.981(a)(3) requires applicants to show that an ignition source in the fuel tank system could not result from any single failure, from any single failure in combination with any latent failure condition not shown to be extremely remote, or from any combination of failures not shown to be extremely improbable. This requirement was originally adopted in Amendment 25–102 and it requires the assumption that the fuel tanks are always flammable when showing that the probability of an ignition source being present is extremely remote. (Amendment 25–102 included § 25.981(c) that required minimizing fuel tank flammability and this was defined in the preamble as being equivalent to unheated aluminum fuel tanks located in the wing.) This requirement defines three types of scenarios that must be addressed in order to show compliance with § 25.981(a)(3). The first scenario is that any single failure, regardless of the probability of occurrence of the failure, must not cause an ignition source. The second scenario is that any single failure, regardless of the probability of occurrence, in combination with any latent failure condition not shown to be at least extremely remote, must not cause an ignition source. The third scenario is that any combination of failures not shown to be extremely improbable must not cause an ignition source. Demonstration of compliance with this requirement would typically require a structured, quantitative safety analysis. Design areas that have latent failure conditions typically would be driven by these requirements to have multiple fault tolerance, or ''triple redundancy.'' This means that ignition sources are still prevented even after two independent failures.

*Flammability Limits*

Section 25.981(b) states that no fuel tank fleet average flammability exposure may exceed 3 percent of the flammability exposure evaluation time calculated using the method in part 25, Appendix N, or the fleet average flammability of a fuel tank within the wing of the airplane being evaluated, whichever is greater. If the wing is not a conventional unheated aluminum wing, the analysis must be based on an assumed equivalent conventional construction unheated aluminum wing. In addition, for fuel tanks that are normally emptied during operation and that have any part of the tank located within the fuselage contour, the fleet average flammability for warm days (above 80 °F) must be limited to 3 percent as calculated using the method in part 25, Appendix M.

*Application of Existing Regulations Inappropriate Due to Impracticality*

Since the issuance of § 25.981(a)(3), as amended by Amendment 25–102, the FAA has conducted certification projects in which applicants found it impractical to meet the requirements of that regulation for some areas of lightning protection for fuel tank structure. Partial exemptions were issued for these projects. These same difficulties exist for the Airbus Model A350–900 series project.

The difficulty of designing multiple-fault-tolerant structure, and the difficulty of detecting failures of hidden structural design features in general, makes compliance with § 25.981(a)(3) uniquely challenging and impractical for certain aspects of the electrical bonding of structural elements. Such bonding is needed to prevent occurrence of fuel tank ignition sources from lightning strikes. The effectiveness and fault tolerance of electrical bonding features for structural joints and fasteners is partially dependent on design features that cannot be effectively inspected or tested after assembly without damaging the structure, joint, or fastener. Examples of such features include a required interference fit between the shank of a fastener and the hole in which the fastener is installed, metal foil or mesh imbedded in composite material, a required clamping force provided by a fastener to pull two structural parts together, and a required faying surface bond between the flush surfaces of adjacent pieces of structural material such as in a wing skin joint or a mounting bracket installation. In addition, other features that can be physically inspected or tested may be located within the fuel tanks; therefore, it is not practical to inspect for failures of those features at short intervals. Examples of such failures include separation or loosening of cap seals over fastener ends and actual structural failures of internal fasteners. This inability to practically detect manufacturing errors and failures of structural design features critical to lightning protection results in degraded conditions that occur and remain in place for a very long time, possibly for the remaining life of the airplane.

Accounting for such long failure latency periods in the system safety analysis required by § 25.981(a)(3) would require multiple fault tolerance in the structural lightning protection design. As part of the design development activity for the Model A350–900 series, Airbus has examined possible design provisions to provide multiple fault tolerance in the structural design to prevent ignition sources from occurring in the event of lightning attachment to the airplane in critical locations. Airbus has concluded from this examination that providing multiple fault tolerance for some structural elements is not practical. Airbus has also identified some areas of

the Model A350–900 series design where it is impractical to provide even single fault tolerance in the structural design to prevent ignition sources from occurring in the event of lightning attachment after a single failure. The FAA has reviewed this examination with Airbus in detail and has agreed that providing fault tolerance beyond that in the proposed Model A350–900 series design for these areas would be impractical.

As a result of the Airbus Model A350–900 series and other certifications projects, the FAA has now determined that compliance with § 25.981(a)(3) is impractical for some areas of lightning protection for fuel tank structure, and that application of § 25.981(a)(3) to those design areas is therefore inappropriate. The FAA plans further rulemaking to revise § 25.981(a)(3). As appropriate, the FAA plans to issue special conditions or exemptions, for certification projects progressing before the revision is complete. This is discussed in FAA Memorandum ANM–112–08–002, Policy on Issuance of Special Conditions and Exemptions Related to Lightning Protection of Fuel Tank Structure, dated May 26, 2009.[1]

*Application of Existing Regulations Inappropriate Due to Compensating Feature That Provides Equivalent Level of Safety*

Section 25.981(b) sets specific standards for fuel tank flammability as discussed above under ''Flammability Limits.'' Under that regulation, the fleet average flammability exposure of all fuel tanks on the Model A350–900 series may not exceed 3 percent of the flammability exposure evaluation time calculated using the method in part 25, Appendix N, or the fleet average flammability of a wing main tank within an equivalent construction conventional unheated aluminum wing fuel tank, whichever is greater. The typical fleet average fuel tank flammability of fuel tanks located in the wing ranges between 1 and 5 percent. If it is assumed that an Model A350–900 series equivalent conventional unheated aluminum wing fuel tank would not exceed a fleet average flammability time of 3 percent, the actual composite airplane wing fuel tank design would be required to comply with the 3 percent fleet average flammability standard and therefore a means to reduce the flammability to 3 percent would be required. However, the proposed Model A350–900 series design includes NGS for all fuel tanks that will also be shown to meet the additional, more stringent warm day average flammability standard in part 25, Appendix M, which is only required for normally emptied fuel tanks with some part of the tank within the fuselage contour. Fuel tanks that meet this requirement typically have average fuel tank flammability levels well below the required 3 percent.

Since the proposed NGS for all fuel tanks on the Model A350–900 series provides performance that meets part 25, Appendix M, the FAA has determined that the risk reduction provided by this additional performance will provide compensation for some relief from the ignition prevention requirements of § 25.981(a)(3) while still establishing a level of safety equivalent to that established in the regulations.

In determining the appropriate amount of relief from the ignition prevention requirements of § 25.981(a), the FAA considered the original overall intent of Amendment 25–102, which was to ensure the prevention of catastrophic events due to fuel tank vapor explosion. These proposed special conditions are intended to achieve that objective through a prescriptive requirement that fault tolerance (with respect to the creation of an ignition source) be provided for all structural lightning protection design features where providing such fault tolerance is practical, and through a performance-based standard for the risk due to any single failure vulnerability that exists in the design. In addition, for any structural lightning protection design features for which Airbus shows that providing fault tolerance is impractical, these proposed special conditions would require Airbus to show that a fuel tank vapor ignition event due to the summed risk of all non-fault-tolerant design features is extremely improbable. Airbus would be required to show that this safety objective is met by the proposed design using a structured system safety assessment similar to that currently used for demonstrating compliance with §§ 25.901 and 25.1309.

Given these novel design features, and the compliance challenges noted earlier in this document, the FAA has determined that application of § 25.981(a)(3) is inappropriate in that it is neither practical nor necessary to apply the ignition source prevention provisions of § 25.981(a)(3) to the specific fuel tank structural lightning protection features of the Airbus Model A350–900 series airplanes. However, without the § 25.981(a)(3) provisions, the remaining applicable regulations in the Model A350–900 series certification basis would be inadequate to set an appropriate standard for fuel tank ignition prevention. Therefore, in accordance with provisions of § 21.16, the FAA has determined that, instead of § 25.981(a)(3), alternative fuel tank structural lighting protection requirements be applied to fuel tank lightning protection features that are integral to the airframe structure of the Model A350–900 series. These proposed alternative requirements are intended to provide the level of safety intended by § 25.981(a)(3), based on our recognition, as discussed above, that a highly effective NGS for the fuel tanks makes it unnecessary to assume that the fuel tank is always flammable. As discussed previously, the assumption that the fuel tanks are always flammable was required when demonstrating compliance to the ignition prevention requirements of § 25.981(a)(3).

One resulting difference between these proposed special conditions and the § 25.981(a)(3) provisions they are meant to replace is the outcome being prevented—fuel vapor ignition versus an ignition source. These proposed special conditions acknowledge that the application of fuel tank flammability performance standards will reduce fuel tank flammability to an extent that it is appropriate to consider the beneficial effects of flammability reduction when considering design areas where it is impractical to comply with § 25.981(a)(3).

One of the core requirements of these proposed special conditions is a prescriptive requirement that structural lightning protection design features must be fault tolerant. (An exception wherein Airbus can show that providing fault tolerance is impractical, and associated requirements, is discussed below.) The other core requirement is that Airbus must show that the design, manufacturing processes, and airworthiness limitations section of the instructions for continued airworthiness include all practical measures to prevent, and detect and correct, failures of structural lightning protection features due to manufacturing variability, aging, wear, corrosion, and likely damage. The FAA has determined that, if these core requirements are met, a fuel tank vapor ignition event due to lightning is not anticipated to occur in the life of the airplane fleet. This conclusion is based on the fact that a critical lightning strike to any given airplane is itself a remote event, and on the fact that fuel tanks must be shown to be flammable for only a relatively

[1] The memorandum may be viewed at: *http://www.airweb.faa.gov/Regulatory_and_Guidance_Library/rgPolicy.nsf/0/12350AE62D393B7A862575C300709CA3?OpenDocument&Highlight=anm-112-08-002.*

small portion of the fleet operational life.

For any non-fault-tolerant features proposed in the design, Airbus must show that eliminating these features or making them fault tolerant is impractical. The requirements and considerations for showing it is impractical to provide fault tolerance are described in FAA Memorandum ANM–112–08–002. This requirement is intended to minimize the number of non-fault tolerant features in the design.

For areas of the design where Airbus shows that providing fault tolerant structural lighting protection features is impractical, non-fault-tolerant features will be allowed provided Airbus can show that a fuel tank vapor ignition event due to the non-fault-tolerant features is extremely improbable when the sum of probabilities of those events due to all non-fault-tolerant features is considered. Airbus will be required to submit a structured, quantitative assessment of fleet average risk for a fuel tank vapor ignition event due to all non-fault-tolerant design features included in the design. This will require determination of the number of non-fault tolerant design features, estimates of the probability of the failure of each non-fault-tolerant design feature, and estimates of the exposure time for those failures. This analysis must include failures due to manufacturing variability, aging, wear, corrosion, and likely damage.

It is acceptable to consider the probability of fuel tank flammability, the probability of a lightning strike to the airplane, the probability of a lightning strike to specific zones of the airplane (for example, Zone 2 behind the nacelle, but not a specific location or feature), and a distribution of lightning strike amplitude in performing the assessment provided the associated assumptions are acceptable to the FAA. The analysis must account for any dependencies among these factors, if they are used. The assessment must also account for operation with inoperative features and systems, including any proposed or anticipated dispatch relief. This risk assessment requirement is intended to ensure that an acceptable level of safety is provided given the non-fault-tolerant features in the proposed design.

Part 25, Appendix N, as adopted in Amendment 25–125, in conjunction with these proposed special conditions, constitutes the standard for how to determine flammability probability. In performing the safety analysis required by these special conditions, relevant § 25.981(a)(3) compliance guidance is still applicable. Appropriate credit for the conditional probability of environmental or operational conditions occurring is normally limited to those provisions involving multiple failures, and this type of credit is not normally allowed in evaluation of single failures. However, these special conditions would allow consideration of the probability of occurrence of lightning attachment and flammable conditions when assessing the probability of structural failures resulting in a fuel tank vapor ignition event.

The FAA understands that lightning protection safety for airplane structure is inherently different from lightning protection for systems. We intend to apply these proposed special conditions only to structural lightning protection features of fuel systems. We do not intend to apply the alternative standards used under these proposed special conditions to other areas of the airplane design evaluation.

*Requirements Provide Equivalent Level of Safety*

In recognition of the unusual design feature discussed above, and the impracticality of requiring multiple fault tolerance for lightning protection of certain aspects of fuel tank structure, the FAA has determined that an equivalent level of safety to direct compliance with § 25.981(a)(3) will be achieved for the Model A350–900 series by applying these proposed requirements. The FAA considers that, instead of only concentrating on fault tolerance for ignition source prevention, significantly reducing fuel tank flammability exposure in addition to preventing ignition sources is a better approach to lightning protection for the fuel tanks. In addition, the level of average fuel tank flammability achieved by compliance with these proposed special conditions is low enough that it is not appropriate or accurate to assume in a safety analysis that the fuel tanks may always be flammable.

Section 25.981(b), as amended by Amendment 25–125, sets limits on the allowable fuel tank flammability for the Model A350–900 series. Paragraph 2(a) of these proposed special conditions applies the more stringent standard for warm day flammability performance applicable to normally emptied tanks within the fuselage contour from § 25.981(b) and part 25, Appendix M, to all of the fuel tanks of the Model A350–900 series.

Because of the more stringent fuel tank flammability requirements in these proposed special conditions, and because the flammability state of a fuel tank is independent of the various failures of structural elements that could lead to an ignition source in the event of lightning attachment, the FAA has agreed that it is appropriate in this case to allow treatment of flammability as an independent factor in the safety analysis. The positive control of flammability and the lower flammability that is required by these proposed special conditions exceeds the minimum requirements of § 25.981(b). This offsets a reduction of the stringent standard for ignition source prevention in § 25.981(a)(3), which assumes that the fuel tank is flammable at all times.

Given the stringent requirements for fuel tank flammability, the fuel vapor ignition prevention and the ignition source prevention requirements in these proposed special conditions will prevent " . . . catastrophic failure . . . due to ignition of fuel or vapors" as stated in § 25.981(a). Thus, the overall level of safety achieved by these proposed special conditions is considered equivalent to that which would be required by compliance with § 25.981(a)(3) and (b).

## Applicability

As discussed above, these proposed special conditions apply to Airbus Model A350–900 series airplanes. Should Airbus apply later 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 the Airbus Model A350–900 series airplanes. It is not a rule of general applicability.

## List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

**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 Airbus Model A350–900 series airplanes.

### 1. Definitions

Most of the terms used in these proposed special conditions, Alternative Fuel Tank Structural Lightning Protection Requirements, either have the common dictionary meaning or are defined in Advisory Circular 25.1309–1A, System Design and Analysis, dated June 21, 1988. The following definitions

are the only terms intended to have a specialized meaning when used in these proposed special conditions:

(a) Basic Airframe Structure. Includes design elements such as structural members, structural joint features, and fastener systems including airplane skins, ribs, spars, stringers, etc., and associated fasteners, joints, coatings, and sealant. Basic airframe structure may also include those structural elements that are expected to be removed for maintenance, such as exterior fuel tank access panels and fairing attachment features, provided maintenance errors that could compromise associated lightning protection features would be evident upon an exterior preflight inspection of the airplane and would be corrected prior to flight.

(b) Permanent Systems Supporting Structure. Includes static, permanently attached structural parts (such as brackets) that are used to support system elements. It does not include any part intended to be removed, or any joint intended to be separated, to maintain or replace system elements or other parts, unless that part removal or joint separation is accepted by the FAA as being extremely remote.

(c) Manufacturing Variability. Includes tolerances and variability allowed by the design and production specifications as well as anticipated errors or escapes from the manufacturing and inspection processes.

(d) Extremely Remote. Conditions that are not anticipated to occur to each airplane during its total life, but which may occur a few times when considering the total operational life of all airplanes of one type. Extremely remote conditions are those having an average probability per flight hour on the order of $1 \times 10^{-7}$ or less, but greater than on the order of $1 \times 10^{-9}$.

(e) Extremely Improbable. Conditions that are so unlikely that they are not anticipated to occur during the entire operational life of all airplanes of one type. Extremely improbable conditions are those having an average probability per flight hour of the order of $1 \times 10^{-9}$ or less.

**2. Alternative Fuel Tank Structural Lightning Protection Requirements**

For lightning protection features that are integral to fuel tank basic airframe structure or permanent systems supporting structure, as defined in this these proposed special conditions, Definitions, for which Airbus shows and the FAA finds compliance with § 25.981(a)(3) to be impractical, the following requirements may be applied in lieu of the requirements of § 25.981(a)(3):

(a) Airbus must show that the airplane design meets the requirements of part 25, Appendix M, as amended by Amendment 25–125, for all fuel tanks installed on the airplane.

(b) Airbus must show that the design includes at least two independent, effective, and reliable lightning protection features (or sets of features) such that fault tolerance to prevent lightning-related ignition sources is provided for each area of the structural design proposed to be shown compliant with these proposed special conditions in lieu of compliance with the requirements of § 25.981(a)(3). Fault tolerance is not required for any specific design feature if:

(1) For that feature, providing fault tolerance is shown to be impractical, and

(2) Fuel tank vapor ignition due to that feature and all other non-fault-tolerant features, when their fuel tank vapor ignition event probabilities are summed, is shown to be extremely improbable.

(c) Airbus must perform an analysis to show that the design, manufacturing processes, and airworthiness limitations section of the instructions for continued airworthiness include all practical measures to prevent, and detect and correct, failures of structural lightning protection features due to manufacturing variability, aging, wear, corrosion, and likely damage.

Issued in Renton, Washington, on November 15, 2013.

**John P. Piccola, Jr.,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2013–30236 Filed 12–18–13; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA–2013–0922; Airspace Docket No. 13–AWA–5]**

**RIN 2120–AA66**

## Proposed Modification of the Philadelphia, PA, Class B Airspace Area

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to amend the description of Area G of the Philadelphia Class B airspace area to correct a design error that resulted in the Class B airspace being published 2.1 nautical miles (NM) larger on the southeast side of the area than intended. No other changes to the Philadelphia Class B airspace are being proposed.

**DATES:** Comments must be received on or before February 3, 2014.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; telephone: (202) 366–9826. You must identify FAA Docket No. FAA–2013–0922 and Airspace Docket No. 13–AWA–5 at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** Paul Gallant, Airspace Policy and Regulations Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2013–0922 and Airspace Docket No. 13–AWA–5) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *http://www.regulations.gov*.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Nos. FAA–2013–0922 and Airspace Docket No. 13–AWA–5.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may

be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRMs**

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*.

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Ave., College Park, GA 30337.

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

**Background**

On May 9, 2013, the FAA published a final rule modifying the Philadelphia Class B airspace area (78 FR 27025, July 25, 2013). After publication, it was found that Area G extended 2.1 NM farther southeast than intended from the Philadelphia International Airport. This was caused by the miscalculation of two points during the design of the Area G boundaries.

**The Proposal**

The FAA is proposing to amend Title 14 Code of Federal Regulations (14 CFR) part 71 to correct two points used to define the boundaries of Area G in the description of the Philadelphia Class B airspace area. Specifically, the point that reads ''. . . the intersection of the PHL 20-mile radius and the 136° bearing from PHL . . .'' would be changed to read ''. . . the intersection of the 17.9-mile radius and the 138° bearing from PHL. . . .'' This point appears in two places in the Area G description. In addition, the point that reads ''. . . the intersection of the PHL 20-mile radius and the 120° bearing from PHL . . .'' would be changed to read ''. . . the intersection of the 20-mile radius and the 118° bearing from PHL. . . .'' This point appears once in the Area G description. This change would result in a small reduction in the lateral dimensions of Class B airspace southeast of Philadelphia International Airport, near the Cross Keys Airport, NJ (17N).

The FAA is not proposing modifications to any other parts of the Philadelphia Class B airspace area.

All radials listed in this proposal stated in degrees relative to True North. All geographic coordinates are stated in degrees, minutes, and seconds based on North American Datum 83.

Class B airspace areas are published in paragraph 3000 of FAA Order 7400.9X, Airspace Designations and Reporting Points, dated August 7, 2013, and effective September 15, 2013, which is incorporated by reference in 14 CFR section 71.1. The Class B airspace area listed in this document would be published subsequently in the Order.

**Regulatory Evaluation Summary**

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it to be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this proposed rule. The reasoning for this determination follows:

This proposal would amend the description of Area G of the Philadelphia Class B area to correct a design error that resulted in the Class B airspace being published 2.1 NM larger than intended on the southeast side of the area.

This proposed rule has the following benefits.

1. It would improve the flow of air traffic, enhance safety, and reduce the potential for midair collision in the Philadelphia Class B airspace.
2. It would continue to ensure the containment of large turbine-powered aircraft within Class B airspace as required by FAA directive.
3. It would provide VFR aircraft with additional non-Class B airspace.
4. It would enhance the safety and efficient management of aircraft operations in the Philadelphia terminal area.

The FAA believes that this proposed rule would result in minimal costs.

The FAA has, therefore, determined that this proposed rule is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and is not ''significant'' as defined in DOT's Regulatory Policies and Procedures.

*Regulatory Flexibility Determination*

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation.'' To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a

substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA believes the proposed rule would not have a significant economic impact on a substantial number of small entities, as the economic impact is expected to be minimal. If an agency determines that a rulemaking will not result in a significant economic impact on a substantial number of small entities, the head of the agency may so certify under section 605(b) of the RFA. Therefore, as provided in section 605(b), the head of the FAA certifies that this rulemaking will not result in a significant economic impact on a substantial number of small entities.

*International Trade Impact Assessment*

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The FAA has assessed the potential effect of this proposed rule and determined that it will enhance safety and is not considered an unnecessary obstacle to trade.

*Unfunded Mandates Assessment*

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $143.1 million in lieu of $100 million.

This proposed rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

**Environmental Review**

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

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

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

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

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

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

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9X, Airspace Designations and Reporting Points, dated August 7, 2013, and effective September 15, 2013, is amended as follows:

*Paragraph 3000 Subpart B—Class B Airspace.*

* * * * *

**AEA PA B Philadelphia, PA [Amended]**

Philadelphia International Airport, PA
(Primary Airport)
(Lat. 39°52′20″ N., long. 75°14′27″ W.)
Northeast Philadelphia Airport, PA
(Lat. 40°04′55″ N., long. 75°00′38″ W.)
Cross Keys Airport, NJ
(Lat. 39°42′20″ N., long. 75°01′59″ W.)
Boundaries.

By removing the current description of Area G and adding in its place:

Area G. That airspace extending upward from 3,500 feet MSL to and including 7,000 feet MSL within a 20-mile radius of PHL, excluding that airspace south of a line beginning at the intersection of the PHL 20-mile radius and the 158° bearing from PHL, thence direct to the intersection of the PHL 17.9-mile radius and the 138° bearing from PHL, and that airspace bounded by a line beginning at the intersection of the PHL 17.9-mile radius and the 138° bearing from PHL, thence direct to the intersection of the PHL 15-mile radius and the 141° bearing from PHL, thence direct to the intersection of the Cross Keys Airport (17N) 1.5-mile radius and the 212° bearing from 17N, thence clockwise via the 1.5-mile radius of 17N to the 257° bearing from 17N, thence direct to the intersection of the 17N 1.5-mile radius and the 341° bearing from 17N, thence clockwise via the 1.5-mile radius of 17N to the 011° bearing from 17N, thence direct to the intersection of the PHL 15-mile radius and the 127° bearing from PHL, thence direct to the intersection of the PHL 20-mile radius and the 118° bearing from PHL, and Areas A, B, C, D, E and F.

* * * * *

Issued in Washington, DC, on December 11, 2013.

**Ellen Crum,**

*Acting Manager, Airspace Policy and Regulations Group.*

[FR Doc. 2013–30086 Filed 12–18–13; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2013–0859; Airspace Docket No. 13–AWA–4]**

**RIN 2120–AA66**

## Proposed Modification of Class B Airspace; Salt Lake City, UT

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to amend the description of Area C and Area O of the Salt Lake City Class B airspace area by raising the floor of a small portion of Class B airspace between the Salt Lake City Class B surface area and the Hill Air Force Base (AFB) Class D airspace area. This action proposes to raise the Class B airspace floor in the northeast corner of Area C from 6,000 feet mean seal level (MSL) to 7,500 feet MSL, and redefine the new boundary segment using the power lines underlying the area. This would benefit and enhance non-participating VFR aircraft operations being flown north and south through the Salt Lake Valley over Interstate 15.

**DATES:** Comments must be received on or before February 3, 2014.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; telephone: (202) 366–9826. You must identify FAA Docket No. FAA–2013–0859 and Airspace Docket No. 13–AWA–4 at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** Colby Abbott, Airspace Policy and Regulations Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2013–0859 and Airspace Docket No. 13–AWA–4) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *http://www.regulations.gov*.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Nos. FAA–2013–0859 and Airspace Docket No. 13–AWA–4.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

## Availability of NPRMs

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

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

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

## Background

On August 17, 2012, the FAA published a final rule modifying the Salt Lake City, UT Class B airspace area (77 FR 49712) with an effective date of October 18, 2012. Subsequent to this effective date, the FAA determined that a portion of Area C, with its 6,000 foot MSL floor, was extended farther northeast (northeast corner of Area C) than necessary based on operational experience with the new Salt Lake City Class B airspace configuration. The portion of Class B airspace in the proposal overlies a short segment of a heavily used VFR flyway that follows Interstate 15 (I–15) between the Salt Lake City Class B surface area and Hill AFB Class D airspace area. However, VFR pilots not in contact with air traffic control use I–15 as a convenient and easily viewed landmark for VFR aircraft flying north and south through the Salt Lake Valley. The 6,000 foot MSL Class B airspace floor in the northeast corner of Area C causes problems for VFR aircraft transitioning this area. VFR pilots following I–15 have found it difficult to avoid the Class B airspace due to the 6,000 foot MSL floor and the lack of good landmarks in the area. In addition, air traffic controllers routing VFR aircraft through the area over I–15 are required to either obtain and issue a Class B airspace clearance or vector the VFR aircraft north of the 6,000 foot MSL Class B airspace floor until clear of the area.

Raising the floor of Class B airspace from 6,000 feet MSL to 7,500 feet MSL in the northeast corner of Area C, and using the power lines located west of I–15 as a visual reference to identify the boundary where Class B airspace with a 6,000 foot MSL floor ends, would overcome the issues associated with Area C that are being experienced by VFR pilots and air traffic controllers. Additionally, raising the floor of Class B airspace in this area would significantly benefit and enhance VFR aircraft operations in the area without compromising containment of large turbine-powered aircraft conducting instrument procedures within Class B airspace.

## The Proposal

The FAA is proposing an amendment to Title 14 of the Code of Federal Regulations (14 CFR) part 71 to modify the Salt Lake City Class B airspace area. This action proposes to raise the floor of a portion of Class B airspace in the northeast corner of Area C from 6,000 feet MSL to 7,500 feet MSL. The portion of Class B airspace being raised lies northeast of the power lines running northwest and southeast under Area C and would be incorporated into the description of Area O, which has a 7,500 foot MSL Class B airspace floor. The power lines under Area C would be used to visually define the new shared boundary between Area C and Area O in that area. These proposed modifications would enhance the safety and flow of VFR aircraft transitioning north and south in the Salt Lake Valley by following I–15, while continuing to support containment of large turbine-powered aircraft flying instrument procedures within Class B airspace.

The FAA is not proposing any modification actions to the Salt Lake City Class B airspace Areas A, B, and D through N. The proposed modifications to the Salt Lake City Class B airspace Area C and Area O subareas are outlined below.

Area C. Area C would include the airspace extending upward from 6,000 feet MSL to 12,000 feet MSL. This action would redefine the northeast boundary of Area C by a line drawn west of and parallel to the power lines that run northwest and southeast between the TCH 006° radial 9.5-mile DME at lat. 41°00′28″ N., long. 111°57′36″ W. and the TCH 016° radial 8.1-mile DME at lat. 40°58′48″ N., long. 111°55′58″ W. The floor of Class B airspace located immediately northeast of the power lines just described would be raised from 6,000 feet MSL to 7,500 feet MSL and incorporated into the adjacent Area O. The remainder of Area C would be unchanged.

Area O. Area O would include the airspace extending upward from 7,500 feet MSL to 12,000 feet MSL. The boundary of the area would be realigned to match the segment of the power lines that run northwest and southeast between the TCH 006° radial 9.5-mile DME at lat. 41°00′28″ N., long. 111°57′36″ W. and the TCH 016° radial 8.1-mile DME at lat. 40°58′48″ N., long. 111°55′58″ W. used to redefine the

northeast boundary of Area C. The portion of Class B airspace incorporated into Area O would raise the floor of Class B airspace in that area from 6,000 feet MSL to 7,500 feet MSL. The remainder of Area O would be unchanged.

All radials listed in this proposed Salt Lake City Class B airspace area description modification are stated in degrees relative to True North. All geographic coordinates are stated in degrees, minutes, and seconds based on North American Datum 83.

Implementation of the proposed modification to the Salt Lake City Class B airspace area would continue to ensure containment of large turbine-powered aircraft within Class B airspace as required by FAA directive. Additionally, this proposed action would allow VFR aircraft to transition east/west, north of the Salt Lake City Class B surface area, and north/south, to and from Salt Lake City airport, using I–15 as an easily identifiable visual landmark outside of Class B airspace below 7,500 feet MSL. This proposed modification would enhance the safety and efficient management of aircraft operations in the Salt Lake City, UT, terminal area.

Class B airspace areas are published in paragraph 3000 of FAA Order 7400.9X, Airspace Designations and Reporting Points, dated August 7, 2013, and effective September 15, 2013, which is incorporated by reference in 14 CFR 71.1. The Class B airspace area listed in this document would be published subsequently in the Order.

**Regulatory Evaluation Summary**

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it to be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this proposed rule. The reasoning for this determination follows:

This proposed rule has the following benefits.

This proposed rule would improve the flow of air traffic, enhance safety, and reduce the potential for midair collision in the Salt Lake City Class B airspace.

Implementation of the proposed modification to the Salt Lake City Class B airspace area would continue to ensure containment of large turbine-powered aircraft within Class B airspace as required by FAA directive. Additionally, this proposed action would allow VFR aircraft to transition east/west, north of the Salt Lake City Class B surface area, and north/south, to and from Salt Lake City Airport, using I–15 as an easily identifiable visual landmark outside of Class B airspace below 7,500 feet MSL. This proposed modification would enhance the safety and efficient management of aircraft operations in the Salt Lake City, UT terminal area.

The FAA believes that this proposed rule would result in minimal costs.

The FAA has, therefore, determined that this proposed rule is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and is not ''significant'' as defined in DOT's Regulatory Policies and Procedures.

*Regulatory Flexibility Determination*

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation.'' To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA believes the proposed rule would not have a significant economic impact on a substantial number of small entities as the economic impact is expected to be minimal.

Therefore as the acting FAA Administrator, I certify that this proposed rule would not have a significant economic impact on a substantial number of small entities.

*International Trade Impact Assessment*

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The FAA has assessed the potential effect of this proposed rule and determined that it would enhance safety and would not be considered an unnecessary obstacle to trade.

*Unfunded Mandates Assessment*

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $143.1 million in lieu of $100 million.

This proposed rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

**Environmental Review**

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

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

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

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

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

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

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9X, Airspace Designations and Reporting Points, dated August 7, 2013, and effective September 15, 2013, is amended as follows:

*Paragraph 3000 Subpart B—Class B Airspace.*

* * * * *

**ANM UT B Salt Lake City, UT [Amended]**

Salt Lake City International Airport (Primary Airport)
(Lat. 40°47′18″ N., long. 111°58′40″ W.)
Wasatch VORTAC (TCH)
(Lat. 40°51′01″ N., long. 111°58′55″ W.)
Hill AFB (HIF)
(Lat. 41°07′26″ N., long. 111°58′23″ W.)
Boundaries.

By removing the current descriptions of Area C and Area O, and adding in its place:

Area C. That airspace extending upward from 6,000 feet MSL to and including 12,000 feet MSL, within an area bounded by a line beginning at the TCH 316° radial 11.6-mile DME at lat. 40°59′21″ N., long. 112°09′33″ W.; thence east to a point west of the power lines at the TCH 006° radial 9.5-mile DME at lat. 41°00′28″ N., long. 111°57′36″ W.; thence southeast to a point west of the power lines at the TCH 016° radial 8.1-mile DME at lat. 40°58′48″ N., long. 111°55′58″ W.; thence south to the TCH 020° radial 6.6-mile DME at lat. 40°57′13″ N., long. 111°55′56″ W.; thence west to a point southeast of Seagull Point on Antelope Island at the TCH 304° radial 9.3-mile DME at lat. 40°56′13″ N., long. 112°09′05″ W.; thence north to the point of beginning.

Area O. That airspace extending upward from 7,500 feet MSL to and including 12,000 feet MSL, within an area bounded by a line beginning at the intersection of U.S. Highway 89 and a 4.3-mile radius from Hill AFB at the TCH 014° radial 13.6-mile DME at lat. 41°04′11″ N., long. 111°54′39″ W.; thence clockwise along the 4.3-mile radius from Hill AFB to 1700 South St. at the TCH 347° radial 14.7-mile DME at lat. 41°05′20″ N., long. 112°03′21″ W.; thence west along W. 1700 South St. to the TCH 329° radial 16.8-mile DME at lat. 41°05′22″ N., long. 112°10′20″ W.; thence south to the TCH 316° radial 11.6-mile DME at lat. 40°59′21″ N., long. 112°09′33″ W.; thence east to a point west of the power lines at the TCH 006° radial 9.5-mile DME at lat. 41°00′28″ N., long. 111°57′36″ W.; thence southeast to a point west of the power lines at the TCH 016° radial 8.1-mile DME at lat. 40°58′48″ N., long. 111°55′58″ W.; thence south to the TCH 020° radial 6.6-mile DME at lat. 40°57′13″ N., long. 111°55′56″ W.; thence south to the intersection of Redwood Rd. and W. 500 South St. at the TCH 049° radial 3.1-mile DME at lat. 40°53′02″ N., long. 111°55′48″ W.; thence south to Center St. at the TCH 102° radial 2.3-mile DME at lat. 40°50′32″ N., long. 111°55′57″ W.; thence east along Center St. to I–15 at the TCH 099° radial 3-mile DME at lat. 40°50′32″ N., long. 111°54′56″ W.; thence north along I–15 to U.S. Highway 89 at the TCH 024° radial 9-mile DME at lat. 40°59′14″ N., long. 111°54′05″ W.; thence north along U.S. Highway 89 to the point of beginning.

Issued in Washington, DC, on December 12, 2013.

**Donna Warren,**

*Acting Manager, Airspace Policy and Regulations Group.*

[FR Doc. 2013–30097 Filed 12–18–13; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA–2013–0915; Airspace Docket No. 12–ASO–41]**

**RIN 2120–AA66**

## Proposed Modification, Revocation, and Establishment of Area Navigation (RNAV) Routes; Charlotte, NC

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to establish two RNAV routes; modify three RNAV routes; and remove one RNAV route in the Charlotte, NC, area. The route changes are proposed to support the Charlotte Optimization of Airspace and Procedures in a Metroplex (OAPM) project. The proposed routes, in combination with existing VOR Federal airways, would provide additional routing options through and around the Metroplex airspace.

**DATES:** Comments must be received on or before February 3, 2014.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; telephone: (202) 366–9826. You must identify FAA Docket No. FAA–2013–0915 and Airspace Docket No. 13–ASO–41 at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Paul Gallant, Airspace Policy and Regulations Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2013–0915 and Airspace Docket No. 13–ASO–41) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2013–0915 and Airspace Docket No. 12–AEA–41.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRMs**

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Ave., College Park, GA 30337.

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

**The Proposal**

The FAA is proposing an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to establish two low-altitude RNAV routes (T–206 and T–214); modify three RNAV routes (T–201, T–202 and T–203); and remove one RNAV route (T–200), in the Charlotte, NC, area.

The following actions are proposed:

T–200: The FAA is proposing to remove T–200 in its entirety. T–200 extends between the Foothills, GA, VORTAC (ODF) and the Florence, SC, VORTAC (FLO). It passes through the RICHE fix at the very south end of the Charlotte Class B airspace area. T–200 is seldom used as it traverses very close to the ''final box'' for Charlotte/Douglas International Airport (CLT) when CLT is landing to the north. The proposed modification of T–202 (see below) would provide routing through the south end of the CLT Class B airspace area in place of T–200. Aircraft flying from ODF to FLO, and vice versa, would fly direct rather than utilizing the RICHE fix. Therefore, it was determined that realignment of T–200 is impractical.

T–201: T–201 extends between the Columbia, SC, VORTAC (CAE) and the JOTTA, NC, fix. This proposed modification would shorten the length of the route so that it would extend between the MEVAE, SC, waypoint (WP) (near Bethune, SC) at the south end, and the BORTZ, NC, WP (south of the JOTTA fix) at the north end. In addition, the track of the route would be shifted approximately seven nautical miles (NM) to the east of its current position. The shift would move the route to the east of the CLT Class B airspace area where it would pass through the FEGNO, NC, WP instead of the LOCAS, NC, fix (on the eastern boundary of the Class B airspace area). The modified route would segregate low altitude overflight traffic from CLT departure and arrival traffic while keeping the T–201 designator. Waypoints along the route would provide connectivity with RNAV routes T–202, T–206 and T–214 (described below). Also along the route, the TRUEX, SC, WP would serve as an ingress/egress point for the Florence, SC, Terminal Radar Approach Control (TRACON) airspace.

T–202: T–202 now extends between the RICHE, SC, fix and the GANTS, NC, fix. This proposal would extend the route at both ends: northeastward from the GANTS fix to the ZADEL WP (near Asheboro Municipal Airport, NC (HBI); and westward from the RICHE fix to the GURSH WP (near Union County Airport (35A), SC). The modified route would utilize airspace around the south of CLT when CLT is landing and departing to the south. That segment from the RICHE WP to the HUSTN WP would segregate T–202 traffic from CLT departures. Waypoints along the route would provide connectivity to T–201, T–206 and T–214. Additionally, the GANTS fix is located at the boundary of the Charlotte and Greensboro TRACONs airspace. This would minimize the impact on satellite and adjacent airport operations by providing a predictable track for overflight traffic while keeping the T–202 designator.

T–203: T–203 extends between the Columbia, SC, VORTAC (CAE) and the Pulaski, VA, VORTAC (PSK). The FAA proposes to shorten the route by changing the endpoints to the ANDYS, SC, fix (near Winnsboro, SC) at the south end, and the OREAD, NC, WP (10 miles north of Hickory, NC) at the north end. In addition, the track would be shifted slightly to the west of its current position but still transiting through the west side of the CLT Class B airspace area. By routing T–203 via the ROUTH, NC, WP (near Grover, SC), transiting aircraft would be segregated from CLT departure airspace. The modified route would keep the T–203 designator. Waypoints along the route would provide connectivity to T–202, T–206 and T–214.

T–206: T–206 would be established to extend between the ENADE, NC, WP (near Cliffside, NC) and the ZADEL, NC, WP (near Asheboro Regional Airport (HBI), NC). The route would be used to transition aircraft through the north side of the CLT Class B airspace area when CLT is landing and departing to the north. Waypoints along the route would provide connectivity to T–201, T–202, T–203 and T–214. Additionally, the alignment of T–206 through the GOTHS, NC, WP (northwest of the existing MOPED, NC, fix) would deconflict transiting traffic from CLT departures.

T–214: T–214 would be established to extend between the OREAD WP and the ORPEE, NC, WP (north of Troy, NC). This route would allow aircraft to transition north of the CLT Class B airspace, but within the Metroplex area, when CLT is landing and departing to the north. Greensboro TRACON (GSO) radar vectors aircraft that are filed for points northwest of CLT in order to separate them from CLT arrivals that are inbound from the northeast. Once they are clear of the arrivals, GSO then clears the aircraft direct to the Holston Mountain, TN, VORTAC (HMV) to resume their filed routes. T–214 would provide a predictable route to points northwest and west of Charlotte that are deconflicted from the CLT arrival flow.

The routes proposed in this notice would be segregated from the heavily used arrival and departure corridors serving the Charlotte area and would enhance the efficiency of the National Airspace System in the Charlotte, NC, Metroplex area.

RNAV routes are published in paragraph 6011 of FAA Order 7400.9X

dated August 7, 2013, and effective September 15, 2013, which is incorporated by reference in 14 CFR 71.1. The RNAV routes listed in this document would be subsequently published in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the route structure as required to preserve the safe and efficient flow of air traffic in the Charlotte, NC, area.

## Environmental Review

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

## List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

## The Proposed Amendment

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

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

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

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

### § 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9X, Airspace Designations and Reporting Points, Dated August 7, 2013, and effective September 15, 2013, is amended as follows:

**Paragraph 6011—United States Area Navigation Routes**

**T–200 Foothills, GA to Florence, SC [Removed]**

**T–201 MEVAE, SC to BORTZ, NC [Amended]**

| | | |
|---|---|---|
| MEVAE, SC | WP | (Lat. 34°25′05″ N., long. 80°22′28″ W.) |
| TRUEX, SC | WP | (Lat. 34°35′55″ N., long. 80°21′18″ W.) |
| FEGNO, NC | WP | (Lat. 35°14′49″ N., long. 80°16′39″ W.) |
| NUROE, NC | WP | (Lat. 35°34′37″ N., long. 80°31′15″ W.) |
| BORTZ, NC | WP | (Lat. 35°52′56″ N., long. 80°44′56″ W.) |

**T–202 GURSH, SC to ZADEL, NC [Amended]**

| | | |
|---|---|---|
| GURSH, SC. | WP | (Lat. 34°42′05″ N., long. 81°30′32″ W.) |
| AWRYT, SC | WP | (Lat. 34°42′00″ N., long. 81°14′52″ W.) |
| RICHE, SC | FIX | (Lat. 34°41′54″ N., long. 80°59′23″ W.) |
| HUSTN, NC | FIX | (Lat. 34°53′20″ N., long. 80°34′20″ W.) |
| FEGNO, NC | WP | (Lat. 35°14′49″ N., long. 80°16′39″ W.) |
| GANTS, NC | FIX | (Lat. 35°27′11″ N., long. 80°06′16″ W.) |
| ZADEL, NC. | WP | (Lat. 35°33′47″ N., long. 80°01′47″ W.) |

**T–203 ANDYS, SC to OREAD, NC [Amended]**

| | | |
|---|---|---|
| ANDYS, SC | FIX | (Lat. 34°22′15″ N., long. 81°08′38″ W.) |
| AWRYT, SC | WP | (Lat. 34°42′00″ N., long. 81°14′52″ W.) |
| ROUTH, NC | WP | (Lat. 35°10′38″ N., long. 81°23′59″ W.) |
| FADOS, NC | WP | (Lat. 35°28′22″ N., long. 81°20′49″ W.) |
| OREAD, NC | WP | (Lat. 35°52′03″ N., long. 81°16′32″ W.) |

**T–206 ENADE, NC to ZADEL, NC [New]**

| | | |
|---|---|---|
| ENADE, NC | WP | (Lat. 35°12′08″ N., long. 81°44′41″ W.) |
| FADOS, NC | WP | (Lat. 35°28′22″ N., long. 81°20′49″ W.) |
| GOTHS, NC | WP | (Lat. 35°35′17″ N., long. 80°58′25″ W.) |
| NUROE, NC | WP | (Lat. 35°34′37″ N., long. 80°31′15″ W.) |
| ZADEL, NC | WP | (Lat. 35°33′47″ N., long. 80°01′47″ W.) |

**T–214 OREAD, NC to ORPEE, NC [New]**

| | | |
|---|---|---|
| OREAD, NC | WP | (Lat. 35°52′03″ N., long. 81°16′32″ W.) |
| BORTZ, NC | WP | (Lat. 35°52′56″ N., long. 80°44′56″ W.) |
| THMSN, NC | WP | (Lat. 35°53′21″ N., long. 80°28′57″ W.) |
| ZADEL, NC | WP | (Lat. 35°33′47″ N., long. 80°01′47″ W.) |
| ORPEE, NC | WP | (Lat. 35°27′12″ N., long. 79°52′56″ W.) |

Issued in Washington, DC, on December 11, 2013.

**Ellen Crum,**

*Acting Manager, Airspace Policy and Regulations Group.*

[FR Doc. 2013–30098 Filed 12–18–13; 8:45 am]

**BILLING CODE 4910–13–P**

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Parts 1, 15, 17, 19, 32, 37, 38, 140 and 150

**RIN 3038–AD99**

### Position Limits for Derivatives

*Correction*

In proposed rule document 2013–27200 appearing on pages 75679 through 75842 in the issue of Thursday, December 12, 2013, Table 10 is corrected to appear as seen below.

TABLE 10—OPEN INTEREST AND CALCULATED LIMITS BY CORE FUTURES REFERENCED CONTRACT, JANUARY 1, 2011, TO DECEMBER 31, 2012

| Commodity type | Core referenced futures contract | Year | Open interest (daily average) | Open interest (month end) | Limit (daily average) | Limit (month end) | Limit |
|---|---|---|---|---|---|---|---|
| Legacy Agricultural | CBOT Corn (C) | 2011 | 2,063,231 | 1,987,152 | 53,500 | 51,600 | 53,500 |
| | | 2012 | 1,773,525 | 1,726,096 | 46,300 | 45,100 | ..... |
| | CBOT Oats (O) | 2011 | 15,375 | 15,149 | 1,600 | 1,600 | 1,600 |
| | | 2012 | 12,291 | 11,982 | 1,300 | 1,200 | ..... |
| | CBOT Soybeans (S) | 2011 | 822,046 | 798,417 | 22,500 | 21,900 | 26,900 |
| | | 2012 | 997,736 | 973,672 | 26,900 | 26,300 | ..... |
| | CBOT Soybean Meal (SM). | 2011 | 237,753 | 235,945 | 7,900 | 7,800 | 9,000 |
| | | 2012 | 283,304 | 281,480 | 9,000 | 9,000 | ..... |
| | CBOT Soybean Oil (SO). | 2011 | 392,658 | 382,100 | 11,700 | 11,500 | 11,900 |
| | | 2012 | 397,549 | 388,417 | 11,900 | 11,600 | ..... |
| | CBOT Wheat (W) | 2011 | 565,459 | 550,251 | 16,100 | 15,700 | 16,200 |
| | | 2012 | 572,068 | 565,490 | 16,200 | 16,100 | ..... |
| | ICE Cotton No. 2 (CT) | 2011 | 275,799 | 272,613 | 8,800 | 8,700 | 8,800 |
| | | 2012 | 259,608 | 261,789 | 8,400 | 8,500 | ..... |
| | KCBT Hard Winter Wheat (KW). | 2011 | 183,400 | 177,998 | 6,500 | 6,400 | 6,500 |
| | | 2012 | 155,540 | 155,074 | 5,800 | 5,800 | ..... |
| | MGEX Hard Red Spring Wheat (MWE). | 2011 | 55,938 | 54,546 | 3,300 | 3,300 | 3,300 |
| | | 2012 | 40,577 | 40,314 | 2,900 | 2,900 | ..... |
| Other Agricultural | CBOT Rough Rice (RR). | 2011 | 21,788 | 21,606 | 2,200 | 2,200 | 2,200 |
| | | 2012 | 15,262 | 14,964 | 1,600 | 1,500 | ..... |
| | CME Milk Class III (DA). | 2011 | 55,567 | 57,490 | 3,300 | 3,400 | 3,400 |
| | | 2012 | 47,378 | 47,064 | 3,100 | 3,100 | ..... |
| | CME Feeder Cattle (FC). | 2011 | 44,611 | 43,730 | 3,000 | 3,000 | 3,000 |
| | | 2012 | 44,984 | 43,651 | 3,000 | 3,000 | ..... |
| | CME Lean Hog (LH) | 2011 | 284,211 | 288,281 | 9,000 | 9,100 | 9,400 |
| | | 2012 | 296,822 | 297,882 | 9,300 | 9,400 | ..... |
| | CME Live Cattle (LC) | 2011 | 433,581 | 440,229 | 12,800 | 12,900 | 12,900 |
| | | 2012 | 409,501 | 417,037 | 12,200 | 12,400 | ..... |
| | ICUS Cocoa (CC) | 2011 | 191,801 | 198,290 | 6,700 | 6,900 | 7,100 |
| | | 2012 | 202,886 | 206,808 | 7,000 | 7,100 | ..... |
| | ICE Coffee C (KC) | 2011 | 174,845 | 176,079 | 6,300 | 6,300 | 7,100 |
| | | 2012 | 204,268 | 207,403 | 7,000 | 7,100 | ..... |
| | ICE FCOJ–A (OJ) | 2011 | 37,347 | 36,813 | 2,900 | 2,800 | 2,900 |
| | | 2012 | 30,788 | 29,867 | 2,700 | 2,700 | ..... |
| | ICE Sugar No. 11 (SB) | 2011 | 814,234 | 806,887 | 22,300 | 22,100 | 23,500 |
| | | 2012 | 855,375 | 862,446 | 23,300 | 23,500 | ..... |
| | ICE Sugar No. 16 (SF) | 2011 | 11,532 | 11,662 | 1,200 | 1,200 | 1,200 |
| | | 2012 | 10,485 | 10,530 | 1,100 | 1,100 | ..... |
| Energy | NYMEX Henry Hub Natural Gas (NG). | 2011 | 4,831,973 | 4,821,859 | 122,700 | 122,500 | 149,600 |
| | | 2012 | 5,905,137 | 5,866,365 | 149,600 | 148,600 | ..... |
| | NYMEX Light Sweet Crude Oil (CL). | 2011 | 4,214,770 | 4,291,662 | 107,300 | 109,200 | 109,200 |
| | | 2012 | 3,720,590 | 3,804,287 | 94,900 | 97,000 | ..... |
| | NYMEX NY Harbor ULSD (HO). | 2011 | 559,280 | 566,600 | 15,900 | 16,100 | 16,100 |
| | | 2012 | 473,004 | 485,468 | 13,800 | 14,100 | ..... |

TABLE 10—OPEN INTEREST AND CALCULATED LIMITS BY CORE FUTURES REFERENCED CONTRACT, JANUARY 1, 2011, TO DECEMBER 31, 2012—Continued

| Commodity type | Core referenced futures contract | Year | Open interest (daily average) | Open interest (month end) | Limit (daily average) | Limit (month end) | Limit |
|---|---|---|---|---|---|---|---|
| | NYMEX RBOB Gasoline (RB). | 2011 | 362,349 | 370,207 | 11,000 | 11,200 | 11,800 |
| | | 2012 | 388,479 | 393,219 | 11,600 | 11,800 | ..... |
| Metals ..... | COMEX Copper (HG) | 2011 | 134,097 | 131,688 | 5,300 | 5,200 | 5,600 |
| | | 2012 | 148,767 | 147,187 | 5,600 | 5,600 | ..... |
| | COMEX Gold (GC) ..... | 2011 | 782,793 | 746,904 | 21,500 | 20,600 | 21,500 |
| | | 2012 | 685,618 | 668,751 | 19,100 | 18,600 | ..... |
| | COMEX Silver (SI) ..... | 2011 | 179,393 | 172,567 | 6,400 | 6,200 | 6,400 |
| | | 2012 | 165,670 | 164,064 | 6,100 | 6,000 | ..... |
| | NYMEX Palladium (PA). | 2011 | 22,327 | 22,244 | 2,300 | 2,300 | 5,000 |
| | | 2012 | 23,869 | 24,265 | 2,400 | 2,500 | ..... |
| | NYMEX Platinum (PL) | 2011 | 40,988 | 40,750 | 2,900 | 2,900 | 5,000 |
| | | 2012 | 54,838 | 54,849 | 3,300 | 3,300 | ..... |

[FR Doc. C1–2013–27200 Filed 12–18–13; 8:45 am]

**BILLING CODE 1505–01–D**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 60

**[EPA–HQ–OAR–2007–0011; FRL–9904–07–OAR]**

**RIN 2060–AS03**

## Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to amend the Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007. In the ''Rules and Regulations'' section of this **Federal Register,** we are amending the definition of ''delayed coking unit'' as a direct final rule without a prior proposed rule. If we receive no adverse comment, we will not take further action on this proposed rule.

**DATES:** *Comments:* Written comments must be received by February 3, 2014.

*Public Hearing:* If anyone contacts EPA requesting to speak at a public hearing by December 24, 2013, a public hearing will be held on January 3, 2014.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–HQ–OAR–2007–0011, by mail to Air and Radiation Docket (2822T), 1200 Pennsylvania Avenue NW., Washington, DC 20460. Please include a total of two copies. 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**.

We request that you also send a separate copy of each comment to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

**FOR FURTHER INFORMATION CONTACT:** Ms. Brenda Shine, Sector Policies and Programs Division (E143–01), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (919) 541–3608; fax number: (919) 541–0246; and email address: *shine.brenda@epa.gov*. For information about the applicability of the New Source Performance Standards (NSPS) to a particular entity, contact Maria Malave, Office of Enforcement and Compliance Assurance (OECA), U.S. Environmental Protection Agency, telephone number: (202) 564–7027; fax number: (202) 564–0050; and email address: *malave.maria@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. Why is the EPA issuing this proposed rule?

This document proposes to take action on amendments to the standards of performance for petroleum refineries at 40 CFR part 60, subpart Ja. We are proposing to amend the definition of ''delayed coking unit'' in 40 CFR 60.101a and to remove a redundant definition of ''delayed coking unit'' in that same section. We have published a direct final rule revising the definition of ''delayed coking unit'' in the ''Rules and Regulations'' section of this **Federal Register** because we view this as a noncontroversial action and anticipate no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule.

If we receive no adverse comment and no request for a public hearing on the parallel direct final rule, we will not take further action on this proposed rule. If we receive adverse comment on a distinct portion of the direct final rule, we will withdraw that portion of the rule and it will not take effect. In this instance, we would address all public comments in any subsequent final rule based on this proposed rule.

If we receive adverse comment on a distinct provision of the direct final rule, we will publish a timely withdrawal in the **Federal Register** indicating which provisions we are withdrawing. The provisions that are not withdrawn will become effective on the date set out in the direct final rule, notwithstanding adverse comment on any other provision. We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time.

The regulatory text for the proposal is identical to that for the direct final rule published in the ''Rules and Regulations'' section of this **Federal Register**. For further supplementary information, the detailed rationale for the proposal and the regulatory revisions, see the direct final rule published in a separate part of this **Federal Register**.

### II. Does this action apply to me?

Categories and entities potentially regulated by this final rule include:

| Category | NAICS Code [1] | Examples of regulated entities |
|---|---|---|
| Industry | 32411 | Petroleum refiners. |
| Federal government | | Not affected. |
| State/local/tribal government | | Not affected. |

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this direct final rule. To determine whether your facility would be regulated by this action, you should examine the applicability criteria in 40 CFR 60.100a. If you have any questions regarding the applicability of this action to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

*Public Hearing.* Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Ms. Virginia Hunt, U.S. EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Refining and Chemicals Group (E143–01), Research Triangle Park, NC 27711; telephone number: (919) 541–0832, email address: *hunt.virginia@epa.gov,* at least 2 days in advance of the potential date of the public hearing. If a public hearing is held, it will be held at 10 a.m. at EPA's Campus located at 109 T.W. Alexander Drive in Research Triangle Park, NC, or an alternate site nearby. If no one contacts EPA requesting to speak at a public hearing concerning this rule by December 24, 2013 this hearing will be cancelled without further notice.

## III. Statutory and Executive Orders

For a complete discussion of all of the administrative requirements applicable to this action, see the direct final rule in the ''Rules and Regulations'' section of this **Federal Register**.

## List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 4, 2013.

**Gina McCarthy,**

*Administrator.*

[FR Doc. 2013–29729 Filed 12–18–13; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 54

**[WC Docket No. 10–90; DA 13–2317]**

## Additional Connect America Fund Phase II Issues

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Wireline Competition Bureau seeks to further develop the record on several implementation issues regarding the transition from Connect America Phase I to Phase II.

**DATES:** Comments are due on or before January 7, 2014.

**ADDRESSES:** All pleadings are to reference WC Docket No. 10–90. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.
- *People with Disabilities:* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (tty).

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Ted Burmeister, Wireline Competition Bureau at (202) 418–7389 or TTY (202) 418–0484.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Wireline Competition Bureau's document in WC Docket No. 10–90; DA 13–2317, released December 3, 2013. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via Internet at *http://www.bcpiweb.com.*

1. In this document, the Wireline Competition Bureau (Bureau) seeks to further develop the record on several implementation issues regarding the transition from Connect America Phase I to Phase II.

2. *Timing of Phase II Support Disbursements.* In the *USF/ICC Transformation Order,* 76 FR 73830, November 29, 2011, the Commission specified that price cap carriers electing to make a state-level commitment would receive five years of model-based support, and it established a process for transitioning support from Connect America Fund Phase I to Phase II in states where model-based support is greater than frozen support. Specifically, for a carrier accepting the state-wide commitment pursuant to Connect America Fund Phase II, ''in the first year, the carrier will receive one-half the full amount the carrier will receive under CAF Phase II and one-half the amount the carrier received under CAF Phase I for the previous year (which would be the frozen amount if the carrier declines Phase I or the frozen amount plus the incremental amount if the carrier accepts Phase I); in the second year, each carrier accepting the state-wide commitment will receive the full CAF Phase II amount.''

3. Several price cap carriers have raised questions regarding how to calculate the five-year funding period in light of the language in paragraph 180 of the *USF/ICC Transformation Order.* We now seek to more fully develop the record on this issue. The Bureau seeks comment on several alternatives. First, the price cap carrier could receive the remaining half of one year of annual support as a lump sum on the date that is five years after the date of the initial election. Second, the remaining half could be distributed pro-rata on a monthly basis over the third through fifth years. Third, the remaining half year could be provided as a lump sum

as soon as the carrier certifies that it has fully met its deployment obligations, which potentially could occur separately from the § 54.313(e)(2) annual report certification that the company is providing the required service to 100 percent of its locations. Fourth, the remaining half year of annual support could be provided as a lump sum after the carrier files its annual report pursuant to § 54.313(e)(2) regarding completion of its deployment obligations for Phase II-funded locations. The Bureau seeks comment on the relative advantages and disadvantages of each alternative. Are there any other alternatives?

4. *Phase-Down in States With Support Reductions.* In the *USF/ICC Transformation Order,* the Commission concluded that it would be ''premature to specify the length of the transition'' for carriers that would receive less money from Connect America Phase II than frozen high-cost support, but ''there will be an appropriate multi-year transition to the lower amount'' which would be addressed in conjunction with the finalization of the cost model.

5. The Bureau now seeks to further develop the record regarding the length of the ''appropriate multi-year transition.'' Consistent with the approach adopted by the Commission for the phase down in support for competitive eligible telecommunications carriers, should the transition for carriers in states where they will receive less funding under Phase II than frozen support occur over a five-year period, with the carrier receiving a 20 percent reduction in frozen support the first year, a 40 percent reduction in the second year, a 60 percent reduction in the third year, an 80 percent reduction in the fourth year, and the full reduction in the fifth year? Alternatively, should the transition period be shorter, such as two or three years? The funding necessary to cover this transition could be drawn from the Connect America broadband reserve, which is designed to ensure that average annual expenditures remain within the $4.5 billion budget over time. The Bureau seeks comment on these proposals. To the extent commenters suggest alternative approaches, they should provide a detailed description of their proposal.

## I. Procedural Matters

### *A. Initial Regulatory Flexibility Act Analysis*

6. The *USF/ICC Transformation Order and FNPRM,* 76 FR 73830, November 29, 2011 and 76 FR 78384, December 16, 2011, included an Initial Regulatory Flexibility Analysis (IRFA) pursuant to 5 U.S.C. 603, exploring the potential impact on small entities of the Commission's proposals. We invite parties to file comments on the IRFA in light of this additional notice.

### *B. Initial Paperwork Reduction Act of 1995 Analysis*

7. This document seeks comment on a potential new or revised information collection requirement. If the Commission adopts any new or revised information collection requirement, the Commission will publish a separate notice in the **Federal Register** inviting the public to comment on the requirement, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501–3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

### *C. Filing Requirements*

8. Interested parties may file comments on or before the date indicated on the first page of this document. Comments are to reference WC Docket No. 10–90 and may be filed using the Commission's Electronic Comment Filing System (ECFS), or by filing paper copies.

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.

9. In addition, we request that one copy of each pleading be sent to each of the following:

(1) Ted Burmeister, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street SW., Room 5–A445, Washington, DC 20554; email: *Ted.Burmeister@fcc.gov;*

(2) Charles Tyler, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street SW., Room 5–A452, Washington, DC 20554; email: *Charles.Tyler@fcc.gov.*

10. People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

11. The proceeding this Notice initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule § 1.1206(b). In proceedings governed by rule § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda

summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Federal Communications Commission.

**Linda Oliver,**

*Deputy Chief, Telecommunications Access Policy Division, Wireline Competition Bureau.*

[FR Doc. 2013–30145 Filed 12–18–13; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 54

**[WC Docket No. 10–90; DA 13–2304]**

### Availability of Version 4.0 of the Connect America Fund Phase II Cost Model; Adopting Current Default Inputs in Final Version of Model

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Wireline Competition Bureau announces that version four of the Connect America Cost Model (CAM v4.0) will be available shortly. The Bureau seeks comment on whether the Bureau should adopt this version of CAM and the default inputs for purposes of calculating cost in price cap areas for implementing Connect America Phase II.

**DATES:** Comments are due on or before January 7, 2014.

**ADDRESSES:** Interested parties may file comments on or before January 7, 2014. All pleadings are to reference WC Docket No. 10–90. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.
- *People with Disabilities:* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (tty).

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Katie King, Wireline Competition Bureau at (202) 418–7491 or TTY (202) 418–0484.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Wireline Competition Bureau's document in WC Docket No. 10–90; DA 13–2304, released December 2, 2013. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via Internet at *http://www.bcpiweb.com.*

1. The Wireline Competition Bureau (Bureau) announces that version four of the Connect America Cost Model (CAM v4.0), which incorporates a number of modifications, including additional adjustments to address the unique circumstances and operating conditions in the non-contiguous areas of the United States, will be available shortly. The Bureau seeks comment on whether they should adopt this version of CAM and the default inputs for purposes of calculating costs in price cap areas for implementing Connect America Phase II.

2. *Overview of Changes in CAM v4.0.* As described in more detail below, CAM v4.0 includes a number of modifications to address the unique circumstances and operating conditions in the non-contiguous areas of the United States. In particular, CAM v4.0 calculates the cost of submarine cables used for middle mile connections between intra-state points in non-contiguous areas. It also updates the plant mix values for the non-contiguous carriers, and assumes that buried plant is placed in conduit in non-contiguous areas to provide additional protection from harsh weather. This version modifies the prior methodology used for determining input values for terrain in non-contiguous areas, and it treats Alaska Communications Systems (ACS) as a small carrier for purposes of calculating its operating expenses. It also uses state-specific values for certain capital expense inputs for Virgin Islands Telephone Corporation d/b/a Innovative Telephone (Vitelco). CAM v4.0 incorporates several modifications to CostQuestLandLine (CQLL) and CostQuestMiddleMile (CQMM), the proprietary applications that CAM relies on to develop the network topology for the CAM. In CQLL, the national demand location data and the terrain data were updated, and the clustering code was modified. CQMM was modified to route middle-mile connections along roads, consistent with the treatment of last mile plant in prior versions. CAM v4.0 includes inputs for submarine cable and other costs specific to non-contiguous areas, and it also adjusts the default input for the cost of money to 8.5 percent. CAM v4.0 also incorporates updated broadband coverage data.

3. *Middle Mile Submarine Routes in Non-Contiguous Areas.* CAM v4.0 includes the capability to model the cost of submarine cable used for middle mile connections in non-contiguous areas. Previous versions of the model did not distinguish between terrestrial routes and the submarine portions of middle mile routes in determining middle mile investment in the non-contiguous areas of the United States. The model was modified to identify middle mile routes requiring an undersea connection, including those connecting the islands in Hawaii, Puerto Rico, the U.S. Virgin Islands, and the Northern Mariana Islands, and to connect Anchorage to Juneau and the Kenai Peninsula. The Capital Expenditures (Capex) workbook was modified to include submarine cable costs and the cost for two beach manholes on each intrastate middle mile submarine route. This submarine cable is part of the middle-mile network in each area; it connects central offices just like wholly land-based middle-mile cable does. Each beach manhole is connected to a nearby central office that provides multiplexing, routing and co-location. The Bureau assumes that there is no need for duplicative facilities to provide multiplexing, routing or co-location between central offices and therefore do not assume a full landing station at each submarine landing site. To the extent that parties disagree with that assumption, they should provide a detailed analysis in support of their position.

4. The table below shows middle mile route distances for terrestrial and submarine routes in non-contiguous areas.

| | Cabling distance | Beach manholes | Total MM distance | Land MM distance | Submarine MM distance | % Submarine |
|---|---|---|---|---|---|---|
| AK | 63,620,956 | 74 | 63,620,956 | 54,717,162 | 8,903,794 | 14.0 |
| HI | 4,657,509 | 10 | 4,657,509 | 3,622,974 | 1,034,536 | 22.2 |
| MP | 591,597 | 4 | 591,597 | 186,097 | 405,500 | 68.5 |
| PR | 3,299,014 | 4 | 3,299,014 | 3,134,003 | 165,010 | 5.0 |
| VI | 442,389 | 4 | 442,389 | 172,750 | 269,639 | 61.0 |

5. *Plant Mix.* CAM v4.0 includes state-specific plant mix values for the price cap carriers serving the non-contiguous United States: ACS, Puerto Rico Telephone Company (PRTC), Hawaiian Telcom, Inc. (HTI), Vitelco, and the Micronesian Telecommunications Corporation d/b/a IT&E (MTC). The plant mix values for price cap carriers serving the contiguous United States were largely based on values that reflect an inventory of existing plant mix. Several of the non-contiguous carriers have suggested that the model should use ''forward-looking'' plant mix values for their areas that are significantly different than their current plant mix values and the national average plant mix values in CAM v3.2.

6. Rather than use current values or the proposed forward-looking values submitted by these carriers, CAM v4.0 incorporates a hybrid approach that recognizes that there may be good reasons in non-contiguous areas to reduce the amount of aerial plant in the future, but that an efficient carrier would likely replace aerial plant with a mixture of buried and underground plant. CAM v4.0 recognizes that buried and underground plant both provide the benefits of below-ground plant, and that an efficient carrier would choose to bury plant rather than build underground plant where technically and legally permitted, as underground plant is typically three to five times more costly than buried plant. CAM v4.0 therefore assumes the amount of underground plant would not exceed a carrier's current amount of underground plant; to the extent the carrier-submitted proposed values for underground plant are higher than current values, the excess is moved into buried plant. The table below illustrates a hypothetical example of this approach.

| | Aerial | Buried | Underground |
|---|---|---|---|
| Current values | 60 | 10 | 30 |
| Forward-looking values | 10 | 30 | 60 |
| Hybrid | 10 | 60 | 30 |

7. By utilizing a greater amount of buried plant than current buried plant, the hybrid approach reflects the fact that there may be some locations where it is more efficient to decrease the amount of aerial plant in favor of buried plant. The Bureau does recognize, however, that there may be some instances when deploying underground plant may be technically or legally required. To the extent any party contends that the approach to plant mix taken in CAM v4.0 does not adequately reflect a forward-looking network, they should supply data that demonstrates what percentage of plant in the state must specifically be placed underground, as opposed to buried, due to local ordinances or for technical reasons.

8. *Buried Plant in Conduit.* In response to comments submitted by some carriers serving non-contiguous areas, CAM v4.0 also was modified to allow buried plant to be placed in conduit systems. Traditionally, underground plant is placed within conduit for added support and protection and with access points via manholes, while buried plant is placed directly into the ground, without any conduit. Some non-contiguous carriers have suggested that the model should include an additional approach to plant deployment that would combine aspects of both traditional underground and buried plant. Such an approach combines buried plant techniques with conduit for added protection. The logic modification contained in CAM 4.0 allows for these ''buried in conduit'' systems and is used for buried plant in the non-contiguous United States.

9. *Terrain.* The methodology for determining whether a census block group is identified as having hard rock was modified for the non-contiguous areas of the United States. Several carriers serving the non-contiguous areas, ACS, PRTC, and HTI, requested that the model treat 100 percent of their terrain as ''hard rock,'' the most expensive terrain in which to place plant. This approach would significantly over-estimate the actual amount of hard rock in these areas.

10. CAM v4.0 modifies the approach for determining whether a census block group is considered to consist of hard rock in non-contiguous areas. Terrain factors for the entire country were developed for each census block group using data from the Natural Resources Conservations Service (NRCS) STATSGO data, where available. The rock hardness used in the contiguous United States for a given census block group is whichever type of rock is listed most frequently for the list of STATSGO map units in the census block group, regardless of the geographic area of those map units. The revised methodology now considers the entire census block group in non-contiguous areas, where terrain data are available, to be hard rock if at least fifty percent of the area is identified as hard rock.

11. *ACS Treated as Small Carrier.* CAM v4.0 shifts ACS from the ''medium'' carrier category, which encompasses carriers that serve between 100,000 and 1 million access lines, to the ''small'' carrier category, for carriers that serve fewer than 100,000 access lines. Given the other changes made in CAM v4.0, we tentatively believe that it would be reasonable to treat ACS as a ''small'' carrier rather than a ''medium'' carrier category for the purposes of calculating its operating expense (opex) in the CAM v4.0.

12. *Vitelco Capex Inputs.* CAM v4.0 also includes state-specific values for certain inputs in the Capex workbook for the Virgin Islands. Vitelco submitted several proposed modifications to the Capex workbook. CAM v4.0 includes the modifications to the material costs, but not to the labor costs. The Bureau tentatively believes it would be reasonable to assume that certain materials would be more expensive in the Virgin Islands, but they are not convinced that labor costs should be adjusted upward as proposed by Vitelco.

13. *Other Changes Proposed by Non-Contiguous Carriers.* CAM v4.0 does not include all the changes submitted into the record by carriers serving the non-contiguous United States. In analyzing the impact of the requested changes and assessing the reasonableness of the modelled costs, we compared the costs calculated in CAM v4.0 with the embedded costs reported by the carriers. To the extent parties believe that additional modifications should be made to CAM v4.0 prior to adopting the cost model, they should provide a detailed analysis in support of their position and specify which inputs should be adjusted upwards or downwards.

14. *CQLL Demand Locations.* CAM v4.0 also incorporates modifications designed to ensure that the growth in demand locations for a given county are appropriately placed in areas with other residential locations. This modification does not alter the demand data sources, but modifies the methodology for random placement of housing units to prevent anomalous and potentially misleading results. Specifically, beginning with CAM v3.0, the overall increase or decrease of residential housing units in a specific county in 2011, as compared to the 2010 census counts, was randomly dispersed to census blocks based on the amount of livable roads in each census block of the county. This process may have resulted in residential housing units being assigned to census blocks for which 2010 census records showed no residential locations. CAM v4.0 uses both 2010 census block information and 2011 GeoResults geocoded residential data to identify census blocks that have no residential locations and removes housing units that previously had been placed in these census blocks to reflect 2011 county growth. Instead, CAM v4.0 randomly places those housing units into census blocks that already contain residential locations. This random placement follows the same methods used beginning in v3.0, but improves on these methods by removing roads in census blocks without residential locations to prevent their use as possible targets for random placement. This modification impacts only about 0.1 percent of all residential demand locations, but results in a net increase in demand of approximately 3,500 Node4 locations, which had been previously excluded due to their assignment to census blocks that had no roads or fell outside of defined service areas.

15. *CQLL Terrain Data.* The CQLL terrain database was modified to correct an inversion in some rows impacting the rock hardness and soil texture values.

16. *CQLL Clustering Code and Node3 Creator.* The CQLL clustering code was modified to improve feeder path branching in areas with multiple roads. The code for the feeder allocation formulas was updated consistent with changes described in CAM v3.2 release notes that previously were addressed via an update to CQLL output. The calculations for accumulating feeder fibers of Gigabit passive optical network (GPON) splitters and special access services were modified. The fiber service terminal (i.e., pedestal) cost values used to determine the placement of Node3s (i.e., pedestals) was modified to use the installed value of a fiber service terminal; the previous value understated the cost.

17. *CQMM Updates.* CQMM was modified to use road distance in calculating terrestrial middle mile route distances, in most instances, and includes the capability to model the cost of submarine cable used for middle mile connections in non-contiguous areas. CQMM calculates connections between nodes using a minimum spanning tree approach. For CAM v3.2, and earlier versions of the model, distance was calculated using airline distance multiplied by 1.2 (i.e., an estimated conversion factor of airline to road distance). For CAM v4.0, distance is calculated using either airline distance or road distance. In the non-contiguous areas of the United States, middle mile distances that include submarine routes are calculated using airline distance (x1.2). In the contiguous United States and for middle mile distances in non-contiguous areas of the United States that do not contain submarine routes, most distances are calculated using road distance. Where the ratio of road distance to airline distance is greater than 3.04, which represents the 99th percentile of the road distance to airline distance ratios for all routes used in CQMM, the distance is the airline distance multiplied by 3.04. Each route with any submarine cable is assigned two beach manholes. Submarine investment is not shared with other utilities, and is not impacted by the regional cost adjustment.

18. CQMM also was modified so that a regional tandem will no longer be able to serve a central office of a different state when states are in the same Local Access and Transport Area (LATA). For example, Minnesota and North Dakota share a LATA. With the modification, North Dakota central offices are served only by regional tandems in North Dakota. In addition, CQMM was modified to remove duplicate key values that could lead to an infinite processing loop, to remove three duplicative regional tandem locations, and to trigger repeater investment based on route distance between nodes rather than total route distance.

19. *Cost of Money.* In prior versions of the model, the default input values reflected a 9 percent cost of money. The previously released model outputs for CAM v3.2 used the model's default input values, but allowed Commission staff and interested parties to see how support amounts varied using both an 8 percent and 9 percent cost of money. CAM v4.0 reflects an 8.5 percent cost of money.

20. *CAM Broadband Coverage.* CAM v4.0 incorporates updated broadband coverage to reflect State Broadband Initiative (SBI) Round 7 data. Consistent with the process for updating broadband coverage in prior versions of the CAM, the new coverage table removes from the SBI data Cable and Fixed Wireless providers receiving subsidies, as well as those not providing voice services as reported on FCC Form 477.

21. *CAM Capex.* CAM v4.0 includes in the undersea tab of the Capex workbook inputs for submarine cable and beach manholes on intrastate middle mile submarine cable routes in non-contiguous areas of the United States, described above. The cable investment is based on the same input used for undersea cabling; each beach manhole investment is estimated at $1 million; and submarine costs are calculated using the underground fiber Annual Charge Factor.

22. CAM v4.0 also includes logic to support a ''buried in conduit'' method of plant placement, which allows buried plant to be placed in conduit systems. The Plant Mix Buried Conduit workbook was added, and the percentage of buried in conduit placements is an input in that workbook. Buried excavation costs are used. A toggle allows the user to exclude manholes (the current default) or to specify access points via size one manholes. Another toggle selects the type of conduit used for the buried trench; duct without inner-duct is the default.

23. In addition, CAM v4.0 includes modifications to the buried and underground formulas' use of the Structure Sharing table (in the Plant Sharing Tables tab) and to the Engineering Rules to allow control over sizing for manholes in rural, suburban, and rural areas.

24. *State Specific Capex.* A State Specific Capex table and toggle were added to provide an input source for situations in which a state-specific

capex input is required. When the State Specific Capex toggle is set to yes, the state-specific capex information will be taken from the State Specific Capex workbook. That is, the state specified in the State Specific Capex workbook will become the active capex values, for the specified state only, in the input collection.

25. *CAM Processing Logic.* When running a single state solution set, CAM previously identified the service areas to process based on the fifth and sixth characters of the service area code, but excluded those census blocks served in neighboring states. CAM v4.0 was modified to retain all census blocks, including neighboring states, associated with service areas in which the fifth and sixth characters of the service area code match the state that is processed. This change aligns the state definition between single and multi-state solution sets, where states are defined as collections of service areas; there is no impact on investment calculations.

26. *Access to CAM v4.0.* Parties should follow the same procedures to access CAM v4.0 as announced for previous versions. In particular, parties may access CAM v4.0 at *http://www.fcc.gov/encyclopedia/caf-phase-ii-models or https://cacm.usac.org.* Additionally, authorized users who have signed the relevant attachments to the protective order will have access to a system evaluator package that provides a test environment populated with a sample database, allowing users to view database structures, observe the processing steps of CAM for a subset of the country, and see changes in the database. In addition, authorized uses will receive a digital rights management protected PDC format file (a form of secure PDF) containing the processing source code for CQLL and CQMM.

27. *Updated Documentation.* In conjunction with the release of CAM v4.0, the Bureau will shortly be posting updated methodology documentation for CAM v4.0, which provides more detail on the current model architecture, processing steps, and data sources. Additionally, the Bureau will be making available the input tables used in the CAM. The methodology documentation and the input tables will be available at *http://www.fcc.gov/encyclopedia/price-cap-resources.*

28. *Illustrative Results.* The Bureau also will shortly be releasing a new set of illustrative model outputs for CAM v4.0. The Bureau emphasizes, however, that it has not yet finalized the funding thresholds, and therefore these illustrative results do not represent final support amounts.

## I. Procedural Matters

### *A. Initial Regulatory Flexibility Act Analysis*

29. The *Non-Contiguous Areas PN,* 78 FR 12006, February 21, 2013, included an Initial Regulatory Flexibility Analysis (IRFA) pursuant to 5 U.S.C. 603, exploring the possible significant economic impact on small entities of the policies and rules proposed therein. The Commission invites parties to file comments on the IRFA in light of this additional document.

### *B. Paperwork Reduction Act*

30. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198.

### *C. Filing Requirements*

31. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before the date indicated on the first page of this document. Comments are to reference WC Docket No. 10–90 and DA 13–2304, and may be filed by paper or by using the Commission's Electronic Comment Filing System (ECFS).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.

32. In addition, we request that one copy of each pleading be sent to each of the following:

(1) Katie King, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street SW., Room 5–B544, Washington, DC 20554; email: *Katie.King@fcc.gov;*

(2) Charles Tyler, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street SW., Room 5–A452, Washington, DC 20554; email: *Charles.Tyler@fcc.gov.*

33. People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

34. The proceeding this Notice initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule § 1.1206(b). In proceedings governed by rule § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte*

presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Federal Communications Commission.

**Linda Oliver,**

*Deputy Chief, Telecommunications Access Policy Division, Wireline Competition Bureau.*

[FR Doc. 2013–30144 Filed 12–18–13; 8:45 am]

**BILLING CODE 6712–01–P**

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

**[Docket No. FWS–R2–ES–2013–0127; 4500030113]**

## Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List Coleman's Coralroot as an Endangered or Threatened Species

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of 12-month petition finding.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list *Hexalectris colemanii* (Coleman's coralroot) as an endangered or threatened species and to designate critical habitat under the Endangered Species Act of 1973, as amended (Act). After review of all available scientific and commercial information, we find that listing Coleman's coralroot is not warranted at this time. However, we ask the public to submit to us any new information that becomes available concerning the threats to the species or its habitat at any time.

**DATES:** The finding announced in this document was made on December 19, 2013.

**ADDRESSES:** This finding is available on the Internet at *http://www.regulations.gov* at Docket Number FWS–R2–ES–2013–0127. Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office, 2321 W. Royal Palm Road, Suite 103, Phoenix, AZ 85021. Please submit any new information, materials, comments, or questions concerning this finding to the above address.

**FOR FURTHER INFORMATION CONTACT:** Steve Spangle, Field Supervisor, U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office, 2321 W. Royal Palm Road, Suite 103, Phoenix, AZ 85021; telephone 602–242–0210; facsimile 602–242–2513; email *incomingazcorr@fws.gov*. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

### Background

In this document we refer to *Hexalectris colemanii* as Coleman's coralroot.

Section 4(b)(3)(A) of the Act (16 U.S.C. 1531 *et seq.*) requires that, for any petition to revise the Federal Lists of Threatened and Endangered Wildlife and Plants that contains substantial scientific or commercial information that listing a species may be warranted, we make a finding within 12 months of the date of receipt of the petition. In this finding, we determine whether the petitioned action is: (a) Not warranted, (b) warranted, or (c) warranted, but immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are threatened or endangered, and expeditious progress is being made to add or remove qualified species from the Federal Lists of Endangered and Threatened Wildlife and Plants. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, that is, requiring a subsequent finding to be made within 12 months. We must publish these 12-month findings in the **Federal Register**.

*Previous Federal Actions*

On June 25, 2007, we received a formal petition dated June 18, 2007, from Forest Guardians (now WildEarth Guardians), requesting that we list 475 southwest species, including *Hexalectris revoluta* (Chisos coralroot), under the Act as either endangered or threatened with critical habitat. We sent a letter to the petitioner dated July 11, 2007, acknowledging receipt of the petition and stating that the petition was under review by staff in our Southwest Regional Office.

On December 16, 2009 (74 FR 66866), we determined that we had substantial information to indicate that listing the Chisos coralroot as endangered or threatened may be warranted. At that time, we believed the Chisos coralroot included the entity now known as Coleman's coralroot. On September 8, 2010, we received a petition dated the same day from The Center for Biological Diversity requesting that Coleman's coralroot be listed separately from Chisos coralroot as an endangered or threatened species under the Act and critical habitat be designated. We acknowledged receipt of the petition via electronic mail to The Center for Biological Diversity on September 8, 2010. On December 1, 2011, we sent another letter to The Center for Biological Diversity acknowledging that Coleman's coralroot was considered a separate species from the Chisos coralroot as of 2010. In the 2011 letter, we stated that because the Coleman's coralroot was considered to be a form of Chisos coralroot in 2009 when we made a substantial 90-day finding for the Chisos coralroot, we already consider a substantial 90-day finding to be in place for the Coleman's coralroot, and that we would further address the petition when workload and funding allow.

On January 30, 2013, we notified interested parties and agencies that we would be conducting a status review of Coleman's coralroot and requested information. We received one response letter from Pima County, AZ. We also informally reached out via email and telephone to staff at the Coronado National Forest (Coronado NF), WestLand Resources, Tohono O'odham Nation, and other experts. In addition, on February 14, 2013, the Service entered into a stipulated settlement agreement with The Center for Biological Diversity to review the status of the Coleman's coralroot and submit to the **Federal Register** a 12-month finding as to whether listing of the species as an endangered or threatened species is (a) not warranted; (b) warranted; or (c) warranted but precluded by other pending proposals, pursuant to 16 U.S.C. 1533(b)(3)(B) by December 31, 2013. This **Federal Register** document constitutes our 12-month finding on the September 8, 2010, petition to list the Coleman's coralroot as an endangered or threatened species and to designate critical habitat, based on our 2009 positive 90-day finding. This document also fulfills the obligations of the Service from the February 14, 2013, settlement agreement.

*Species Information*

Description and Taxonomy

A member of the orchid family (Orchidaceae), Coleman's coralroot is a perennial herb that forms a short,

segmented, vertical rhizome or spike. The species has pinkish-cream stems that measure 46 to 55 centimeters (cm) (18 to 22 inches (in)); inflorescences (flowering part of plant) measure 20 to 23 cm (8 to 9 in) with sepals and petals whitish or creamy-pink to very pale brown at the tips and partly with noticeable bands of magenta or maroon (Catling 2004, pp. 14–15). The species has a chasmogamous flower (one that opens to allow for pollination) with a well-developed rostellum (structure that prevents self-pollination) (Kennedy and Watson 2010, p. 74). Coleman's coralroot is identifiable by the sepals and lateral petals, which are rolled back along the outer third of their length by more than 360 degrees forming a tight coil (Coleman 2002, p. 99).

Coleman's coralroot was originally identified as *Hexalectris spicata* from specimens collected by Toolin and Reichenbacher in 1981 and by McLauglin in 1986 (Coleman 1999, pp. 312–14; Coleman 2000 entire; Coleman 2001, p. 96). These specimens were later treated as *H. revoluta* by Coleman (1999, pp. 314–315). Using morphological characteristics (the physical form or structure of an organism or any of its parts), Catling (2004, pp. 14–16) described *H. revoluta* var. *colemanii* as a variety of *H. revoluta.* Utilizing phylogenetic analyses (the assessment of the genetic relatedness of organisms), as well as morphological characters, Kennedy and Watson (2010, pp. 65, 73–74) concluded that *H. revoluta* var. *colemanii* should be recognized at the species rank as *H. colemanii.*

In September of 2010, we solicited independent peer review of the suggested classification of *Hexalectris colemanii* by Kennedy and Watson (2010) as a separate species. Three reviewers opined that Kennedy and Watson (2010) properly treated *H. colemanii* as a separate and distinct species (Jenkins 2010, pers. comm.; Sharma 2010, pers. comm.; Liggio 2010, pers. comm.), while two reviewers opined that, although *H. revoluta* var. *colemanii* is a distinct taxonomic entity at the rank of variety, it does not merit treatment as a separate species (Goldman 2010, pers. comm.; Freudenstein 2010, pers. comm.). In plant classification, the use of the term ''variety'' is generally synonymous with the term ''subspecies''.

Jenkins (2010, pers. comm.) offered that the methods and testing in Kennedy and Watson (2010) were good and certainly would survive any criticism from a reviewer who is acquainted with these methods, and their work showed good evidence that *Hexalectris colemanii* and *H. arizonicus* were reliably different from the other species sampled. Sharma (2010, pers. comm.) offered that the markers analyzed were appropriate for the question with regard to whether the different taxa represent individual taxonomic units or whether they should be considered single taxonomic units, and it is evident that *H. colemanii* stands out as a separate taxonomic unit, i.e., a species, especially when considered along with the morphological differences that separate it from its close relatives. Liggio (2010, pers. comm) offered that Kennedy and Watson (2010) present phylogenetic evidence that *H. colemanii* is a distinct taxon, as well as morphological characters that distinguish it from other members of the *Hexalectris spicata* complex, *H. revoluta,* the western clade of *H. spicata* and *H. arizonica.* Goldman (2010, pers. comm.) offered that Kennedy and Watson (2010) support its distinction from *H. revoluta* var. *revoluta,* but it seems to have different relationships with various species based upon which phylogeny is examined (with possible hybridization inferred), and one could also suspect that it is part of the other new species described in that 2010 paper, *H. arizonica,* merely as a variety of *H. arizonica* (or vice-versa). Freudenstein (2010, pers. comm.) offered that the real contribution of Kennedy and Watson (2010) has been the addition of molecular data, but the tree obtained from nuclear locus suggests the two varieties of *H. revoluta* are not very distinct from each other.

In conclusion, even though two of our five peer reviewers felt that Coleman's coralroot should not be treated as a separate species, they still believe it is a distinct taxonomic entity (i.e., variety). Furthermore, three reviewers agreed with Kennedy and Watson (2010) that Coleman's coralroot is a separate and distinct species. Additionally, the Kennedy and Watson (2010) study that denoted Coleman's coralroot as a separate species was published in Systematic Botany, which is a peer-reviewed and widely accepted scientific journal. Based on the morphological and phylogenetic analysis conducted by Kennedy and Watson (2010, entire), the fact that this study was published in a peer-reviewed scientific journal, and because the scientific community has generally accepted Kennedy and Watson's 2010 determination that the Coleman's coralroot is a distinct taxonomic entity as noted by our own peer reviewers, we conclude that the Coleman's coralroot should be recognized as a separate species. Therefore, based on the best scientific information available, we recognize Coleman's coralroot (*Hexalectris colemanii*) as a distinct species.

Habitat and Life History

Orchids, such as Coleman's coralroot, may be found either as individual plants or as part of a colony. The determination of what constitutes a colony, or cluster, is largely based on subjective professional expertise, taking into consideration factors such as local geography and relative distance between plants. A colony or cluster can range from a relatively small number of individual orchids to many hundred individual plants. A colony or cluster can also span across areas of varying size and may be primarily interconnected below the ground level, though this not known with a level of certainty.

Coleman's coralroot grows in moderate shade in oak (*Quercus* spp.) woodland canyons, hills, and drainages at elevations between 1,315 to 1,826 meters (m) (4,315 to 5,990 feet (ft)) in southeastern Arizona and southwestern New Mexico (Coleman 1999, p. 315; 2002, pp. 100–101; Catling 2004, pp. 15–16; Baker 2012a, p. 9; WestLand Resources 2012a, pp. 5–7; 2012b, p. 10; 2012c, p. 5; 2012d, pp. 8–10). Though dominated by oaks, and primarily by white oak (*Q. grisea*), these woodlands also include juniper (*Juniperus* spp.), mesquite (*Prosopis* spp.), Arizona black walnut (*Juglans major*), acacia (*Acacia* spp.), desert willow (*Chilopsis linearis*), and Wright sycamore (*Platanus wrightii*). Individual and orchid colonies establish themselves in soil, duff, humus, and heavy leaf litter under trees such as oak and mesquite, or among rock outcrops or the edges of rocky cliffs (Coleman 1999, p. 315; Coleman 2002, p. 101). In a study of general habitat characteristics, WestLand Resources (2012a, pp. 5–6) found that study sites with Coleman's coralroot and *Hexalectris arizonica* (Arizona crested coralroot) were predominantly characterized by sandy loam or sandy clay loam soils, had an average 44 percent canopy cover, and slopes ranging from 1 to 60 percent. This observation is similar to the findings of Collins *et al.* (2005, pp. 1,886–1,888), who found that *Hexalectris* orchid locations in Texas where statistically correlated with loamy carbonatic soils and sites with less than 60 percent canopy cover. Microhabitat parameters appear to vary considerably across known sites (WestLand Resources 2012d, pp. 9–10), making it difficult to identify specific conditions needed by the species.

Plants of the family Orchidaceae are predisposed to mycoheterotrophy (Kennedy *et al.* 2011, p. 1,303), meaning they do not use photosynthesis to make food, but rather obtain food via relationships with root fungi that have colonized the roots of trees (Leake 1994, pp. 171–172; Taylor *et al.* 2003, pp. 1,168–1,169), and members of the genus *Hexalectris* are fully mycoheterotrophic (Coleman 2002, p. 91). This mutualism between photosynthetic plants and root fungi, whereby plants and fungi acquire carbon from one another, is referred to as mycorrhizal symbiosis. However, mycoheterotrophy in *Hexalectris* orchids is entirely one-sided in favor of the orchid, and they have often been described as parasites. Because Coleman's coralroot occur predominantly in well-developed white oak woodlands, it seems likely that the preferred fungus grows on the roots of white oak, or perhaps in the duff and humus layer near oaks. *Hexalectris* orchids exhibit a high degree of mychorrhizal specificity, meaning they have a very restricted range of fungal associates, and the morphology of *Hexalectris* orchids suggests they depend heavily on specific fungi (Kennedy *et al.* 2011, pp. 1,309–1,313; Taylor *et al.* 2003, pp. 1,175–1,177). Members of the fungal group Sebacinaceae have been identified as the sole fungal associate of Coleman's coralroot (Kennedy *et al.* 2011, pp. 1,307–1,313). Although we have no specific information on the distribution of Sebacinaceae in Arizona, it is reasonable to infer a wide geographic distribution because Coleman's coralroot associates with sebacinaceous fungi of widely distant subclades or groups that have been identified from western Mexico to the eastern United States (Kennedy *et al.* 2011, p. 1,313).

Relatively little is known about the reproductive biology of Coleman's coralroot or other orchids within the genus *Hexalectris.* Autogamy (self-pollination) is reported for other members of this genus, though Coleman's coralroot is considered to be an obligate outbreeding taxon (relies on cross pollination) with a distinct rostellum (flower structure that prevents self-pollination) (Argue 2012, p. 144). Argue (2012, p. 144) suggests insects play a role in pollination of *Hexalectris* orchids. Hill (2007, p. 15) suggests *H. spicata* may require insect pollination because the flowers are ''medium-sized and showy'' and reports observation of a bumblebee (*Bombus impatiens*) visiting the flowers of an individual plant in Indiana. Buchman *et al.* (2010, pp. 4, 39) suggests that large bees, such as *Bombus* and *Xylocopa,* are likely pollinators of *H. warnockii.* Klooster and Culley (2009, pp. 1,340–1,343) found that *Bombus* spp. were the most reliable floral visitors and the primary pollen dispersal agents for two mycoheterotrophic orchids in the subfamily Monotropoideae. Several species of *Bombus* have been reported from the mountains of southern Arizona (Schmidt and Jacobson 2005, pp. 128–129), and Coleman's coralroot may be pollinated by a member of this genus. Additionally, the presence of beetles and ants on the flowers of *Hexalectris,* including Coleman's coralroot, has been documented (Sharma 2013, pers. comm.). It is not clear if Coleman's coralroot produces nectar in any significant amount, or if the species could attract potential pollinators merely through floral scent.

To what degree these orchid colonies exchange genetic material is unknown, but tiny wind-blown seeds can travel thousands of kilometers (Jersáková and Malinová 2007, p. 238). Additionally, the potential for a *Bombus* pollinator provides some context to evaluate orchid colony relationships. Although we were unable to locate information for local *Bombus,* Carvell *et al.* (2012, p. 738) reported 2,317 m (7,602 ft) as the maximum foraging distance for *B. pascuorum,* a species from Britain, suggesting that colonies within this distance from one another may exchange genetic material through a shared pollinator. However, this situation has not been documented for Coleman's coralroot.

Like most mycoheterotrophs, Coleman's coralroot is almost exclusively subterranean and survives mostly as an underground tuber or rhizome (Leake 1994, p. 172; WestLand Resources 2012d, p. 2). For mycoheterotrophic orchids to reach reproductive maturity may take 10 to 20 years (Hill 2007, p. 16; WestLand Resources 2012c, p. 3), though Coleman's coralroot likely takes 4 to 10 years (Coleman 2013, pers. comm.). Researchers suspect that a plant blooms only once then dies, because rhizomes have been observed to bloom more than once on only a few occasions (Coleman 2013, pers. comm.). For plants that do bloom more than once, the period of vegetative dormancy between flowering can be several years (WestLand Resources 2012c, p. 4). Due to the uncertainty surrounding maturation and blooming, how long an individual plant can live is currently unknown.

The total number of blooming individuals fluctuates widely from year to year and the species is considered an erratic, unreliable bloomer in successive years (Coleman 2001, p. 96; 2005, p. 250; 2013, p. 16). Coleman (2002, p. 101) noted that in some years all plants that send up spikes will put on a good display of flowers, while in other years none of the plants that sprout will bloom. When individual plants do bloom, the inflorescence (flowering part of the plant) emerges in April and flowers bloom between early May and mid-June (Coleman 2002, p. 101; Catling 2004, p. 15; WestLand Resources 2010, p. 3). The species sets capsules (seed-bearing structures) very infrequently (Coleman 2013, p. 18), which may be related to the biology of the pollinator. Orchids that do successfully set capsules can produce millions of microscopic seeds that are dispersed by the wind over long distances and are reliant upon fungi for germination (WestLand Resources 2012c, pp. 2–3; Hill 2007, p. 17; Leake 1994, p. 172). Because of the small seed size, individual seeds likely have low nutrient reserves and seedbanks are likely short-lived.

The quality and quantity of blooming plants in the genus *Hexalectris* appears to be influenced by rainfall patterns (Coleman 2002, p. 101; Argue 2012, p. 145). For instance, Collins *et al.* (2005, p. 1,888) reported a large number of *Hexalectris* blooms in Texas following late spring rains. Engel (2013, p. 2) also reported a correlation between blooming for *H. nitida* in Texas and late spring rains over a 7-year period. For Coleman's coralroot, Coleman (2005, pp. 249–250) found that the number of blooming plants at two sites in Arizona correlated very closely with winter rains (October to May) from 1996 to 2003. WestLand Resources (2012c, pp. 10–11) demonstrated that flowering for Coleman's coralroot is highly correlated with October to March rainfall totals, and hypothesized that flowering may be positively correlated with cold wintertime temperatures because wintertime temperatures from 2008 to 2012 were exceptionally low.

Range and Distribution

Coleman's coralroot occurs within oak woodland communities across southeastern Arizona and southwestern New Mexico. When Coleman's coralroot was recognized as a separate species in 2010, it was known only from three sites in the Santa Rita and Dragoon Mountains of southern Arizona (Center for Biological Diversity 2010, pp. 4–7). Since that time, extensive surveys have been conducted for the species in numerous mountain ranges across southeastern Arizona (WestLand Resources 2010, 2012b, 2012d, 2103, entire). In 2012 alone, WestLand

Resources (2012b, p. 50) surveyed 181 canyons in 16 mountain ranges. As of July 2013, the species has been positively identified in 22 confirmed extant colonies across seven mountain ranges, including the Santa Rita, Whetstone, Dragoon, Chiricahua, Patagonia, Peloncillo, and Baboquivari Mountains in southeastern Arizona and southwestern New Mexico (Coleman 2001, p. 96; Catling 2004, p. 15; Coleman 2010, pp. 1–2; WestLand Resources 2010, pp. 9–14; 2012b, pp. 3–5; 2012d, pp. 4–8; 2013, pp. 5–6). All confirmed extant sites are located on Coronado NF lands managed by the U.S. Forest Service (USFS) or Tribal lands owned by the Tohono O'odham Nation.

Population Trends and Abundance

Identifying discrete populations of Coleman's coralroot is challenging due to the species' life history, particularly its cryptic nature, the unpredictability of emergence and inflorescence, and the variability of habitat conditions (e.g., slope, aspect, cover). Furthermore, we do not have much information on population trends because most populations were not discovered until after 2010, when the Coleman's coralroot was recognized as a distinct species. Also, without specific knowledge of pollinators and gene exchange, making biological correlations regarding populations is difficult (Baker 2013, pers. comm.). However, orchids typically occur in patchy distributions where clusters of plants, or colonies, exhibit some spatial separation (Tremblay *et al.* 2006, p. 71; Winkler *et al.* 2009, p. 995).

Based on our review of the available information, we have identified 22 confirmed extant colonies (i.e., sites) of Coleman's coralroot (19 on Coronado NF and 3 on Tohono O'odham Nation). This includes five colonies in the Santa Rita Mountains in the upper, middle, and lower McCleary Canyon, Wasp Canyon, and Sawmill Canyon; three colonies in the Dragoon Mountains including West Cochise Stronghold, East Cochise Stronghold, and Middlemarch Canyons; four colonies in the Peloncillo Mountains including Cottonwood Creek in Arizona, Cottonwood Creek in New Mexico, Miller Spring, and Skeleton Canyons; two colonies in the Whetstone Mountains including French Joe and Dry Canyons; four colonies in the Chiricahua Mountains including upper Tex Canyon, Tex Canyon, and two tributaries to Tex Canyon; one colony in the Patagonia Mountains in Hermosa Canyon; and three colonies in the Baboquivari Mountains.

Additionally, four colonies have been identified as to the coralroot genus *Hexalectris,* but the actual species were not identified. These plants had already flowered when they were found during surveys, so the infloresence had already dried and shriveled. Without the flower intact, the plants could only be identified to genus and not to species. However, these findings could potentially be Coleman's coralroot sites. These include Jordan Canyon in the Santa Rita Mountains, Paige Creek in the Rincon Mountains, Harshaw Canyon in the Patagonia Mountains, and Alamo Canyon in the Canelo Hills. If these are Coleman's coralroot sites, the spatially separated clusters of plants rise to 26 sites or colonies.

The life history of Coleman's coralroot makes the determination of population sizes extremely challenging, particularly because individual plants spend most of their lives underground where they are difficult to count. It is difficult to estimate population size or trends for subterranean orchids because the correlation between the number of rhizomes living underground and the number of spikes that emerge in any given year is unknown.

To date, monitoring rangewide has been irregular. Prior to 2010 only three Coleman's coralroot colonies had been monitored with regularity, including McCleary and Sawmill Canyons in the Santa Rita Mountains, and West Stronghold Canyon in the Dragoon Mountains. These three sites have been surveyed to varying degrees since 1996 (Coleman 1999, 2000, 2001, 2002, 2005, 2010 entire), and have exhibited significant fluctuations in the number of orchids emerging year to year, from zero to dozens of inflorescences. More extensive survey effort occurred from 2010 through 2013 (WestLand Resources 2013, p. 6), dramatically increasing the number of known and potential colonies of Coleman's coralroot. Count data collected for each colony since 2010, excluding those located on the Tohono O'odham Nation, is presented in Table 1 (Coleman 2010, p. 4; Baker 2012a, pp. 25–27; WestLand Resources 2010, pp. 9–14; 2012b, pp. 51–55; 2012c, p. 8; 2013, p. 5; Cerasale 2013, pers. comm.).

TABLE 1—SUMMARY OF TOTAL COUNTS OF INFLORESCENCE OF COLEMAN'S CORALROOT BY COLONY, 2010–2013

| Mountain range | Canyon | Year | | | |
|---|---|---|---|---|---|
| | | 2010 | 2011 | 2012 | 2013 |
| Santa Rita | Upper McCleary | 95 | 6 | 46 | 18 |
| | Middle McCleary | 15 | 0 | 2 | 6 |
| | Lower McCleary | 10 | 0 | 2 | 2 |
| | Wasp | 4 | 0 | 1 | 0 |
| | Sawmill | 25 | 6 | 23 | 41 (+3*) |
| | Jordan | | | *4 | 0 |
| Dragoon | West Stronghold | 140 | 1 | 31 | 13 |
| | East Stronghold | | | | 1 |
| | Middlemarch | | | 4 | 0 |
| Peloncillo | Cottonwood Creek (AZ) | | | 5 | 0 |
| | Cottonwood Creek (NM) | | | 2 | |
| | Miller Spring | | | 2 | 5 |
| | Skeleton | | | 1 | 0 |
| Whetstone | French Joe | | | 29 | 26 |
| | Dry | | | 1 | 0 |
| Chiricahua | Upper Tex | | | | 2 |
| | Tex | | | *2 | 4 |
| | Tex west tributary | | | | 6 |
| | Tex north tributary | | | | 12 |
| Patagonia | Hermosa | | | | 1 |
| | Paige Creek | | | | *16 |
| Rincon | Alamo | | | | *2 |

TABLE 1—SUMMARY OF TOTAL COUNTS OF INFLORESCENCE OF COLEMAN'S CORALROOT BY COLONY, 2010–2013—Continued

| Mountain range | Canyon | Year | | | |
|---|---|---|---|---|---|
| | | 2010 | 2011 | 2012 | 2013 |
| Canelo Hills | Harshaw | | | | *1 |

* Reported as *Hexalectris* spp.

**Summary of Information Pertaining to the Five Factors**

Section 4 of the Act (16 U.S.C. 1533) and implementing regulations (50 CFR part 424) set forth procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, a species may be determined to be endangered or threatened based on any of the following five factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

In making this finding, information pertaining to the Coleman's coralroot in relation to the five factors provided in section 4(a)(1) of the Act is discussed below. In considering what factors might constitute threats, we must look beyond the mere exposure of the species to the factor to determine whether the species responds to the factor in a way that causes actual impacts to the species. If there is exposure to a factor, but no response, or only a positive response, that factor is not a threat. If there is exposure and the species responds negatively, the factor may be a threat and we then attempt to determine how significant a threat it is. If the threat is significant, it may drive or contribute to the risk of extinction of the species such that the species warrants listing as threatened or endangered as those terms are defined by the Act. This does not necessarily require empirical proof of a threat. The combination of exposure and some corroborating evidence of how the species is likely impacted could suffice. The mere identification of factors that could impact a species negatively is not sufficient to compel a finding that listing is appropriate; we require evidence that these factors are operative threats that act on the species to the point that the species meets the definition of threatened or endangered under the Act.

In making our 12-month finding on the petition we considered and evaluated the best available scientific and commercial information.

*Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range*

We have identified mining, livestock grazing, nonnative invasive plants species, wildfire, drought, and climate change as potential threats to the habitat or range of the Coleman's coralroot.

Mining

Mining is a significant component of the history and economy of the American Southwest, particularly Arizona, and there are numerous claims across the southeastern portion of the State. The Coronado NF, in particular, has a number of mining proposals in various stages of planning (Sandwell-Weiss 2012, pers. comm.). Mining and mineral exploration could detrimentally affect orchids and their habitats through land clearing, construction of facilities, rock blasting, groundwater pumping, storm water management, toxic chemical use, and other mine operations. These activities could directly or indirectly contribute to: Direct fatality of individual orchids; the loss and alteration of microhabitat sites necessary for orchid survival; direct fatality of pollinators; and the loss and alteration of microhabitat sites necessary for pollinator survival. Of the 22 extant populations, 7 Coleman's coralroot colonies occur within, or adjacent to, mineral claims on public lands, which include McCleary (3 colonies), Wasp (1 colony), and Sawmill (1 colony) Canyons in the Santa Rita Mountains, Middlemarch Canyon (1 colony) in the Dragoon Mountains, and Hermosa Canyon (1 colony) in the Patagonia Mountains (USFS 2011, pp. 374, 393; Fonseca 2012, pp. 4–5; WestLand Resources 2012c, pp. 1, 17; USFS 2013, p. 6). We are aware of two mining projects that have developed plans of operation; the Rosemont Copper Mine in the Santa Rita Mountains, which may affect colonies in McCleary and Wasp Canyons, and the Hermosa Drilling Project in the Patagonia Mountains, which may affect a colony in Hermosa Canyon.

Rosemont Copper Mine—The Rosemont Copper Company has submitted a mine plan of operation to the Coronado NF for development of the Rosemont ore deposit. The proposed mine site is located on the east side of the Santa Rita Mountains of the Nogales Ranger District, approximately 48 kilometers (km) (30 miles (mi)) south of Tucson, Arizona. The proposed project would result in the direct disturbance of approximately 2,839 hectares (ha) (7,016 acres (ac)) of land, including 513 ha (1,267 ac) of private land, 2,287 ha (5,651 ac) administered by the Coronado NF, 1.2 ha (3 ac) administered by the BLM, and 38 ha (95 ac) of Arizona State Land Department land administered as a State Trust (SWCA 2012, p. 22). How much of this area is suitable for occupation by Coleman's coralroot is unknown, largely because the distribution of the fungal symbiont is unknown. However, the proposed project area is occupied by two colonies in upper McCleary Canyon and Wasp Canyon.

Project planning is well under way, and the Coronado NF released a Draft Environmental Impact Statement (EIS) in September 2011. The Rosemont Copper Mine includes an open-pit copper mine, storage area for waste rock and tailings, and plant facilities. The mine life, including construction, operation, reclamation, and closure, is approximately 25 years. The full-scale project is expected to begin after a Final EIS and a Record of Decision is completed. Based on current scheduling and compliance, this may occur in late 2013, though the precise schedule for commencement of the project is not known and depends on the finalization of the Record of Decision. Construction and operation of the open pit would entail blasting ore-laden rock with ammonium nitrate and fuel oil explosive (WestLand Resources 2007, p. 12; USFS 2011, p. 24). Sulfide ore would be transported, via haul trucks, to a series of crushers and mills to produce finely ground ore, which will be taken to a flotation processing plant to extract copper concentrate that will then be loaded for shipment (WestLand

Resources 2007, pp. 18–20; USFS 2011, p. 25). Waste rock and tailings will be placed in storage areas primarily on public lands (WestLand Resources 2007, p. 23; USFS 2011, p. 26).

The Draft EIS acknowledges effects to Coleman's coralroot from the proposed action, owing to the construction of the mine pit in Wasp Canyon and the placement of dry-stack tailings in McCleary Canyon (USFS 2011, pp. 393, 405). Based on our review of the available information, the entirety of two Coleman's coralroot colonies within upper McCleary and Wasp Canyons lie within the footprint of the preferred alternative (Barrel) of the proposed Rosemont Copper Mine (USFS 2011, pp. 57–58; Fonseca 2012, p. 2; WestLand Resources 2012c, p. 21; 2007, p. 2.6). We anticipate that any and all individual orchids, and their underground rhizomes, within the direct footprint of the pit, roads, or structures will be crushed and killed during vegetation clearing, the ore extraction process (i.e., blasting and crushing), or other operational activities. Any habitat blasted and transported to the crusher would no longer remain suitable for orchids. Additionally, we anticipate that any pollinator nests and hives within the direct footprint of these facilities would be destroyed. The loss of nearby orchids and pollinators within the mine footprint could affect the fitness of orchids remaining on the mine perimeter through a potential reduction in the exchange of genetic material. However, this effect cannot be quantified because we cannot predict how many Coleman's coralroot will be on the mine's perimeter in any given season.

Two orchid colonies, one within middle McCleary Canyon and one within lower McCleary Canyon, are located just outside the direct footprint of mine facilities on the northern end of the project site. They appear to be directly on the edge, or within 305 m (1,000 ft) of the edge, of the footprint of mine facilities (USFS 2011, p. 58; WestLand Resources 2012c, p. 21). Due to their proximity, these colonies could also experience: Drying from denuded vegetation; increased potential for invasive species, which often favor disturbed habitats; increased edge effect to the oak stand and fungal communities; increased vulnerability to predation; alteration of surface and subsurface hydrology; and exposure to heavy metal contamination from seepage or fugitive dust. Native floristic quality can be negatively affected by exposure to heavy metals (Struckhoff *et al.* 2013, p. 27), and particulate pollution could lead to physiological stress of orchids and their habitats that remain on the mine perimeter. Of particular concern is particle matter that can contain acids, organic chemicals, metals, and soil or dust particles (USFS 2011, p. 170), because these compounds could potentially be toxic to orchids.

Because fugitive dust from the tailings pile is expected to generally consist of coarse particles that settle out rapidly (SWCA 2012, p. 20), we do not anticipate exposure to particulates will be significant. Also, the dust control plan for the mine may include the application of chemical dust suppressants, such as petroleum resins and acrylic cement (SWCA 2012, p. 19), which might ameliorate effects to the two colonies adjacent to the mine. Additionally, the plan of operation will seek to minimize fugitive dust through implementation of a variety of controls (e.g., application of binder materials or use of water spray) (USFS 2011, pp. 196–200). Although the potential for exposure exists, there is uncertainty regarding the magnitude of these potential stressors on the two Coleman's coralroot colonies and habitats located just outside the mine footprint. The level of exposure cannot be predicted and the specific vulnerability of the species to these stressors requires further investigation. Furthermore, because only 4 of the 22 known colonies would be affected by this stressor, we do not anticipate rangewide impacts to the overall status of the species. The Coleman's coralroot is known to occur across seven mountain ranges in southeastern Arizona and southwestern New Mexico, and we have no information indicating that the remaining colonies are subject to impacts from mining.

Hermosa Drilling Project—Arizona Minerals, Inc. (AMI) has submitted a request for approval of a plan of operation to the Coronado NF to implement the Hermosa Drilling Project. The project area is located about 9.6 km (6 mi) east of the town of Patagonia, Arizona, on the Sierra Vista Ranger District, and approximately 80 km (50 mi) southeast of Tucson, Arizona. The proposed action would extend the current Hermosa mineral deposit exploration program from AMI patented mining claims to unpatented claims on Coronado NF lands (AMI 2013, p. 1). Site characterization activities, including mineral exploration drilling, hydrogeologic drilling and testing, geotechnical drilling and sampling, and construction and improvement of access roads would disturb 3.7 ha (9.2 ac) of Coronado NF lands (AMI 2013, p. 9). The Coronado NF is planning to prepare an Environmental Assessment. The precise schedule for commencement of the project is not known, though operations may begin as soon as 2018.

The project area for the Hermosa drilling project overlaps the occurrence of one individual Coleman's coralroot in Hermosa Canyon and one individual *Hexalectris* spp. located near Harshaw Canyon. We assume this finding represents at least one colony, but we do not have sufficient information to determine how much land is occupied or if an entire colony would be affected. However, we anticipate that any orchids and rhizomes within the direct footprint of exploration activities would be crushed and killed during vegetation clearing, drilling, or other operational activities. Additionally, any habitat modified would no longer maintain suitability for orchids, and any pollinators within the direct footprint of these activities would be destroyed. Based on this information, a high level of certainty exists that at least one individual Coleman's coralroot may be destroyed.

Other Claims—Additional mining claims exist within the known range of the species. For instance, Coleman's coralroot colonies in the Dragoon Mountains are located near mining claims. However, we have no information on whether these lands are closed to new mining claims, if the Coronado NF will require a plan of operations and an environmental assessment or environmental impact statement before new disturbance occurs, or what kind of mining activities can occur prior to Coronado NF oversight. Thus, we have no specific information regarding other mining operations that would impact Coleman's coralroot colonies.

In conclusion of mining concerns and based on our review of the best available information, 7 of the 22 Coleman's coralroot colonies occur within, or adjacent to, mineral claims on public lands, which include McCleary (3 colonies), Wasp (1 colony), and Sawmill (1 colony) Canyons in the Santa Rita Mountains, Middlemarch Canyon (1 colony) in the Dragoon Mountains, and Hermosa Canyon (1 colony) in the Patagonia Mountains (USFS 2011, pp. 374, 393; Fonseca 2012, pp. 4–5; WestLand Resources 2012c, pp. 1, 17; USFS 2013, p. 6). Two Coleman's coralroot colonies within upper McCleary and Wasp Canyons are likely to be extirpated by anticipated effects from construction and operation of the Rosemont Copper Mine, but the five additional colonies are not expected to be lost. Of these five additional colonies, two colonies in lower and

middle McCleary Canyon are likely to be affected by mining operations, but we have a high level of uncertainty regarding effects to the viability of those colonies because the effect of adjacent mining (e.g., fugitive dust) on individual orchids is unknown. Some of the uncertainty is because a colony may persist underground without flowering parts emerging. In addition, while at least one and perhaps two individual orchids within Hermosa and Harshaw Canyons are likely to be destroyed, we do not know how the viability of a colony or colonies in those canyons will be affected because we do not know the distribution of orchids there. Further, other localities of Coleman's coralroot in the Dragoon Mountains are located near mining claims, but we have no specific information regarding ongoing or proposed mining operations in that area or other areas. The existence of a mining claim does not ensure a mineral deposit will be subject to a plan of operation or active mining. Therefore, the best available information indicates that mining does not pose a threat to the Coleman's coralroot now or in the future.

Livestock Grazing

Cattle grazing in Arizona began in 1696, but ranching did not proliferate to any extent until the 1870's (Clemensen 1987, p. 1). The Coronado NF has been managing livestock grazing on its lands since the early 1900's (Allen 1989, pp. 14–17). Nineteen of the 22 confirmed extant Coleman's coralroot colonies occur on the Coronado NF within USFS grazing allotments. Although the Coleman's coralroot is currently a USFS sensitive species, we do not have any information indicating that these allotments contain stipulations that protect the species. Livestock grazing is cited as a contributing factor in the extirpation of the species from Baboquivari Canyon on BLM lands (Center for Biological Diversity 2010, p. 10, Coleman 2010, pers. comm.), though specific evidence is not provided. *Hexalectris* orchids are palatable to ungulates, and hoof action could contribute to soil compaction that may be detrimental to the fungus or the roots of either the *Hexalectris* or the oak trees. Livestock grazing has been demonstrated to reduce seed production and detrimentally impact survival of other orchid species (Alexander *et al.* 2010, pp. 47–48). Hágsater and Dumont (1996, p. 17) note that heavy grazing and trampling has been shown to eliminate other species of orchids, reduce plant diversity, and lead to soil erosion; though they also note that grazing may simulate natural disturbance regimes, reduce competition, and promote certain rare species.

In the Whetstone Mountains, French Joe and Dry Canyons that are occupied by two colonies of Coleman's coralroot are located in the 7,111-ha (17,572-ac) Mescal Allotment, which consists of 4,036 ha (9,972 ac) capable of supporting grazing. The allotment is permitted for 800 cattle, or 4,800 Animal Unit Months (AUM), from November 1 to April 30 of each year (USFS 2010, p. 1; Kraft, 2013, pers. comm.). Typically, a single herd enters the allotment on November 1, on the west side and is moved east as feed and water diminish. Cattle travel to French Joe Canyon on the east side of the allotment at the end of the grazing season in April.

In the Peloncillo Mountains, one Coleman's coralroot colony occurs in Skeleton Canyon, which overlaps the 1,594-ha (3,939-ac) Fairchild Allotment and the 1,882-ha (4,651-ac) Skeleton Allotment which are together permitted for 272 cattle (1,496 AUM) from October 1 to March 15 of each year (Service 2009, pp. 22, 27; USFS 2008, pp. 2, 21). Cattle are pushed into upper elevations of the Fairchild Allotment at the beginning of the grazing season and allowed to drift down to the north as the season progresses. A lack of reliable water and fencing makes it difficult to maintain proper distribution, resulting in heavier use in lower Skeleton Canyon (USFS 2008, p. 273).

In the Dragoon Mountains, the West Cochise Stronghold Canyon, which is occupied by one colony of Colemen's coralroot, is located within the 4,700-ha (11,616-ac) Slavin Allotment, which consists of 2,030 ha (5,017 ac) capable of supporting grazing. The allotment is permitted for 130 cattle (780 AUM) from December 1 to May 31 of each year (Service 1999, p. 20).

In the Santa Rita Mountains, the 3,931-ha (9,714-ac) Rosemont Allotment consists of 3,671 ha (9,072 ac) capable of supporting grazing. The allotment is permitted for 325 cattle from March 1 to 31, for 325 cattle from September 1 to October 31, and for 150 cattle from November 1 to February 28 (1,575 AUM) (Service 1999, p. 74).

In the Chiricahua Mountains, the 7,420-ha (18,336-ac) Tex Canyon Allotment consists of 6,713 ha (16,589 ac) capable of supporting grazing. The allotment is permitted for 600 cattle from November 1 to February 28, and 150 cattle from December 1 to February 28 (3,399 AUM) (Service 1999, p. 66).

As of 2012, the best available information indicates that livestock grazing occurs within or near all 19 Coleman's coralroot colonies that exist on Coronado NF lands. Whether livestock grazing occurs near the three colonies on Tohono O'odham Nation is uncertain, although information in our files indicates that no cattle activity occurs in the immediate area of reported plants. However, the presence of livestock grazing within landscapes where Coleman's coralroot occurs potentially makes the species vulnerable to direct grazing, trampling, and compaction of soils. When individual plants do bloom, the inflorescence (flowering part of plant) emerges in April and flowers bloom between early May and mid-June (Coleman 2002, p. 101; Catling 2004, p. 15; WestLand Resources 2010, p. 3). Livestock grazing in the Whetstone and Dragoon Mountains overlaps the emergence season, providing the opportunity for cattle to eat or trample individual flowering orchids, or compact soils. Because relevant allotments are grazed outside the emergence season, cattle have no opportunity to eat or trample individual flowering orchids in the Peloncillo, Santa Rita, or Chiricahua Mountains. However, the presence of livestock at other times does provide the opportunity for cattle to compact soils.

Although cattle are present on the landscape, two key factors likely contribute to minimization of the effects of grazing on Coleman's coralroot. First, the Coronado NF has a drought policy that directs permittees to work with the Coronado NF when rainfall for the water year (beginning October 1) is less than 75 percent of normal by March 1 and the long-range forecast is for less than normal precipitation. This policy limits livestock presence during drought, which in turn lessens the likelihood that Coleman's coralroot would be detrimentally impacted by livestock grazing. Second, these allotments are relatively large allowing livestock to disperse over a large area, and we have no information to indicate that livestock congregate within orchid colonies or that they may be attracted to orchid localities.

Livestock grazing has occurred for at least the past 100 years in Coleman's coralroot habitat. Although livestock grazing has been shown to affect other species of orchids, Coleman's coralroot persists across a number of mountain ranges in Arizona and New Mexico despite the presence of livestock. Because Coleman's coralroots primarily occur in areas that are not likely to be heavily grazed, such as areas with thick cover and limited accessibility under oak and mesquite trees, among rock outcrops, and on the edges of rocky cliffs (Coleman 1999, p. 315; Coleman 2002, p. 101), it is unlikely that

livestock grazing will substantially impact the orchid. Accordingly, based on the best available information, livestock grazing does not pose a threat to the Coleman's coralroot continued existence now or in the future.

Nonnative Invasive Plant Species

Invasive plants, specifically exotic annuals, can negatively affect native vegetation including rare plants. One of the most substantial effects is the change in vegetation fuel properties that, in turn, alter fire frequency, intensity, extent, type, and seasonality (Menakis *et al.* 2003, pp. 282–283; Brooks *et al.* 2004, p. 677; McKenzie *et al.* 2004, p. 898) (see Wildfire discussion). Invasive plants can also exclude native plants and alter pollinator behaviors (D'Antonio and Vitousek 1992, pp. 74–75; DiTomaso 2000, p. 257; Traveset and Richardson 2006, pp. 211–213; Cane 2011, pp. 27–28). Furthermore, invasive plants can out-compete native species for soil nutrients and water (Aguirre and Johnson 1991, pp. 352–353; Brooks 2000, p. 92), as well as modify the activity of pollinators by producing different nectar from native species (Levine *et al.* 2003, p. 776) or introducing nonnative pollinators (Traveset and Richardson 2006, pp. 208–209), leading to disruption of normal pollinator interactions.

Since its introduction in the 1940s, buffelgrass (*Pennisetum ciliare*) has become widespread in southeastern Arizona (Yetman 1994, pp. 1, 8; Van Devender and Reina 2005, p. 161; Cohn 2005, pp. 1–2; Stevens and Falk 2009, p. 417). Originally introduced as forage for livestock, as erosion control, or as an ornamental, buffelgrass is now considered invasive and a threat to native ecosystems (Búrquez-Montijo *et al.* 2002, entire). Researchers generally think that buffelgrass will continue to spread in the Sonoran Desert biome into the future, reducing native biodiversity through direct competition and alteration of nutrient and disturbance regimes (Ward *et al.* 2006, p. 724; Franklin and Molina-Freaner 2010, p. 1671). However, buffelgrass is usually limited to elevations less than 1,000 m (3,300 ft) because it is frost-intolerant (Perramond 2000, p. 5), though it has been documented up to 1,265 m (4,150 ft) (Arizona Sonora Desert Museum 2012, p. 2). Coleman's coralroot colonies occur at elevations of 1,315 to 1,826 m (4,315 to 5,990 ft), which is higher than the limit of where buffelgrass occurs, suggesting the Coleman's coralroot is not impacted by buffelgrass invasion, though climatic warming trends may facilitate future invasion of buffelgrass at higher elevations (see Climate Change discussion).

Other nonnative plant species that may impact Coleman's coralroot's persistence include Lehman's lovegrass (*Eragrostis lehmanniana*) and rose natal grass (*Melinis repens*) (Baker 2012a, p. 14). However, specific research is lacking on the impacts of exotic species in general upon individual Coleman's coralroot and their habitats (Baker 2012a, p. 14). A review of the best available information does not indicate that Lehman's lovegrass or rose natal grass occurs within Coleman's coralroot colonies. Also, there is a high level of uncertainty regarding interactions between these nonnative invasive species and Coleman's coralroot. Therefore, our review of the best available information does not indicate that nonnative invasive species pose a threat to the continued existence of Coleman's coralroot now or in the future.

Wildfire

Fire frequency and intensity in southwestern forests are altered from historical conditions (Dahms and Geils 1997, p. 34; Danzer *et al.* 1997, pp. 1–2). Before the late 1800s, surface fires generally occurred at least once per decade in montane forests (Swetnam and Baisan 1996, p. 15). During the early 1900s, frequent widespread ground fires ceased to occur due to intensive livestock grazing that removed fine fuels, such as grasses. Coupled with fire suppression, changes in fuel load began to alter forest structure and natural fire regime (Dahms and Geils 1997, p. 34). An absence of low-intensity ground fires allowed a buildup of woody fuels that resulted in infrequent, but very hot, stand-replacing fires (fires that kill all or most of above-ground parts of dominant vegetation) (Dahm and Geils 1997, p. 34; Danzer *et al.* 1997, p. 9). Additionally, when nonnative buffelgrass invades an area, the natural fire regime can change from infrequent, low-intensity, localized fires, to frequent, high-intensity, spreading fires because of the increased grassy fuel load (Van Devender and Reina 2005, p. 161; Stevens and Falk 2009, p. 418; Yetman 1994, pp. 8–9). Also, the introduced Lehmans lovegrass can form dense stands, increasing fine fuels and fire danger where it occurs (Anable *et al.* 1992, pp. 186–187), which could lead to increased fire hazard in nearby oak woodlands.

Information in our files indicates wildfires of varying intensity in the past few years have occurred upslope of Coleman's coralroot plants on Tohono O'odham Nation. These wildfires may have resulted in increased runoff from burned areas, which may cause soil erosion that could wash away Coleman's coralroot plants or bury them under sediment. However, the available information does not provide specific evidence that wildfire has directly affected any cluster or colony of Coleman's coralroot. Additionally, there has been no scientific study of the impacts of fire on the species (Baker 2012a, p. 13). We can speculate that native plants that have evolved with low-intensity, high-frequency wildfire may suffer decreased viability when exposed to a fire regime that is now dominated by high-intensity wildfire. Hot temperatures may be too extreme for living plants, existing seedbank, and the pollinator species; and a hot wildfire occurring during the flowering season could potentially kill individual orchids that are flowering, or kill oak trees that are host to the fungal symbiont.

Conversely, Coleman's coralroot life-history traits may provide for the continued survival of the species under these conditions. Perhaps the subterranean rhizome is protected from surface fire, allowing the species to survive and resprout after fire. As discussed above, buffelgrass and Coleman's coralroot currently occur at different elevations, reducing the potential for the species to be affected by fire regimes altered by buffelgrass. Also, the distribution of other invasive species within or near Coleman's coralroot colonies is uncertain. Additionally, oak woodlands can recover after hot fires as affected trees often resprout and grow vigorously, though it may take a few decades to return to former conditions (Baker 2012a, p. 16).

Overall, researchers have a high level of uncertainty regarding the effects of wildfire on Coleman's coralroot, and we have no site-specific information regarding the occurrence of wildfire within or near sites occupied by Coleman's coralroot. Therefore, our review of the best available information does not indicate that wildfire poses a threat to the Coleman's coralroot now or in the future.

Drought and Climate Change

Our analyses under the Act include consideration of ongoing and projected changes in climate. The terms climate and climate change are defined by the Intergovernmental Panel on Climate Change (IPCC). Climate refers to the mean and variability of different types of weather conditions over time, with 30 years being a typical period for such measurements, although shorter or longer periods also may be used (IPCC

2007, p. 78). Thus, the term climate change refers to a change in the mean or variability of one or more measures of climate (e.g., temperature or precipitation) that persists for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or both (IPCC 2007, p. 78). Various types of changes in climate can have direct or indirect effects on species. These effects may be positive, neutral, or negative, and they may change over time, depending on the species and other relevant considerations, such as the effects of interactions of climate with other variables (e.g., habitat fragmentation) (IPCC 2007, pp. 8–14, 18–19). In our analyses, we use our expert judgment to weigh relevant information, including uncertainty, in our consideration of various aspects of climate change.

Climate change will be particularly challenging for biodiversity because the interaction of additional stressors associated with climate change and current stressors may push species beyond their ability to survive (Lovejoy 2005, pp. 325–326). The synergistic implications of climate change and habitat fragmentation are the most threatening facet of climate change for biodiversity (Hannah *et al.* 2005, p. 4). Current climate change predictions for terrestrial areas in the Northern Hemisphere indicate warmer air temperatures, more intense precipitation events, and increased summer continental drying (Field *et al.* 1999, pp. 1–3; Hayhoe *et al.* 2004, p. 12422; Cayan *et al.* 2005, p. 6; Seager *et al.* 2007, p. 1181). Climate change may lead to increased frequency and duration of severe storms and droughts (Cook *et al.* 2004, p. 1,015; Golladay *et al.* 2004, p. 504; McLaughlin *et al.* 2002, pp. 6,072–6,074).

The current prognosis for climate change in the American Southwest includes fewer frost days; warmer temperatures; greater water demand by plants, animals, and people; and an increased frequency of extreme weather events (Weiss and Overpeck 2005, p. 2,074; Archer and Predick 2008, p. 24). Some models predict dramatic changes in southwestern vegetation communities (Weiss and Overpeck 2005, p. 2,074; Archer and Predick 2008, p. 24), especially as wildfires carried by nonnative plants (e.g., buffelgrass) potentially become more frequent, promoting the presence of invasive, exotic species over native ones (Weiss and Overpeck 2005, p. 2,075).

Climate change models predict that the southwestern United States will become drier in the twenty-first century and that the trend is already under way (Seager *et al.* 2007, pp. 1,181–1,184; Schwinning *et al.* 2008, p. 14–15). The current, multiyear drought in the southwestern United States is the most severe drought recorded since 1900 (Overpeck and Udall 2010, p. 1,642). Winter rainfall in southern Arizona has been declining steadily for the last 34 years, and most noticeably 1998 to the present (McPhee *et al.* 2004, p. 2). Projections predict annual precipitation in the Southwest will continue to decrease (Christensen *et al.* 2007, p. 888; Solomon *et al.* 2009, p. 1,707). Additionally, maximum summer temperatures in the Southwest are expected to increase over time (Christensen *et al.* 2007, p. 887). Weiss and Overpeck (2005, p. 2,075) examined low-temperature data over a 40-year timeframe from numerous weather stations in the Sonoran desert ecoregion and found: (1) Widespread warming trends in winter and spring, (2) decreased frequency of freezing temperatures, (3) lengthening of the freeze-free season, and (4) increased minimum temperatures per winter year. The current trend in the Southwest of less frequent, but more intense, precipitation events leading to overall drier conditions is predicted to continue (Karl *et al.* 2009, p. 24). The levels of aridity of recent drought conditions, and perhaps those of the 1950s drought years, will become the new climatology for the southwestern United States (Seager *et al.* 2007, p. 1,181). Additionally, the timing of precipitation may be altered. Projected patterns of precipitation changes predict that winter precipitation in the Southwest may decline 10 to 20 percent, for the period 2090–2099 relative to 1980–1999, as a result of climate change (IPCC 2007, p. 20).

Arid environments can be especially sensitive to climate change because the biota that inhabit these areas are often near their physiological tolerances for temperature and water stress. Slight changes in temperature and rainfall, along with increases in the magnitude and frequency of extreme climatic events, can significantly alter species distributions and abundance (Archer and Predick 2008, p. 23). Nonnative plant species may respond positively, out-competing native vegetation (Smith *et al.* 2000, p. 79; Lioubimsteva and Adams 2004, p. 401), thereby increasing the risk of wildfire. Seasonal changes in rainfall may contribute to the spread of invasive species, which are often capable of explosive growth, and able to out-compete native species (Barrows *et al.* 2009, p. 673).

As discussed above, flowering patterns are highly correlated with October to March rainfall totals, with higher numbers of flowering plants observed during years with more winter rainfall. A 10 to 20 percent decline in winter rainfall by the end of this century may have rangewide repercussions on flowering by Coleman's coralroot, though the magnitude of effect is uncertain. The irregular flowering patterns of Coleman's coralroot could already be indicative of effects from drought. For instance, in a study of the terrestrial orchid *Dactylorhiza majalis,* Pavel and Zuzana (1999, pp. 272–273) suggest that if both climatic and habitat conditions are good, irregular flowering regimes in orchids should not occur, and such patterns may be characteristic of sites with declining populations. On the other hand, flowering in *Hexalectris,* and Coleman's coralroot in particular, is known to be very erratic (Hill 2007, p. 16; Coleman 2013, p. 16), and may be an adaptation to cope with the extreme climatic conditions of arid environments.

It is difficult to determine how Coleman's coralroot colonies will fare with current and future drought conditions. The long-term trend for these colonies is unpredictable, and the inconsistent nature of historical count data makes it hard to assess trends (e.g., variation from year to year, unknown relationship to number of rhizomes, and lack of standardized data collection methodology). Despite past and ongoing drought conditions, the species continues to persist. While winter precipitation appears to be correlated with flowering, which influences seed production and germination, the effects of long-term drought on these life-history traits are uncertain. Currently, the extent of the cumulative effects of drought are undocumented, and we have no information to indicate if they independently or collectively have led to, or will lead to, the loss of Coleman's coralroot colonies.

It is also possible the Coleman's coralroot is adapted to arid conditions. Plants growing in high-stress landscapes are often adapted to stress, and drought-adapted species may experience lower mortality during severe droughts (Gitlin *et al.* 2006, pp. 1,477 and 1,484). The ability of Coleman's coralroot to remain dormant during dry periods, and regrow when rainfall is abundant, may be an adaptation for coping with aridity. This ability to remain dormant during dry periods may have been important in the Coleman's coralroot survival of the large-scale drought in the 1950s. However, we note that drought was 11 years and followed by a period of higher

annual precipitation (Allen and Breschears 1998, p. 14,841; Fye *et al.* 2003, p. 907), and the current drought may not be comparable.

In summary, the best available information indicates a continuation of current drying trends, but it does not indicate that the rangewide status of Coleman's coralroot will be negatively affected. In fact, some information indicates that Coleman's coralroot is adapted to arid environmental conditions. Therefore, the best available information does not indicate that drought and climate change pose a threat to the Coleman's coralroot at a species-level across the range now or within the future.

Conservation Efforts To Reduce Habitat Destruction, Modification, or Curtailment of Its Range

We have no information regarding conservation efforts that are nonregulatory, such as habitat conservation plans, safe harbor agreements, habitat management plans, memorandums of understanding, or other voluntary actions that may be helping to ameliorate stressors to the species' habitat, but are not legally required.

Summary of Factor A

After assessing the best available science on the magnitude and extent of the effects of mining, livestock grazing, nonnative invasive plants species, wildfire, drought, and climate change, we find that the destruction, modification, and curtailment of Coleman's coralroot's habitat or range is not a threat to the species. Mining operations may affect a small percentage of the Coleman's coralroot habitat. Effects of livestock grazing, nonnative species, wildfire, and drought have not resulted in measurable population declines. However, a review of the limited available information does not indicate that these stressors alone or in combination rise to the level of effects that they would be considered a threat to the Coleman's coralroot.

*Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

Coleman's coralroot has been subject to minimal collection related to documentation of occurrence (i.e., voucher specimens) and scientific inquiry. Voucher specimens were collected from Baboquivari Canyon by Toolin in 1981 and from McCleary Canyon by McLaughlin in 1986 (Coleman 2000, p. 138; 2001, p. 96). Specimens were collected from Sawmill Canyon in 2003 and McCleary Canyon in 2005 for phylogenetic analysis (Baker 2012a, p. vi; Kennedy and Watson 2010, pp. 64–65; WestLand Resources 2010, pp. iv–v, 1–2). More recently, voucher specimens were collected from Cottonwood Creek and Miller Spring by Baker (2012a, p. vi). WestLand Resources (2012c, p. 5) also reports a collection from West Cochise Stronghold. These collections represent a small number of individuals, and there is no indication that large numbers of Coleman's coralroot have been collected for scientific purposes. In fact, Coleman (2010, p. 2), the principal authority on the species, reports that he refrained from collecting the species during his years of survey effort.

Removal of unsustainable levels of plants from wild populations for commercial trade is a major cause for the decline of many showy orchids (Hágsater and Dumont 1996, p. 9). Although many species of orchids are highly sought by collectors, we are not aware of any significant utilization of Coleman's coralroot for commercial or recreational purposes (i.e., reports or observations of collection or removal from the wild). Coleman's coralroot localities are relatively remote and access is challenging, minimizing potential collection by novices. Furthermore, collection for propagation seems unlikely because the conditions necessary for growth and survival appear to be very difficult to recreate in an artificial environment (i.e., successfully growing the fungus).

Conservation Efforts To Reduce Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

We have no information regarding conservation efforts that are nonregulatory, such as habitat conservation plans, safe harbor agreements, habitat management plans, memorandums of understanding, or other voluntary actions, that may be helping to ameliorate stressors due to overutilization for commercial, recreational, scientific, or educational purposes.

Summary of Factor B

Based on the best available information, the Coleman's coralroot has been subject to minimal collection. We have no indication that collection is affecting the species now or will do so in the future. Therefore, we conclude that overutilization for commercial, recreational, scientific, or educational purposes, does not pose a threat to the Coleman's coralroot.

*Factor C. Disease or Predation*

Orchids like the Coleman's coralroot are susceptible to herbivory by native browsers, such as insects, small mammals, or deer. Hill (2007, p. 19) identified herbivory by deer as a potential threat to *Hexalectris* orchids, while Baker (2012a, p. 13) offered that Coleman's coralroot may be vulnerable to predation or grazing by rodents, feral pigs, rabbits, and deer. Since 1996, evidence of herbivory of Coleman's coralroot has been observed (Coleman 2013, p. 16), including a report of a single plant damaged by insects from McCleary Canyon in 1996 (Coleman 1999, p. 314) and the reporting that spikes may be eaten (Coleman 2002, p. 101). With the dramatic increase in survey effort from 2010 to 2013, the incidence of observed herbivory also increased. For instance, in 2010 researchers found that 30 percent of spikes in West Cochise Stronghold Canyon were browsed by deer (WestLand Resources 2010, p. 12). From the Santa Rita Mountains, WestLand Resources (2012b, pp. 8, 53–54) reported one Coleman's coralroot inflorescence that showed signs of herbivory in McCleary Canyon, at least one inflorescence of *H. arizonica* that showed insect damage in Agua Caliente Canyon, and one *H. arizonica* inflorescence sheared off at the base due to small rodent or insect herbivory in Dutch John Canyon. WestLand Resources (2012b, pp. 5, 53) also reported four *Hexalectris* spp. in Jordan Canyon in the Dragoon Mountains that appeared to be clipped from insect herbivory. Baker (2012b, p. 1) also reported an individual Coleman's coralroot from the Peloncillo Mountains eaten at the base of the stalk.

In 2012, Coleman (2013, p. 16) marked and tracked eight Coleman's coralroot plants in Sawmill Canyon, in an effort to quantify the effects of herbivory. A site visit later that same year revealed four plants had been destroyed by digging, likely from a small rodent (Coleman 2013, p. 16). In 2013, all marked plants had either been dug by a small rodent, or had been eaten down below the lowest flower by either a rabbit or deer (Coleman 2013, p. 17). Coleman (2013, p. 18) expressed concern that herbivory may preclude large numbers of plants from developing and setting capsules. Because the species appears to set capsules infrequently, herbivory could affect seed development and dispersal. Coleman (2013, p. 18) concludes that additional work is needed to identify the herbivores and to determine what

proportion of plants that emerge in any given year are lost to herbivory.

As a matter of their life history, wild plants are susceptible to predation or herbivory. Although it has been demonstrated that Coleman's coralroot are subject to herbivory, the available information does not indicate that herbivory is occurring at levels different from historical conditions or if the species is experiencing population-level declines or a loss of colony viability as a result of herbivory. The most significant incident was the documentation of herbivory on 30 percent of spikes in West Cochise Stronghold Canyon in 2010 by WestLand Resources (2010, p. 12). In 2010, 140 inflorescences were counted in West Cochise Stronghold that year, the most counted in a single colony. However, we have no information indicating that herbivory affected capsule formation for the remaining orchids in West Cochise Stronghold, and we cannot determine if herbivory has affected the viability of the colony. Our review of the best available information does not indicate that herbivory, and resulting loss of individual plants, poses a threat to the Coleman's coralroot now or in the future.

We have no information regarding specific diseases affecting Coleman's coralroot, though oak trees can be vulnerable to several wood-rotting fungi. Oak wilt and oak leaf scorch can be a cause for concern, but the available information does not indicate that either occurs in Arizona (Olsen 2013, pers. comm.). Also, the pathogen *Nosema bombi* may be responsible for a decline in certain members of bumblebees in the genus *Bombus* across the United States. However, several species remain abundant, and it is unlikely that affected species have become fully extirpated (Cameron *et al.* 2010, p. 4). What this means for Coleman's coralroot is difficult to interpret because the specific pollinator has not been identified.

Conservation Efforts To Reduce Disease or Predation

We have no information regarding conservation efforts that are nonregulatory, such as habitat conservation plans, safe harbor agreements, habitat management plans, memorandums of understanding, or other voluntary actions, that may be helping to ameliorate stressors due to disease or predation.

Summary of Factor C

Overall, researchers have uncertainty regarding the effects that disease and predation have on Coleman's coralroot at the population and species levels. Accordingly, our review of the best available information does not indicate that disease or predation poses a threat to the Coleman's coralroot now or will do so in the future.

*Factor D. The Inadequacy of Existing Regulatory Mechanisms*

Under this factor, we examine whether existing regulatory mechanisms are inadequate to address or alleviate the threats to the species discussed under the other factors. Section 4(b)(1)(A) of the Act requires the Service to take into account ''those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species . . ..'' In relation to Factor D under the Act, we interpret this language to require the Service to consider relevant Federal, State, and tribal laws, plans, regulations, and other such mechanisms that may minimize any of the threats we describe in threat analyses under the other four factors, or otherwise enhance conservation of the species. We give strongest weight to statutes and their implementing regulations and to management direction that stems from those laws and regulations. An example would be State governmental actions enforced under a State statute or constitution, or Federal action under statute. Having evaluated the significance of the threat as mitigated by any such conservation efforts, we analyze under Factor D the extent to which existing regulatory mechanisms are inadequate to address the specific threats to the species. Regulatory mechanisms, if they exist, may reduce or eliminate the impacts from one or more identified threats. In this section, we review existing Federal and State regulatory mechanisms to determine whether they effectively reduce or remove threats to Coleman's coralroot.

Federal Regulations

Nineteen of 22 known Coleman's coralroot colonies occur on lands managed by the USFS as part of the Coronado NF. Although the Coleman's coralroot is not covered under the Coronado NF's Land and Resource Management Plan at this time, it does receive indirect benefits from management strategies outlined in the plan. For instance, the Coronado NF's Land and Resource Management Plan has guidance to protect riparian areas, maintain or restore fire-adapted ecosystems through thinning or prescribed burning, and provide for invasive species management. Any of these management strategies would provide some ancillary benefit to the Coleman's coralroot. On the other hand, the species may be affected by program management activities like grazing, recreation, mining, invasive species management, and fire management. The Coronado NF's Land and Resource Management Plan is designed to minimize impacts to sensitive species from management activities, but actual ground-level conservation would be implemented during project-specific planning and implementation.

Also, numerous Federal statutes apply on these lands. Because we have identified the construction of the proposed Rosemont Copper Mine as potentially affecting four colonies, two statutes of particular interest are the Mining Law of 1872 (30 U.S.C. 21 *et seq.*) and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) (NEPA). The Mining Law was enacted to promote exploration and development of domestic mineral resources, as well as the settlement of the western United States. In addition, the USFS considers the effects of their actions on the viability of sensitive species through the NEPA process. As defined by USFS's own policy, actions should not result in loss of species viability or create significant trends toward the need for Federal listing. Coleman's coralroot is currently a USFS sensitive species and is being considered in the planning process for the Rosemont Copper Mine. At this state in the planning process, we are unaware of mitigating actions, if any, the USFS may require for Coleman's coralroot as part of the NEPA process. If the mining project proceeds as planned, two colonies in upper McCleary and Wasp Canyons will be lost to the construction and operation. However, other sites throughout the species' range do not appear to be facing mining or other threats now or in the future to which current Federal regulations would apply. Although Federal regulations will not protect the portion of the species' range in upper McCleary and Wasp Canyons from the detrimental effects of hard rock mining, we do not find existing regulatory mechanisms to be inadequate across the entire range of the species.

Tribal Regulations

We have no information regarding specific Tribal regulations designed to protect Coleman's coralroot. In October of 2009, the Tohono O'odham Nation issued a resolution opposing the Rosemont Copper Mine. However, the Tohono O'odham Nation has no regulatory authority to manage the effects from this mine, because it does

not occur on their land. Although we are unaware of any Tribal regulations that would provide protection to the Coleman's coralroot, there are no threats on Tribal lands to which regulations would apply.

State Regulations

No State laws specifically protect Coleman's coralroot habitat on State or private lands in Arizona. Also, the species is currently not on the list of native plants protected from collection by the Arizona Native Plant Act (Arizona Department of Agriculture 2013, entire). Although State of Arizona regulations provide no protection to the species, we do not find them to be inadequate because no threats exist to which State regulations would apply.

Summary of Factor D

Based on our review of the best available information, we do not believe that there are inadequate regulatory mechanisms posing a threat to the Coleman's coralroot now or will do so in the future.

*Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence*

We have evaluated the best available scientific information, and we did not find any information indicating that recreation, activities associated with illegal immigration, development, or any other natural or manmade factors are threats to the Coleman's coralroot. We found no indication that Coleman's coralroot are trampled, crushed, or destroyed by off-road vehicles, illegal immigrants, Border Patrol operations, or housing construction. Additionally, the Coleman's coralroot colonies may be somewhat protected from these activities because of the rugged terrain (e.g., steep slopes, thick brush, rock outcrops, the edges of rocky cliffs) in which they occur. Information in our files indicates signs of illegal immigration near Coleman's coralroot colonies on Tohono O'odham Nation, but we have no information indicating that individual orchids have been destroyed or that the viability of any colony has been compromised.

We also considered whether small population size and overall rarity of Coleman's coralroot were threats. We recognize that Coleman's coralroot may be rare as indicated by the relatively small number of canyons where the species has been found compared to the large number of canyons that have been searched. But we did not find any indication that the rarity of the species, acting in concert with other stressors, is a threat to the species.

Conservation Efforts To Reduce Other Natural or Manmade Factors Affecting Its Continued Existence

We have no information regarding conservation efforts that are nonregulatory, such as habitat conservation plans, safe harbor agreements, habitat management plans, memorandums of understanding, or other voluntary actions, that may be helping to ameliorate stressors due to other natural or manmade factors affecting the Coleman's coralroot's continued existence.

Summary of Factor E

Based on the best available information, we have determined that other natural or manmade factors do not pose a threat to the Coleman's coralroot now or in the future.

**Finding**

As required by the Act, we conducted a review of the status of the species and considered the five factors in assessing whether the Coleman's coralroot is an endangered or threatened species throughout all or a significant portion of its range. We examined the best scientific and commercial information available regarding the past, present, and future threats faced by the species. We reviewed the petition, information available in our files, and other available published and unpublished information, and we consulted with appropriate experts and other Federal and local agencies. In considering which factors might constitute threats, we must look beyond the mere exposure of the species to the factor to determine whether the species responds to the factor in a way that causes actual impacts to the species. If the species has exposure to a factor, but no response, or only a positive response, that factor is not a threat. If the species has exposure and responds negatively, the factor may be a threat and we then attempt to determine how significant a threat it is. If the threat is significant, it may drive or contribute to the risk of extinction of the species such that the species warrants listing as an endangered or threatened species as those terms are defined by the Act. This situation does not necessarily require empirical proof of a threat. The combination of exposure and some corroborating evidence of how the species is likely impacted could suffice. The mere identification of factors that could impact a species negatively is not sufficient to compel a finding that listing is appropriate; we require evidence that these factors are operative threats that act on the species to the point that the species meets the definition of threatened or endangered under the Act.

Under the five-factor analysis above, we identified several potential stressors that will likely cause declines, such as mining operations, livestock grazing, wildfire, drought, and herbivory. However, we have no information to indicate that these stressors alone or in combination rise to the level of effects that they would be considered a threat to the species' continued existence. Based on anticipated mining operations, we expect that 2 of the 22 confirmed Coleman's coralroot colonies will be extirpated due to mining operations and that 3 additional colonies may be negatively impacted but not lost. The Coleman's coralroot is known to occur across seven mountain ranges in southeastern Arizona and southwestern New Mexico. Because the species is fairly wide ranging, we do not believe that mining operations, livestock grazing, wildfire, drought, and herbivory operate in a manner that results in cumulative synergistic negative effects at the species level. The best available information does not indicate that the remaining colonies are subject to operative threats or that the impacts from any of the stressors are contributing to the risk of extinction such that the species warrants listing as an endangered or threatened species. Therefore, based on our review of the best available scientific and commercial information pertaining to the five factors, we find that the stressors are not operating at a level that is resulting in a species-level impact to indicate that Coleman's coralroot is in danger of extinction (endangered), or likely to become endangered within the foreseeable future (threatened), throughout all of its range.

Significant Portion of the Range

Having determined that Coleman's coralroot does not meet the definition of a threatened or endangered species, we must next consider whether there are any significant portions of the range where the Coleman's coralroot is in danger of extinction or is likely to become endangered in the foreseeable future. A portion of a species' range is significant if it is part of the current range of the species and it contributes substantially to the representation, resiliency, or redundancy of the species. The contribution must be at a level such that its loss would result in a decrease in the ability to conserve the species.

In determining whether a species is threatened or endangered in a significant portion of its range, we first identify any portions of the range of the species that warrant further

consideration. The range of a species can theoretically be divided into portions an infinite number of ways. However, there is no purpose to analyzing portions of the range that are not reasonably likely to be both (1) significant and (2) threatened or endangered. To identify only those portions that warrant further consideration, we determine whether substantial information indicates that: (1) The portions may be significant, and (2) the species may be in danger of extinction there or likely to become so within the foreseeable future. In practice, a key part of this analysis is whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats applies only to portions of the species' range that are not significant, such portions will not warrant further consideration.

If we identify portions that warrant further consideration, we then determine whether the species is threatened or endangered in these portions of its range. Depending on the biology of the species, its range, and the threats it faces, the Service may address either the significance question or the status question first. Thus, if the Service considers significance first and determines that a portion of the range is not significant, the Service need not determine whether the species is threatened or endangered there. Likewise, if the Service considers status first and determines that the species is not threatened or endangered in a portion of its range, the Service need not determine if that portion is significant. However, if the Service determines that both a portion of the range of a species is significant and the species is threatened or endangered there, the Service will specify that portion of the range as threatened or endangered under section 4(c)(1) of the Act.

In our analysis for this listing determination, we determined that the Coleman's coralroot does not meet the definition of an endangered or threatened species throughout its entire range. We found that there are geographically concentrated stressors. The effects from the proposed Rosemont Copper Mine (located on the east side of the Santa Rita Mountains) and Hermosa Drilling Project (located in the Patagonia Mountains) will be limited to 5 of 22 confirmed extant colonies of Coleman's coralroot, including 4 colonies located in McCleary and Wasp Canyons in the Santa Rita Mountains, and 1 located in Hermosa Canyon in the Patagonia Mountains. Two of these colonies are expected to be extirpated. Even if these 2 colonies are extirpated, the Coleman's coralroot will continue to remain in 20 other colonies across 7 mountain ranges. There is enough redundancy in the remaining populations spread over a wide geographic area that the species will continue to persist.

Furthermore, determining the effect of the potential loss of these individual plants on the rangewide status of the species is challenging because of the lack of information on population ecology and demographics. For instance, we have no information regarding the degree to which these populations exchange genetic material, if these two colonies represent a unique genetic diversity, or the degree to which they may behave as subpopulations within a metapopulation. There is no information regarding how the number of aboveground flowering plants correlates with the total number of orchids, including those living underground as a rhizome or tuber. Thus, it is very difficult to determine how resilient the species is to withstanding demographic and environmental variation. These information gaps and uncertainties make it difficult to extrapolate population sizes, to evaluate trends, or to make meaningful comparisons within and across years. Based on the best available information, we have no evidence to indicate that the two colonies we expect to be extirpated are a significant portion of the current range of the species or that they contribute substantially to the representation, resiliency, or redundancy of the species. Therefore, we have no information to indicate that the contribution of five colonies that will be impacted from mining are at a level such that their loss would result in a decrease in the ability to conserve the species.

Our review of the best available scientific and commercial information indicates that the Coleman's coralroot is not in danger of extinction now (endangered) nor likely to become endangered within the foreseeable future (threatened) throughout all or a significant portion of its range. Although we expect two colonies (upper McCleary and Wasp Canyons) to be severely compromised or lost, and three other colonies (lower and middle McCleary, and Hermosa Canyons) to be detrimentally affected, we have no information to indicate that these losses would have a negative impact on the overall species across its entire range. Accordingly, we do not find that threats to the portion of the species' range in McCleary, Wasp, and Hermosa Canyons would likely place the species in danger of extinction throughout its entire range. Because the portion of the Coleman's coralroot colonies in these canyons due to mining is not significant enough that their potential loss would render the species in danger of extinction now or in the foreseeable future, we conclude that these colonies do not constitute a significant portion of the species' range. Therefore, we find that listing the Coleman's coralroot as an endangered or threatened species under the Act is not warranted at this time.

We request that any new information concerning the status of, or threats to, Coleman's coralroot be submitted to our Arizona Ecological Services Field Office (see **ADDRESSES** section) whenever it becomes available. New information will help us monitor the species and encourage its conservation. If an emergency situation develops for Coleman's coralroot, or any other species, we will act to provide immediate protection.

## References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Arizona Ecological Services Office (see **ADDRESSES** section).

## Author(s)

The primary authors of this notice are the staff members of the Arizona Ecological Services Field Office.

## Authority

The authority for this finding is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: December 2, 2013.

**Rowan W. Gould,**

*Acting Director, Fish and Wildlife Service.*

[FR Doc. 2013–29967 Filed 12–18–13; 8:45 am]

BILLING CODE 4310–55–P

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Parts 622 and 640

**RIN 0648–BC12**

## Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Revisions to Dealer Permitting and Reporting Requirements for Species Managed by the Gulf of Mexico and South Atlantic Fishery Management Councils

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The Gulf of Mexico (Gulf) and South Atlantic Fishery Management Councils (Councils) have submitted a Generic Amendment to the Fishery Management Plans (FMPs) in the Gulf and South Atlantic Regions (Generic Dealer Amendment) for review, approval, and implementation by NMFS. The Generic Dealer Amendment amends the following FMPs: Reef Fish Resources and the Red Drum Fishery of the Gulf; the Snapper-Grouper Fishery (including wreckfish), the Golden Crab Fishery, and the Shrimp Fishery (excluding penaeid shrimp) of the South Atlantic Region; the Dolphin and Wahoo Fishery of the Atlantic; and Coastal Migratory Pelagic (CMP) Resources and the Spiny Lobster Fishery of the Gulf and South Atlantic. The Generic Dealer Amendment would modify the permitting and reporting requirements for seafood dealers who first receive species managed by the Councils through the previously mentioned FMPs. These revisions would create a single dealer permit for dealers who first receive fish managed by the Councils, require both purchase and non-purchase reports to be submitted online on a weekly basis, not authorizing dealers to purchase fish from federally-permitted vessels if they are delinquent in submitting reports, and modify the sale and purchase provisions based on the new dealer permitting requirements. The intent of the amendment is to obtain timelier purchase information from dealers to help reduce annual catch limit (ACL) underages and overages, and achieve optimum yield in accordance with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**DATES:** Written comments must be received on or before February 18, 2014.

**ADDRESSES:** You may submit comments on the amendment identified by ''NOAA–NMFS–2012–0206'' by any of the following methods:

- *Electronic submissions:* Submit electronic comments via the Federal e-Rulemaking Portal: *http://www.regulations.gov.* Follow the ''Instructions'' for submitting comments.
- *Mail:* Rich Malinowski, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

*Instructions:* All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required field if you wish to remain anonymous).

To submit comments through the Federal e-Rulemaking Portal: *http://www.regulations.gov,* enter ''NOAA–NMFS–2012–0206'' in the search field and click on ''search.'' After you locate the notice of availability, click the ''Submit a Comment'' link in that row. This will display the comment web form. You can then enter your submitter information (unless you prefer to remain anonymous), and type your comment on the web form. You can also attach additional files (up to 10MB) in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Comments received through means not specified in this notice will not be considered.

For further assistance with submitting a comment, see the ''Commenting'' section at *http://www.regulations.gov/#!faqs* or the Help section at *http://www.regulations.gov.*

Electronic copies of the amendment may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Rich Malinowski, Southeast Regional Office, NMFS, telephone 727–824–5305; email: *rich.malinowski@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Act requires each regional fishery management council to submit any fishery management plan or amendment to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving a plan or amendment, publish an announcement in the **Federal Register** notifying the public that the plan or amendment is available for review and comment.

The FMPs being revised by this amendment were prepared by the Councils and are implemented through regulations at 50 CFR part 622 and part 640 under the authority of the Magnuson-Stevens Act.

## Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve, on a continuing basis, the optimum yield from federally managed fish stocks. These mandates are intended to ensure fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems. To further this goal, the Magnuson-Stevens Act requires fishery managers to specify their strategy to rebuild overfished stocks to a sustainable level within a certain time frame, to minimize bycatch and bycatch mortality to the extent practicable, and to establish accountability measures (AMs) for a stock to ensure ACLs are not exceeded.

The intent of the Generic Dealer Amendment is to improve the timeliness and accuracy of dealer reporting, which will help achieve harvest targets. Many commercial fisheries have AMs that implement closures of fisheries when the commercial ACLs are projected to be met. The current reporting frequency reduces the precision of the projections, which may result in estimates of landings significantly less or greater than the ACL. When fisheries are closed well before the ACL is met, optimum yield may not be achieved. In turn, overages have the potential to result in significant disruption in fishing behavior the following fishing year and, reduce revenue and profit for fishermen. Overages also decrease the ability of stocks to rebuild when overfished and may lead to overfishing conditions. The proposed actions, including increasing the frequency of dealer reporting and requiring more dealers to report, are intended to result in better monitoring of the ACLs. Actions Contained in the Generic Dealer Amendment.

The Generic Dealer Amendment would modify the current permitting and reporting requirements for seafood dealers who first receive fish managed by the Councils through eight FMPs. Currently, the following six Federal dealer permits exist for purchasing product in the Southeast Region: Atlantic Dolphin-Wahoo, Gulf Reef Fish, South Atlantic Golden Crab, South Atlantic Rock Shrimp, South Atlantic Snapper Grouper (excluding wreckfish), and South Atlantic Wreckfish. The Generic Dealer Amendment proposes to create a single dealer permit that would be required for the species currently covered by the six dealer permits. In addition, the dealer permit would be required to first receive the following species from federally permitted vessels: Gulf and South Atlantic CMP, Gulf and South Atlantic spiny lobster, and Gulf Red Drum. If the proposed actions are implemented, the universal dealer permit would be required for all species managed by the Councils except for

species in the following five FMPs: Coral, Coral Reefs, and Live/Hard Bottom Habitats of the South Atlantic Region; Pelagic *Sargassum* Habitat of the South Atlantic Region; Coral and Coral Reefs of the Gulf, Shrimp Fishery of the Gulf, and Shrimp Fishery of the South Atlantic Region (excluding rock shrimp).

The Councils exempted penaeid shrimp species from the universal dealer permit because there are no ACLs established for these species. Thus, the current reporting system is adequate for determining catch and effort for these species and the administrative burden of issuing such a large number of shrimp dealer permits would outweigh the benefits from more timely shrimp dealer reports. The Councils did not include corals or pelagic *Sargassum* because coral harvest is limited to octocoral harvest off Florida and does not require a Federal harvest permit if landed in Florida, and no recorded harvest of pelagic *Sargassum* from Federal waters occurs.

Currently, federally permitted Gulf reef fish, South Atlantic snapper-grouper, and South Atlantic wreckfish dealers, and dealers with records of king mackerel or Spanish mackerel from the previous year, are required to submit dealer purchase forms every 2 weeks via fax or online through the appropriate state trip ticket reporting system. South Atlantic golden crab, rock shrimp, and Atlantic dolphin-wahoo dealers are required to submit dealer purchase forms on a monthly basis via fax or online through the appropriate state trip ticket reporting system. Reports are currently due 5 days after the end of each reporting period.

If implemented, the Generic Dealer Amendment would require federally permitted dealers to submit forms electronically (via computer or internet) on a weekly basis. Dealer reports for trips landing species between Sunday through Saturday would be required to be submitted by 11:59 p.m., local time, the following Tuesday. In addition, federally permitted dealers would be required to submit records of no purchases electronically (via computer or internet) at the same frequency and via the same process as records for purchases.

Dealer reports would be required to be submitted through the dealer electronic trip ticket reporting system. Electronic reports are currently authorized in each state, except for South Carolina, which currently requires paper reporting. The data elements that would be required through this Generic Dealer Amendment are consistent with the information currently required by the state trip ticket programs.

This amendment would also stipulate that dealers who are delinquent in submitting their reports are not authorized to receive fish from federally-permitted vessels until they have submitted all reports on purchases and no purchases.

This amendment would place new restrictions on certain dealers who currently are not required to have a Federal dealer permit and on certain fishermen who can currently sell to state dealers. Dealers who first receive CMP fish and spiny lobster from federally permitted commercial vessels or charter vessels/headboats, including federally permitted shrimp vessels, would be required to have a Federal dealer permit and would be required to report electronically on a weekly basis. Federally permitted vessels that currently sell CMP fish and spiny lobster to state dealers would be required to sell them to federally permitted dealers.

A proposed rule that would implement the management measures outlined in the Generic Dealer Amendment has been drafted. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether it is consistent with the FMPs, the Magnuson-Stevens Act, and other applicable laws. If the determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

## Consideration of Public Comments

The Councils submitted the Generic Dealer Amendment for Secretarial review, approval, and implementation. NMFS' decision to approve, partially approve, or disapprove the Amendment will be based, in part, on consideration of comments, recommendations, and information received during the comment period on this notice of availability.

Public comments received by 11:59 p.m. eastern time, on February 18, 2014, will be considered by NMFS in its decision to approve, partially approve, or disapprove the Generic Dealer Amendment. All comments received by NMFS on the Generic Dealer Amendment or the proposed rule during their respective comment periods would be addressed in a final rule.

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

Dated: December 13, 2013.

**Sean Corson,**

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

[FR Doc. 2013–30134 Filed 12–18–13; 8:45 am]

BILLING CODE 3510–22–P

# Notices

Federal Register

Vol. 78, No. 244

Thursday, December 19, 2013

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Information Collection; Environmental Justice and the Urban Forest in Atlanta, GA

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the new information collection, Environmental Justice and the Urban Forest in Atlanta, GA.

**DATES:** Comments must be received in writing on or before February 18, 2014 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

**ADDRESSES:** Comments concerning this notice should be addressed to Cassandra Johnson Gaither, Forestry Sciences Lab, 320 Green St., Athens, GA 30602. Comments also may be submitted via facsimile to 706–559–4266 or by email to: *cjohnson09@fs.fed.us*.

The public may inspect comments received at Forestry Sciences Lab, 320 Green St., Athens, GA 30602 during normal business hours. Visitors are encouraged to call ahead to 706–559–4270 to facilitate entry to the building.

**FOR FURTHER INFORMATION CONTACT:** Cassandra Johnson Gaither, U.S. Forest Service, Southern Research Station, 706–559–4270. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, 7 days a week, including holidays.

**SUPPLEMENTARY INFORMATION:**

*Title:* Environmental Justice and the Urban Forest in Atlanta, GA

*OMB Number:* 0596–NEW

*Type of Request:* New

*Abstract:* This information collection records data on the attitude and engagement of Atlanta city residents as it relates to the Atlanta urban forest. The information collected serves several purposes beginning with the provision of data. This data will be used to support the participation of U.S. Forest Service Region 8 in the interagency, Green Infrastructure Community of Practice initiative (GI COP). GI COP is a public agency collaboration, partnered with others, that advocate to increase the amount of green space in cities across the country. The collected data will be used to help achieve the Region 8, Regional Urban Forester, goals as related to the GI COP effort. Another purpose of this information collection is to support the U.S. Forest Service Strategic Goal # 6, through the GI COP, which directs the agency to engage urban America with Forest Service Programs. Action items are implemented, related to Strategic Goal #6, and used ''to develop partnerships with nontraditional partners to engage urban and underserved audiences''. The final purpose of this information collection is to incorporate the President Obama *America's Great Outdoors Initiative* (AGO), Recommendation 6.4, which stresses the need to connect urban residents with community green spaces *http://americasgreatoutdoors.gov/files/2011/02/AGO-Report-With-All-Appendices-3-1-11.pdf*.

The AGO recommendation requires the federal government to find innovative ways to engage urban residents, with both public and private green space, in cities through the elimination of barriers to engagement. A better understanding of the constraints to citizen engagement is one of the methods being used to comply with the AGO.

This information collection addresses environmental justice from the perspective of urban trees; and how this resource may contribute to environmental justice in a given community or neighborhood. Most existing studies of environmental justice focus solely on environmental threats. A better account of environmental justice would include an assessment of the cumulative impact of both environmental burdens and environmental services. In cities, this would include the counts for both the number of hazardous facilities and the number of city parks and green spaces, for instance. Another component of environmental justice is human interest and advocacy for environmental quality. This information collection gathers data on people's interest in, and their understanding of, city trees in Atlanta. This dimension of environmental justice will be combined with data on environmental threats, and data on the physical remediation of pollutants via urban vegetation to produce a more complete assessment of environmental justice in Atlanta neighborhoods.

*Type of Respondents:* Individuals and Households

*Estimated Annual Number of Respondents:* 1,236

*Estimated Annual Number of Responses per Respondent:* 2.5

*Estimate of Burden per response:* 1 to 15 minutes

*Estimated Total Annual Burden on Respondents:* 199 hours

*Comment is Invited on:* (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden 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 to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: December 11, 2013.

**Daina D. Apple,**

*Senior Staff to the Deputy Chief, U. S. Forest Service Research and Development.*

[FR Doc. 2013–30152 Filed 12–18–13; 8:45 am]

BILLING CODE 3410–11–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:** National Oceanic and Atmospheric Administration (NOAA).

*Title:* National Oceanic and Atmospheric Administration: (1) Office of Education, Educational Partnership Program (EPP), (2) Ernest F. Hollings Undergraduate Scholarship Program; (3) Dr. Nancy Foster Scholarship Program; and, (4) National Marine Fisheries Service Recruitment, Training, and Research Program.

*OMB Control Number:* 0648–0568.

*Form Number(s):* NA.

*Type of Request:* Regular submission (revision and extension of a current information collection).

*Number of Respondents:* 3,581.

*Average Hours per Response:* Scholarship applications, 8 hours; references and alumni surveys, 1 hour; student performance measures tracking, 28 hours.

*Burden Hours:* 9,513.

*Needs and Uses:* This request is for revision and extension of a current information collection.

The National Oceanic and Atmospheric Administration (NOAA) Office of Education (OEd) collects, evaluates and assesses student data and information for the purpose of selecting successful candidates, generating internal NOAA reports and articles to demonstrate the success of its program. The OEd requires applicants to its student scholarship programs to complete an application for NOAA undergraduate scholarship programs. Part of the application package requires completion of a NOAA student scholar reference form in support of the scholarship application by academic professors/advisors. NOAA OEd student scholar alumni are also requested to provide information to NOAA for internal tracking purposes. NOAA OEd grantees are required to update the student tracker database with the required student information.

In addition, the collected student data supports NOAA OEd's program performance measures.

**Revision**

New to the alumni student data collection are the Dr. Nancy Foster Scholarship Program and the Recruiting, Training, and Research Program. Both programs have a need to collect information on their program alumni.

*Affected Public:* Individuals and households; not-for-profit institutions.

*Frequency:* One time and on occasion.

*Respondent's Obligation:* Required to obtain or maintain benefits.

*OMB Desk Officer: OIRA_Submission@omb.eop.gov.*

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

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.*

Dated: December 13, 2013.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2013–30177 Filed 12–18–13; 8:45 am]

BILLING CODE 3510–22–P

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## 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:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* Western Alaska Community Development Quota (CDQ) Program.

*OMB Control Number:* 0648–0269.

*Form Number(s):* NA.

*Type of Request:* Regular submission (extension of a current information collection).

*Number of Respondents:* 7.

*Average Hours per Response:* Application for approval of use of non-Community Development Quota (CDQ) harvest regulations, 5 hours; transfer of prohibited species quota (PSQ), non-Chinook, 30 minutes.

*Burden Hours:* 11.

*Needs and Uses:* This request is for extension of a current information collection.

The Western Alaska CDQ Program is an economic development program implemented under the Magnuson Stevens Fishery Conservation and Management Act, the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands, and regulations at 50 CFR part 679. The purpose of the program is to provide western Alaska communities the opportunity to participate and invest in Bering Sea and Aleutian Islands Management Area fisheries, to support economic development in western Alaska, to alleviate poverty and provide economic and social benefits for residents of western Alaska, and to achieve sustainable and diversified local economies in western Alaska.

CDQ and PSQ allocations are made to CDQ groups. However, in many cases the CDQ groups contract with existing fishing vessels and processors to harvest CDQ on their behalf. The CDQ group is responsible to monitor the catch of CDQ and PSQ by all vessels fishing under its Community Development Plan and to take the necessary action to prevent overages. National Marine Fisheries Service monitors the reported catch to assure that quotas are not being exceeded. Information is collected only through quota transfers in this collection.

*Affected Public:* Business or other for-profit organizations.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer: OIRA_Submission@omb.eop.gov.*

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

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.*

Dated: December 13, 2013.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2013–30176 Filed 12–18–13; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### In the Matter of: Andrew Vincent O'Donnell, Inmate Number—62355–019, USP Atlanta, U.S. Penitentiary, P.O. Box 15060, Atlanta, GA 30315; Order Denying Export Privileges

On August 1, 2011, in the U.S. District Court, Northern District of Georgia, Andrew Vincent O'Donnell (''O'Donnell''), was convicted of violating Section 38 of the Arms Export Control Act (22 U.S.C. 2778 (2006 & Supp. IV 2010)) (''AECA''). Specifically, O'Donnell was convicted of aiding and abetting by others known and unknown, knowingly and willfully exporting and attempting to export EOTech Holographic Weapon Sights from the United States to Hong Kong and VLTOR Modular Upper Receivers from the United States to Japan, which are designated as defense articles on the United States Munitions List, without having first obtained from the Department of State a license for such export or written authorization for such export. O'Donnell was sentenced to 37 months of imprisonment, three years of probation, a $2,500 fine and a special assessment of $400. O'Donnell is also listed on the U.S. Department of State Debarred List.

Section 766.25 of the Export Administration Regulations (''EAR'' or ''Regulations'') [1] provides, in pertinent part, that ''[t]he Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny the export privileges of any person who has been convicted of a violation of the Export Administration Act (''EAA''), the EAR, or any order, license or authorization issued thereunder; any regulation, license, or order issued under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706); 18 U.S.C. 793, 794 or 798; section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. 2778).'' 15 CFR 766.25(a); *see also* Section 11(h) of the EAA, 50 U.S.C. app. § 2410(h). The denial of export privileges under this provision may be for a period of up to 10 years from the date of the conviction. 15 CFR 766.25(d); *see also* 50 U.S.C. app. § 2410(h). In addition, Section 750.8 of the Regulations states that the Bureau of Industry and Security's Office of Exporter Services may revoke any Bureau of Industry and Security (''BIS'') licenses previously issued in which the person had an interest in at the time of his conviction.

I have received notice of O'Donnell's conviction for violating the AECA, and have provided notice and an opportunity for O'Donnell to make a written submission to BIS, as provided in Section 766.25 of the Regulations. I have not received a submission from O'Donnell.

Based upon my review and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny O'Donnell's export privileges under the Regulations for a period of 10 years from the date of O'Donnell's conviction. I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which O'Donnell had an interest at the time of his conviction.

Accordingly, it is hereby *ordered*

I. Until August 1, 2021, Andrew Vincent O'Donnell, with a last known address at: Inmate Number—62355–019, USP Atlanta, U.S. Penitentiary, P.O. Box 15060, Atlanta, GA 30315, and when acting for or on behalf of O'Donnell, his representatives, assigns, agents or employees (the ''Denied Person''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to O'Donnell by affiliation, ownership, control or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order if necessary to prevent evasion of the Order.

IV. This Order is effective immediately and shall remain in effect until August 1, 2021.

V. In accordance with Part 756 of the Regulations, O'Donnell may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

VI. A copy of this Order shall be delivered to the O'Donnell. This Order

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2013). The Regulations issued pursuant to the Export Administration Act (50 U.S.C. app. §§ 2401–2420 (2000)) (''EAA''). Since August 21, 2001, the EAA has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 8, 2013 (78 FR 49107 (August 12, 2013)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.* (2006 & Supp. IV 2010)).

shall be published in the **Federal Register**.

Issued this 13th day of December 2013.

**Eileen M. Albanese,**

*Acting Director, Office of Exporter Services.*

[FR Doc. 2013–30209 Filed 12–18–13; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### Igor Bobel, Inmate #–67253–066, FCI Loretto, Federal Correctional Institution, P.O. Box 1000, Loretto, PA 15940; Order Denying Export Privileges

On May 11, 2012, in the U.S. District Court, Eastern District of Pennsylvania, Igor Bobel (''Bobel''), was convicted of violating Section 38 of the Arms Export Control Act (22 U.S.C. 2778 (2006 & Supp. IV 2010)) (''AECA''). Specifically, Bobel was convicted of knowingly and willfully exporting and attempting to export, and causing to export, from the United States to a European country, an L–3 CNVD–T2 and two Night Force NXS 8–32x56, which were designated as defense articles on the United States Munitions List, without having first obtained from the United States Department of State a license for such export or written authorization for such export. Bobel was sentenced to 30 months of imprisonment, three years of supervised release and a $200 assessment. Bobel is also listed on the U.S. Department of State Debarred List.

Section 766.25 of the Export Administration Regulations (''EAR'' or ''Regulations'') [1] provides, in pertinent part, that ''[t]he Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny the export privileges of any person who has been convicted of a violation of the Export Administration Act (''EAA''), the EAR, or any order, license or authorization issued thereunder; any regulation, license, or order issued under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706); 18 U.S.C. 793, 794 or 798; section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. 2778).'' 15 CFR 766.25(a); *see also* Section 11(h) of the EAA, 50 U.S.C. app. § 2410(h). The denial of export privileges under this provision may be for a period of up to 10 years from the date of the conviction. 15 CFR 766.25(d); *see also* 50 U.S.C. app. § 2410(h). In addition, Section 750.8 of the Regulations states that the Bureau of Industry and Security's Office of Exporter Services may revoke any Bureau of Industry and Security (''BIS'') licenses previously issued in which the person had an interest in at the time of his conviction.

I have received notice of Bobel's conviction for violating the AECA, and have provided notice and an opportunity for Bobel to make a written submission to BIS, as provided in Section 766.25 of the Regulations. I have not received a submission from Bobel.

Based upon my review and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Bobel's export privileges under the Regulations for a period of five years from the date of Bobel's conviction. I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which Bobel had an interest at the time of his conviction.

Accordingly, it is hereby

*ordered*

I. Until May 11, 2017, Igor Bobel, with a last known address at: Inmate # –67253–066, FCI Loretto, Federal Correctional Institution, P.O. Box 1000, Loretto, PA 15940, and when acting for or on behalf of Bobel, his representatives, assigns, agents or employees (the ''Denied Person''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Bobel by affiliation, ownership, control or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order if necessary to prevent evasion of the Order.

IV. This Order is effective immediately and shall remain in effect until May 11, 2017.

V. In accordance with Part 756 of the Regulations, Bobel may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2013). The Regulations issued pursuant to the Export Administration Act (50 U.S.C. app. §§ 2401–2420 (2000)) (''EAA''). Since August 21, 2001, the EAA has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 8, 2013 (78 FR 49107 (August 12, 2013)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.* (2006 & Supp. IV 2010)).

comply with the provisions of Part 756 of the Regulations.

VI. A copy of this Order shall be delivered to the Bobel. This Order shall be published in the **Federal Register**.

Issued this 13th day of December, 2013.

**Eileen M. Albanese,**

*Acting Director, Office of Exporter Services.*

[FR Doc. 2013–30208 Filed 12–18–13; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### In the Matter of: Mohammed Soroush Mahalaty, a/k/a Mohammad Soroush, a/k/a Mike Soroush, 18 Clinton Lane, Jericho, NY 11753; Order Denying Export Privileges

On October 3, 2012, in the U.S. District Court, Southern District of New York Mohammed Soroush Mahalaty, a/k/a Mohammad Soroush a/k/a Mike Soroush (''Mahalaty''), was convicted of violating the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.* (2006 & Supp. IV 2010)) (''IEEPA''). Specifically, Mahalaty was convicted of violating IEEPA by unlawfully, willfully, and knowingly exporting, selling, and supplying financial services from the United States to and in Iran, by among other things, conducting financial transactions for the purpose of, and which had the effect of, violating, and which facilitated the violation of, the prohibitions set forth in the Executive Orders and the Regulations issued under the IEEPA, including the Iranian Transaction Regulations set forth in 31 CFR part 560, including specifically using the hawala system to transfer money into Iran which money Mahalaty believed was intended for investment in Iran. Mahalaty was sentenced to time served, three years of supervised release, a $400 assessment, $5,000 fine and restitution of $739,377.31.

Section 766.25 of the Export Administration Regulations (''EAR'' or ''Regulations'') [1] provides, in pertinent part, that ''[t]he Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny the export privileges of any person who has been convicted of a violation of the Export Administration Act (''EAA''), the EAR, or any order, license or authorization issued thereunder; any regulation, license, or order issued under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706); 18 U.S.C. 793, 794 or 798; section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. 2778).'' 15 CFR 766.25(a); *see also* Section 11(h) of the EAA, 50 U.S.C. app. § 2410(h). The denial of export privileges under this provision may be for a period of up to 10 years from the date of the conviction. 15 CFR 766.25(d); *see also* 50 U.S.C. app. § 2410(h). In addition, Section 750.8 of the Regulations states that the Bureau of Industry and Security's Office of Exporter Services may revoke any Bureau of Industry and Security (''BIS'') licenses previously issued in which the person had an interest in at the time of his conviction.

I have received notice of Mahalaty's conviction for violating the IEEPA, and have provided notice and an opportunity for Mahalaty to make a written submission to BIS, as provided in Section 766.25 of the Regulations. I have not received a submission from Mahalaty.

Based upon my review and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Mahalaty's export privileges under the Regulations for a period of five years from the date of Mahalaty's conviction. I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which Mahalaty had an interest at the time of his conviction.

Accordingly, it is hereby *ordered*

I. Until October 3, 2017, Mohammed Soroush Mahalaty, a/k/a Mohammad Soroush, a/k/a Mike Soroush, with a last known address at: 18 Clinton Lane, Jericho, NY 11753, and when acting for or on behalf of Mahalaty, his representatives, assigns, agents or employees (the ''Denied Person''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Mahalaty by affiliation, ownership, control or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order if

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2013). The Regulations issued pursuant to the Export Administration Act (50 U.S.C. app. §§ 2401–2420 (2000)) (''EAA''). Since August 21, 2001, the EAA has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 8, 2013 (78 FR 49107 (August 12, 2013)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.* (2006 & Supp. IV 2010)).

necessary to prevent evasion of the Order.

IV. This Order is effective immediately and shall remain in effect until October 3, 2017.

V. In accordance with Part 756 of the Regulations, Mahalaty may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

VI. A copy of this Order shall be delivered to the Mahalaty. This Order shall be published in the **Federal Register**.

Issued this 13th day of December 2013.

**Eileen M. Albanese,**

*Acting Director, Office of Exporter Services.*

[FR Doc. 2013–30211 Filed 12–18–13; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–570–997, C–580–873, C–583–852]**

### Non-Oriented Electrical Steel From the People's Republic of China, the Republic of Korea, and Taiwan: Postponement of Preliminary Determinations in the Countervailing Duty Investigations

**AGENCY:** Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

**FOR FURTHER INFORMATION CONTACT:** Austin Redington at (202) 482–1664 or Nancy Decker at (202) 482–0196, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

#### Background

On November 6, 2013, the Department of Commerce (the Department) initiated countervailing duty investigations on non-oriented electrical steel (NOES) from the People's Republic of China, the Republic of Korea, and Taiwan.[1] Currently, the preliminary determinations are due no later than January 10, 2013.

#### Postponement of Due Date for Preliminary Determinations

Section 703(b)(1) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the preliminary determination in a countervailing duty investigation within 65 days after the date on which the Department initiated the investigation. However, if the petitioner makes a timely request for a postponement, section 703(c)(1)(A) of the Act allows the Department to postpone making the preliminary determination until no later than 130 days after the date on which the administering authority initiated the investigation.

On November 26, 2013, AK Steel Corporation, the petitioner in these investigations, requested that the deadline for the preliminary determination in each of these cases be postponed in accordance with 19 CFR 351.205(b)(2). Therefore, in accordance with section 703(c)(1)(A) of the Act, we are fully postponing the due date for the preliminary determinations to no later than 130 days after the day on which the investigations were initiated. However, as that date falls on a Sunday (*i.e.,* March 16, 2014), the deadline for completion of the preliminary determinations is now March 17, 2014, the next business day.

This notice is issued and published pursuant to section 703(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: December 13, 2013.

**Paul Piquado,**

*Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2013–30262 Filed 12–18–13; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–533–856]**

### Steel Threaded Rod From India: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Determination

**AGENCY:** Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (''the Department'') preliminarily determines that countervailable subsidies are being provided to producers and exporters of steel threaded rod from India. The period of investigation (''POI'') is January 1, 2012, through December 31, 2012. For information on the estimated subsidy rates, see the ''Suspension of Liquidation'' section of this notice.

**DATES:** *Effective Date:* December 19, 2013.

**FOR FURTHER INFORMATION CONTACT:** Brooke Kennedy, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3818.

**SUPPLEMENTARY INFORMATION:**

#### Scope of the Investigation

The merchandise covered by this investigation is steel threaded rod. Steel threaded rod is certain threaded rod, bar, or studs, of carbon quality steel, having a solid, circular cross section, of any diameter, in any straight length, that have been forged, turned, cold-drawn, cold-rolled, machine straightened, or otherwise cold-finished, and into which threaded grooves have been applied. In addition, the steel threaded rod, bar, or studs subject to this investigation are non-headed and threaded along greater than 25 percent of their total length. A variety of finishes or coatings, such as plain oil finish as a temporary rust protectant, zinc coating (*i.e.,* galvanized, whether by electroplating or hot-dipping), paint, and other similar finishes and coatings, may be applied to the merchandise. For a complete description of the scope of the investigation, *see* Appendix 1 to this notice.

#### Methodology

The Department is conducting this countervailing duty (''CVD'') investigation in accordance with section 701 of the Tariff Act of 1930, as amended (''the Act''). For a full description of the methodology underlying our preliminary conclusions, *see* the Preliminary Decision Memorandum.[1] The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). IA ACCESS is available to registered users at *http://iaaccess.trade.gov,* and is available to all parties in the Central Records Unit, room 7046 of the main Department of

[1] *See Non-Oriented Electrical Steel from the People's Republic of China, the Republic of Korea, and Taiwan: Initiation of Countervailing Duty Investigations,* 78 FR 68412 (November 14, 2013).

[1] *See* Memorandum from Gary Taverman, Senior Advisor for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, ''Decision Memorandum for the Preliminary Determination in the Countervailing Duty Investigation on Steel Threaded Rod from India,'' dated concurrently with this notice (''Preliminary Decision Memorandum'').

Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at *http://www.trade.gov/enforcement/.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

In accordance with section 703(d)(1)(A)(i) of the Act, we calculated a CVD rate for each individually investigated producer/exporter of the subject merchandise. Sections 703(d) and 705(c)(5)(A) of the Act state that for companies not individually investigated, we will determine an all-others rate by weighting the individual company subsidy rate of each of the companies investigated by each company's exports of subject merchandise to the United States. However, the all-others rate may not include zero and *de minimis* rates or any rates based solely on the facts available. In this investigation, the only rate that is not *de minimis* or based entirely on facts available is the rate calculated for Mangal Steel Enterprises Ltd. (''Mangal''). Accordingly, the rate calculated for Mangal is also assigned as the all-others rate. For further information, *see* the Preliminary Decision Memorandum.

**Use of Facts Otherwise Available—Babu Exports (''Babu'')**

Babu is a producer/exporter that was selected for investigation. On September 6, 2013, the Department issued a questionnaire to Babu and confirmed that Babu received the questionnaire.[2] Babu never responded to the Department's questionnaire.

Sections 776(a)(1) and (2) of the Act provide that the Department shall apply ''facts otherwise available'' if, *inter alia,* necessary information is not on the record or an interested party or any other person: (A) Withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Babu did not provide any of the information requested by the Department that is necessary to determine a CVD rate for this preliminary determination. As a result, we have none of the data necessary to calculate a subsidy rate for Babu. Accordingly, in reaching our preliminary determination, pursuant to section 776(a)(2)(A) and (C) of the Act, we have based Babu's CVD rate on facts otherwise available.

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Section 776(b) of the Act also authorizes the Department to use as adverse facts available (''AFA'') information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

The Department preliminarily determines that an adverse inference is warranted, pursuant to section 776(b) of the Act because, by not responding to our requests for information, Babu failed to cooperate by not acting to the best of its ability. Accordingly, our preliminary determination is based on AFA. For further information, *see* ''Use of Facts Otherwise Available and Adverse Inferences'' in the Preliminary Decision Memorandum.

**Selection of the Adverse Facts Available Rate**

In CVD proceedings, the Department computes a total AFA rate for the non-cooperating company using the highest calculated program-specific rates determined for the cooperating respondents in the instant investigation, or, if not available, rates calculated in prior CVD cases involving the same country.[3] Specifically, the Department applies the highest calculated rate for the identical program in the investigation if a responding company used the identical program, and the rate is not zero.[4] If there is no identical program match within the investigation, or if the rate is zero, the Department uses the highest non-*de minimis* rate calculated for the same or similar program (based on treatment of benefit) in another CVD proceeding involving the same country. Absent an above *de minimis* subsidy rate calculated for the same or similar program in the same country, the Department applies the highest calculated subsidy rate for any program otherwise identified in a CVD case involving the same county that could be used by the non-cooperating company.[5]

For a discussion of the application of the individual AFA rates for programs preliminarily determined to be countervailable, *see* Preliminary Decision Memorandum.

**Corroboration of Secondary Information**

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. In the instant case, the Department preliminarily finds that the information used has been corroborated to the extent practicable. For further information, *see* ''Use of Facts Otherwise Available and Adverse Inferences'' in the Preliminary Decision Memorandum.

**Alignment of Final Determination**

On July 29, 2013, the Department initiated an antidumping (''AD'') investigation concurrent with this CVD investigation of steel threaded rod.[6] The scope of the merchandise being covered is the same for both the AD and CVD investigations. On December 11, 2013, Petitioners submitted a letter, in accordance with section 705(a)(1) of the Act, requesting alignment of the final CVD determination with the final determination in the companion AD investigation. Therefore, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be issued on April 28, 2014.

[2] *See* the Department's memorandum, ''Babu Exports Original Questionnaire Delivery Confirmation,'' dated September 14, 2013.

[3] *See, e.g., Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination,* 73 FR 70971, 70975 (November 24, 2008) (unchanged in *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof From the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 74 FR 29180, (June 19, 2009), and accompanying Issues and Decision Memorandum at ''Application of Facts Available, Including the Application of Adverse Inferences'').

[4] There is an exception to this approach for income tax exemption and reduction programs; however, since there are no such programs in this investigation, the exception is not applicable here.

[5] *See, e.g., Aluminum Extrusions From the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 76 FR 18521, (April 4, 2011), and accompanying Issues and Decision Memorandum at ''Application of Adverse Inferences: Non-Cooperative Companies.''

[6] *See Steel Threaded Rod from India and Thailand: Initiation of Antidumping Duty Investigations,* 78 FR 44526 (July 24, 2013).

## Preliminary Determination and Suspension of Liquidation

We preliminarily determine the countervailable subsidy rates to be:

| Company | Subsidy rate (percent) |
|---|---|
| Mangal Steel Enterprises Ltd. (''Mangal'') | 8.13 |
| Babu Exports (''Babu'') | 38.98 |
| All Others | 8.13 |

In accordance with sections 703(d)(1)(B) and (2) of the Act, we are directing U.S. Customs and Border Protection to suspend liquidation of all entries of steel threaded rod from India that are entered, or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit for such entries of the merchandise in the amounts indicated above.

## Disclosure and Public Comment

The Department intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of public announcement of this determination.[7] Interested parties may submit case and rebuttals briefs.[8] For a schedule of the deadlines for filing case briefs, rebuttal briefs, and hearing request, *see* the Preliminary Determination Memorandum.

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act.

Dated: December 11, 2013.

**Paul Piquado,**

*Assistant Secretary for Enforcement and Compliance.*

## Appendix 1

### Scope of the Investigation

The merchandise covered by this investigation is steel threaded rod. Steel threaded rod is certain threaded rod, bar, or studs, of carbon quality steel, having a solid, circular cross section, of any diameter, in any straight length, that have been forged, turned, cold-drawn, cold-rolled, machine straightened, or otherwise cold-finished, and into which threaded grooves have been applied. In addition, the steel threaded rod, bar, or studs subject to this investigation are nonheaded and threaded along greater than 25 percent of their total length. A variety of finishes or coatings, such as plain oil finish as a temporary rust protectant, zinc coating (*i.e.,* galvanized, whether by electroplating or hot-dipping), paint, and other similar finishes and coatings, may be applied to the merchandise.

Included in the scope of this investigation are steel threaded rod, bar, or studs, in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 1.80 percent of manganese, or
- 1.50 percent of silicon, or
- 1.00 percent of copper, or
- 0.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 1.25 percent of nickel, or
- 0.30 percent of tungsten, or
- 0.012 percent of boron, or
- 0.10 percent of molybdenum, or
- 0.10 percent of niobium, or
- 0.41 percent of titanium, or
- 0.15 percent of vanadium, or
- 0.15 percent of zirconium.

Steel threaded rod is currently classifiable under subheadings 7318.15.5051, 7318.15.5056, 7318.15.5090 and 7318.15.2095 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Excluded from the scope of this investigation are: (a) Threaded rod, bar, or studs which are threaded only on one or both ends and the threading covers 25 percent or less of the total length; and (b) threaded rod, bar, or studs made to American Society for Testing and Materials (''ASTM'') A193 Grade B7, ASTM A193 Grade B7M, ASTM A193 Grade B16, and ASTM A320 Grade L7.

## Appendix 2

### List of Topics Discussed in the Preliminary Decision Memorandum

1. Scope Comments
2. Scope of the Investigation
3. Injury Test
4. Subsidies Valuation
5. Use of Facts Otherwise Available
6. Analysis of Programs
7. Calculation of the All Others Rate
8. ITC Notification
9. Disclosure and Public Comment
10. Verification

[FR Doc. 2013–30113 Filed 12–18–13; 8:45 am]

BILLING CODE 3510–DS–P

[7] *See* 19 CFR 351.224(b).

[8] *See* 19 CFR 351.309.

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## DEPARTMENT OF COMMERCE

## International Trade Administration

## Limitation of Duty-Free Imports of Apparel Articles Assembled in Haiti Under the Haitian Hemispheric Opportunity Through Partnership for Encouragement Act (HOPE)

**AGENCY:** International Trade Administration, Department of Commerce.

**ACTION:** Notification of Annual Quantitative Limit on Certain Apparel under HOPE.

**DATES:** *Effective Date:* December 20, 2013.

**FOR FURTHER INFORMATION CONTACT:** Maria Dybczak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3651.

**SUPPLEMENTARY INFORMATION:**

**Authority:** The Caribbean Basin Recovery Act (''CBERA''), as amended by the Haitian Hemispheric Opportunity Through Partnership for Encouragement Act of 2006 (''HOPE''), Title V of the Tax Relief and Health Care Act of 2006 and the Food, Conservation, and Energy Act of 2008 (''HOPE II''); the Haiti Economic Lift Program Act of 2010 (''HELP''); and implemented by Presidential Proclamations No. 8114, 72 FR 13655, 13659 (March 22, 2007), and No. 8596, 75 FR 68,153 (November 4, 2010).

HOPE provides for duty-free treatment for certain apparel articles imported directly from Haiti. Section 213A(b)(1)(B) of HOPE outlines the requirements for certain apparel articles to qualify for duty-free treatment under a ''value-added'' program. In order to qualify for duty-free treatment, apparel articles must be wholly assembled, or knit-to-shape, in Haiti from any combination of fabrics, fabric components, components knit-to-shape, and yarns, as long as the sum of the cost or value of materials produced in Haiti or one or more countries, as described in HOPE, or any combination thereof, plus the direct costs of processing operations performed in Haiti or one or more countries, as described in HOPE, or any combination thereof, is not less than an applicable percentage of the declared customs value of such apparel articles. Pursuant to HELP, the applicable percentage for the period December 20, 2013 through December 19, 2014, is 50 percent or more.

For every twelve month period following the effective date of HOPE, duty-free treatment under the value-added program is subject to a quantitative limitation. HOPE provides that the quantitative limitation will be recalculated for each subsequent 12-month period. Section 213A(b)(1)(C) of HOPE, as amended by HOPE II and HELP, requires that, for the twelve-month period beginning on December 20, 2013, the quantitative limitation for qualifying apparel imported from Haiti under the value-added program will be an amount equivalent to 1.25 percent of the aggregate square meter equivalent of all apparel articles imported into the United States in the most recent 12-month period for which data are

available. The aggregate square meters equivalent of all apparel articles imported into the United States is derived from the set of Harmonized System lines listed in the Annex to the World Trade Organization Agreement on Textiles and Clothing (''ATC''), and the conversion factors for units of measure into square meter equivalents used by the United States in implementing the ATC. For purposes of this notice, the most recent 12-month period for which data are available as of December 20, 2013 is the 12-month period ending on October 31, 2013.

Therefore, for the one-year period beginning on December 20, 2013 and extending through December 19, 2014, the quantity of imports eligible for preferential treatment under the value-added program is 322,629,971 square meters equivalent. Apparel articles entered in excess of these quantities will be subject to otherwise applicable tariffs.

Dated: December 11, 2013.

**Janet E. Heinzen,**

*Acting, Deputy Assistant Secretary for Textiles, Consumer Goods and Materials.*

[FR Doc. 2013–30261 Filed 12–18–13; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### U.S. Healthcare Education Trade Mission to New Delhi, Hyderabad, and Ahmedabad, India, January 27–February 1, 2014; Correction

**AGENCY:** International Trade Administration, Department of Commerce.

**ACTION:** Notice cancellation.

**SUMMARY:** The United States Department of Commerce, International Trade Administration, U.S. and Foreign Commercial Service published a document in the **Federal Register** of November 13, 2013 regarding the U.S. Healthcare Education Trade Mission to New Delhi, Hyderabad, and Ahmedabad, India, January 27–February 1, 2014. This mission has been cancelled. Please update the existing notice with a note that this mission is cancelled as of December 10, 2013.

### Cancellation Notice

In the **Federal Register** of July 16, 2013, in 78 FR 42505, title, note a top of page, correct the subject heading of the notice to read:

U.S. Healthcare Education Trade Mission to New Delhi, Hyderabad, and Ahmedabad, India, January 27–February 1, 2014 has been cancelled.

**FOR FURTHER INFORMATION CONTACT:** Koreen M. Grube, International Trade Specialist, Milwaukee U.S. Export Assistance Center, International Trade Administration, U.S. Department of Commerce Tel: 414–297–1853 *Koreen.Grube@trade.gov*.

**Elnora Moye,**

*Trade Program Assistant.*

[FR Doc. 2013–30239 Filed 12–18–13; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Secretarial Infrastructure Business Development Mission to the United Arab Emirates, the Kingdom of Saudi Arabia and Qatar

March 8–14, 2014.

**AGENCY:** International Trade Administration, Department of Commerce.

**ACTION:** Notice.

### Mission Description

The United States Secretary of Commerce will lead an Infrastructure Business Development Mission to the United Arab Emirates, the Kingdom of Saudi Arabia and Qatar from March 8–14, 2014. This business development mission will promote U.S. exports to the Gulf region by helping U.S. companies launch or increase their business in the infrastructure sector. The mission will include government and business-to-business meetings, market briefings and networking events. In all three countries, the governments and private sector are investing significant money in infrastructure projects. As a result, the mission will focus on export-ready U.S. firms with product and services in a broad range of leading U.S. infrastructure sectors with an emphasis on project management and engineering (including construction, architecture and design), renewable energy (solar, wind, waste-to-energy), smart grid and energy efficiency, and environmental technologies (including water/wastewater; air pollution control; and waste management).

The mission will stop in the United Arab Emirates, the Kingdom of Saudi Arabia and Qatar. In each country, participants will meet with pre-screened potential agents, distributors, and representatives, as well as other business partners and government officials. They will also attend market briefings by U.S. Embassy officials, as well as networking events offering further opportunities to speak with local business and industry decision-makers.

The delegation will be composed of representatives from 20–25 U.S. firms in the mission's target sectors. Representatives of the Export-Import Bank of the United States (Ex-Im) and the Overseas Private Investment Corporation (OPIC) will be invited to participate to provide information and counseling regarding their suite of programs, services, and interests in the Middle East.

### Commercial Setting

*The United Arab Emirates*

The US-UAE trade relationship is undergoing a period of rapid expansion as the UAE seeks to undertake major investment in its infrastructure and transport systems. U.S. exports to the UAE totaled almost $23 billion in 2012. U.S. exports to the UAE increased by 36% in 2011, 42% in 2012 and are poised to grow an additional 15% in 2013. Key market opportunities for U.S. firms will continue to be present in project management and design work on urban transport, rail, oil & gas and power generation (including alternative energy). Demand for imports is being fueled by economic growth rates of 3–4%, and bolstered by strong oil revenues as the UAE implements a one-third increase in its petroleum production.

In addition to accounting for virtually all UAE oil production and defense sector acquisitions, the Emirate of Abu Dhabi is also moving forward to develop a $10 billion urban transit system, a national railroad network and a nuclear energy industry. Dubai continues to expand its role as the major regional trade hub and has begun development of one the world's largest new airport projects. On November 27, 2013, the Emirate won the award to host the 2020 World Expo which will result in the undertaking of major infrastructure and hospitality development.

Specific projects in these sectors include an urban transit project in Abu Dhabi (light rail and below ground subway); development of the Etihad Rail network to link the UAE's major ports and cities; development of Dubai's new Al Maktoum airport and adjacent logistics, commercial, residential and recreational sites; and the anticipated design and construction of over 100 new hotels and multiple venues for the 2020 World Expo with an estimated project value of $40 billion.

Additionally, there are many major clean energy opportunities for U.S. firms. Dubai plans to develop a 1,000

mw solar energy capacity and Abu Dhabi continues plans to create a nuclear power industry.

*Kingdom of Saudi Arabia*

Saudi Arabia is the 9th largest trading partner of the United States with a bilateral trade of $74 billion in 2012 and is also the 20th largest destination for U.S. exports. In 2012, U.S. exports to Saudi Arabia exceeded $18 billion mark, an increase of 31% from 2011. The Saudi economy—the largest in the Middle East and North Africa region—has been growing at a robust pace. The private sector has been the key driver behind the stronger non-oil sector growth, with an annual growth rate close to 7 percent since 2000. The private sector is expected to continue to be a key driver of non-oil growth. The country has benefited enormously from oil and gas reserves that have generated vast financial liquidity in the six years between 2006 and 2012. As a result, there are currently about $960 billion worth of projects planned or under way in Saudi Arabia. Of these, more than $700 billion are megaprojects, or large master planned developments of more than $1 billion, making Saudi Arabia the biggest opportunity in the region for businesses involved in the infrastructure and construction sectors. The revenues from hydrocarbon resources are expected to be sufficient to support planned development spending and support private sector growth. The FY–2013 budget, the largest in Saudi history, projected spending of $221 billion.

Significant opportunities exist for U.S. companies interested in Saudi Arabia's construction project management, architectural, engineering and design, and renewable energy sectors. The King Abdullah City for Atomic and Renewable Energy has a stated goal to spend more than $150 billion to develop renewable energy capabilities, specifically solar, to reduce the country's reliance on burning oil for domestic power generation. The $22.5 billion Riyadh Metro, along with rail schemes in Mecca, Jeddah, Medina and Dammam, promises to transform transport infrastructure. The King Abdullah and Jizan Economic Cities are in the process of creating new industrial clusters and new communities. The government is committed to continue to spend heavily in the education, health, municipality, transportation and water sectors. Some of the anticipated capital expenditures for 2014 include the construction of new schools, hospitals, and roads across the country. Urbanization and population growth in Saudi Arabia have boosted demand for housing, especially affordable housing. The Saudi Government remains committed to building 500,000 houses over the next five years. Likewise, demand for power generation will continue to climb over the next five years on the back of a rapidly growing population, and resulting high investments in social and physical infrastructure.

*Qatar*

The U.S.-Qatar trade relationship is going through a massive transformation. The United States posted a trade surplus with Qatar of $2.6 billion from January 2013–August 2013. Total U.S. exports to Qatar through August 2013, were $3.6 billion establishing a new record and growing 106% compared year-on-year with January through August 2012. (The previous yearly record for U.S. exports to Qatar was $3.57 billion in 2012). Given this trend, U.S. exports to Qatar are poised to break the $5 billion dollar level in 2013. Despite Qatar's small population (Qatar is a country of only two million people and only 250,000 Qatari citizens) it ranks as the fifth largest U.S. export market in the MENA region, only behind the much larger markets of the UAE, the Kingdom of Saudi Arabia, Israel and Egypt. Over the past 10 years U.S. exports to Qatar have grown by over 700%.

With Qatar's 2030 Vision, which establishes a framework for Qatar to transform itself from a carbon-based economy, combined with Qatar hosting the 2022 FIFA World Cup, Qatar plans to spend over $250 billion on physical infrastructure over the next five years. Opportunities include: The new Hamad International Airport—$25 billion for completion of the first phase and the $10 billion dollar Phase II; the New Doha Port which is the world's largest green-field port construction project valued at $8 billion (commercial and naval port); QRail is embarking on a $40 billion dollar rail construction project creating three new subway lines, three above ground Light Rail Systems and a high-speed rail network, with heavy freight to follow after 2022; the Public Works Authority is spending $40 billion on new road projects (converting from European systems to U.S.-based designs) as well as public buildings such as schools and hospitals; and the Qatar 2022 Supreme Committee will supervise the construction of 9–12 stadiums for the 2022 World Cup valued at $5 billion. These projects provide on-going opportunities for U.S. engineering and design firms.

Another key program is the $4 billion dollar Inner Doha Re-sewerage Implementation Strategy (IDRIS). This scheme will include a major deep tunnel sewer network and advanced sewage treatment works. Renewable energy is a priority and Qatar is heavily investing in solar energy.

*Products and Services Outside of the Scope of the Mission*

The foregoing analysis of infrastructure export opportunities is not intended to be exhaustive, but illustrative of the many opportunities available to U.S. businesses in the United Arab Emirates, the Kingdom of Saudi Arabia and Qatar. Applications from companies selling products or services within the scope of this mission will be considered and evaluated by the U.S. Department of Commerce. Companies whose products or services do not fit the scope of the mission may contact their local U.S. Export Assistance Center (USEAC) to learn about other business development missions and export promotion services that may provide more targeted export opportunities. Companies may call 1–800–872–8723, or visit the Web site: *http://www.export.gov* to obtain such information.

**Mission Goals**

This mission will demonstrate the United States' commitment to a sustained economic partnership in the Gulf region. The mission's purpose is to support the business development goals of U.S. firms as they construct a firm foundation for future business in the United Arab Emirates, the Kingdom of Saudi Arabia and Qatar, and specifically aims to:

- Assist in identifying potential partners and strategies for U.S. companies to gain access to each market for infrastructure products and services.
- Confirm U.S. Government support for activities of U.S. business in each market and to provide access to senior decision makers in the United Arab Emirates, the Kingdom of Saudi Arabia and Qatar government.
- Listen to the needs, suggestions and experience of individual participants so as to shape appropriate U.S. Government positions regarding U.S. business interests in the region.
- Organize private and focused events with local business and association leaders capable of becoming partners and clients for U.S. firms as they develop their business in the region.
- Assist in the development of competitive strategies and increasing market access through high level information gathering from private and public-sector leaders.

**Mission Scenario**

The mission will stop in the United Arab Emirates, the Kingdom of Saudi Arabia and Qatar. In each country, participants will meet with pre-screened potential agents, distributors, and representatives, as well as other business partners and government officials. They will also attend market briefings by U.S. Embassy officials, as well as networking events offering further opportunities to speak with local business and industry decision-makers.

PROPOSED TIME TABLE

| | | |
|---|---|---|
| Saturday, March 8 | Abu Dhabi, United Arab Emirates | Business Development Mission Orientation.<br>U.S. Government Trade Finance Briefing.<br>Commercial Opportunity Overview.<br>Country Team Briefing.<br>Welcome Dinner. |
| Sunday, March 9 | Abu Dhabi, United Arab Emirates | Industry Briefings/Roundtable Discussions.<br>One-on-One Business Appointments.<br>Networking Luncheon.<br>Networking Reception. |
| Monday, March 10 | Dubai, United Arab Emirates | Travel to Dubai, United Arab Emirates.<br>Industry Briefings/Roundtable Discussions.<br>One-on-One Business Appointments.<br>Travel to Riyadh, Saudi Arabia. |
| Tuesday, March 11 | Riyadh, Saudi Arabia | Commercial Opportunity Overview.<br>Country Team Briefing.<br>Government Meetings.<br>One-on-One Business Appointments.<br>Networking Luncheon.<br>Networking Reception. |
| Wednesday, March 12 | Riyadh, Saudi Arabia<br>Doha, Qatar | One-on-One Business Appointments.<br>Travel to Doha, Qatar.<br>Commercial Opportunity Overview.<br>Country Team Briefing.<br>One-on-One Business Appointments.<br>Networking Reception. |
| Thursday, March 13 | Doha, Qatar | Government Meetings.<br>One-on-One Business Appointments.<br>Networking Luncheon.<br>Wrap-up Discussion.<br>Closing Dinner. |

**Participation Requirements**

All parties interested in participating in the Secretarial Infrastructure Business Development Mission to the United Arab Emirates, the Kingdom of Saudi Arabia and Qatar must complete and submit an application package for consideration by the Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. Approximately 20–25 companies will be selected to participate in the mission from the applicant pool. U.S. companies doing business with the United Arab Emirates, the Kingdom of Saudi Arabia and Qatar, as well as U.S. companies seeking to enter these markets for the first time may apply.

*Fees and Expenses*

After a company has been selected to participate on the mission, a payment to the Department of Commerce in the form of a participation fee is required. The fee schedule for the mission is below:

- $11,500 for large firms
- $9,000 for a small or medium-sized enterprises (SMEs) [1]
- $3000 each additional firm representative (large firm or SME)

Expenses for air travel, lodging, most meals, and incidentals will be the responsibility of each mission participant.

*Conditions of Participation*

An applicant must submit a completed and signed mission application and supplemental application materials, including adequate information on the company's products and/or services, primary market objectives, and goals for participation. If the Department of Commerce receives an incomplete application, the Department may reject the application, request additional information, or take the lack of information into account when evaluating the applications. Each applicant must also:

- Certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, marketed under the name of a U.S. firm and have at least 51% U.S. content. In cases where the U.S. content does not exceed 50%, especially where the applicant intends to pursue investment and major project opportunities, the following factors, may be considered in determining whether the applicant's participation in the business development mission is in the U.S. national interest:
  - ○ U.S. materials and equipment content;
  - ○ U.S. labor content;
  - ○ Repatriation of profits to the U.S. economy; and
  - ○ Potential for follow-on business that would benefit the U.S. economy.

[1] An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations (see *http://www.sba.gov/services/contracting opportunities/sizestandardstopics/index.html*). Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing reflects the Commercial Service's user fee schedule that became effective May 1, 2008 (see *http://www.export.gov/newsletter/march2008/initiatives.html* for additional information).

• Certify that the export of the products and services that it wishes to export through the mission would be in compliance with U.S. export controls and regulations;

• Certify that it has identified to the Department of Commerce for its evaluation any business pending before the Department of Commerce that may present the appearance of a conflict of interest;

• Certify that it has identified any pending litigation (including any administrative proceedings) to which it is a party that involves the Department of Commerce; and

• Sign and submit an agreement that it and its affiliates (1) have not and will not engage in the bribery of foreign officials in connection with a company's/participant's involvement in this mission, and (2) maintain and enforce a policy that prohibits the bribery of foreign officials.

*Selection Criteria for Participation*

Selection will be based on the following criteria, listed in decreasing order of importance:

• Suitability of a company's products or services to the target markets and the likelihood of a participating company's increased exports or business interests in the target markets as a result of this mission;

• Consistency of company's products or services with the scope and desired outcome of the mission's goals;

• Demonstrated export experience in the target markets and/or other foreign markets;

• Current or pending major project participation; and

• Rank/seniority of the designated company representative.

Additional factors, such as diversity of company size, type, location, and demographics, may also be considered during the review process.

Referrals from political organizations and any documents containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and not considered during the selection process.

**Timeframe for Recruitment and Applications**

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register** (*http://www.gpoaccess.gov/fr*), posting on ITA's business development mission calendar (*http://export.gov/trademissions*) and other Internet Web sites, press releases to general and trade media, direct mail, broadcast fax, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows.

Recruitment will begin immediately and conclude no later than January 17, 2014. Applications can be completed on-line at the GCC Infrastructure Business Development Mission Web site at *http://www.export.gov/GCCMission2014* or can be obtained by contacting the U.S. Department of Commerce Office of Business Liaison (202–482–1360 or *businessLiaison@doc.gov*).

The application deadline is Friday, January 17, 2014. Completed applications should be submitted to the Office of Business Liaison. Applications received after Friday, January 17, 2014, will be considered only if space and scheduling constraints permit.

**How to Apply**

Applications can be downloaded from the business development mission Web site (*http://export.gov/GCCMission2014*) or can be obtained by contacting the Office of Business Liaison (see below). Completed applications should be submitted to the Office of Business Liaison via email: *businessliaison@doc.gov* or fax: 202–482–4054.

**Contacts**

General Information and Applications: The Office of Business Liaison, 1401 Constitution Avenue NW., Room 5062, Washington, DC 20230, Tel: 202–482–1360, Fax: 202–482–4054, Email: *BusinessLiaison@doc.gov.*

**Elnora Moye,**

*Trade Program Assistant.*

[FR Doc. 2013–30237 Filed 12–18–13; 8:45 am]

BILLING CODE 3510–DR–P

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## DEPARTMENT OF COMMERCE

### International Trade Administration

### Executive-Led U.S.-Turkey Healthcare Trade Mission to Ankara, Istanbul, and Izmir

**AGENCY:** International Trade Administration, Department of Commerce.

**ACTION:** Amendment.

**SUMMARY:** The United States Department of Commerce, International Trade Administration is amending the Notice published at 78 FR 18318 (March 26, 2013), regarding the Executive-Led U.S.-Turkey Healthcare Trade Mission to Ankara, Istanbul, and Izmir to extend the date of the application deadline to February 6, 2014, and to amend the selection criteria for the applications received from midnight December 16, 2013 through close-of-business February 6, 2014.

**SUPPLEMENTARY INFORMATION:** Recruitment for this Mission began in July 2013. Due to the government shutdown, it has been determined that additional time is needed to allow for additional recruitment and marketing in support of the mission. Applications will now be accepted through close-of-business February 6, 2014 (and after that date if space remains and scheduling constraints permit).

The applications received prior to the original deadline of December 16, 2013, will be evaluated in accordance with the Notice published at 78 FR 18318 (March 26, 2013) regarding the Amendment to the Executive-Led U.S.-Turkey Healthcare Trade Mission to Ankara, Istanbul, and Izmir. The applicants selected will be notified as soon as possible.

**Amendments**

Additional applications will be accepted through February 6, 2014. All applications received from midnight December 16, 2013, through close-of-business February 6, 2014, will form a single selection pool and will be evaluated in a single, comparative selection process. In addition to the requirements, conditions and criteria set out above, the following criteria will be taken into account in the evaluation of these additional applications:

• The overall distribution of participants, considering those already selected for participation, representing a diversity of key sub-sectors, with a special emphasis on the Medical Devices, Healthcare IT and Mobile-Health sub-sectors.

Applications received after the February 6, 2014 cob deadline will be considered only if space and scheduling constraints permit.

**Contact Information**

U.S. Commercial Service Turkey: Ebru Olcay, Healthcare Specialist, *Ebru.olcay@trade.gov.*

Boston U.S. Export Assistance Center: Michelle Ouellette, Specialist, *Michelle.ouellette@trade.gov.*

**Elnora Moye,**

*Trade Program Assistant.*

[FR Doc. 2013–30240 Filed 12–18–13; 8:45 am]

BILLING CODE 3510–FP–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Transmittal Nos. 13–52]**

### 36(b)(1) Arms Sales Notification

**AGENCY:** Defense Security Cooperation Agency, Department of Defense.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 13–52 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: December 13, 2013.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**BILLING CODE 5001–06–P**

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

DEC 05 2013

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 13-52, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Saudi Arabia for defense articles and services estimated to cost $170 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

For J. W. Rixey
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified Document Provided Under Separate Cover)

**BILLING CODE 5001–06–C**

Transmittal No. 13–52

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b) (1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Kingdom of Saudi Arabia

(ii) *Total Estimated Value:*

| | |
|---|---|
| Major Defense Equipment | $170 million |
| Other | $0 million |
| Total | $170 million |

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* 750 BGM–71 2B Tube-launched, Optically-tracked Wire-guided (TOW) missiles, 7 Fly-to-Buy TOW2B missiles, 1,000 BGM–71 2A TOW missiles, 7 Fly-to-Buy TOW2A missiles, containers, spare and repair parts, support equipment, tools and test equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering, logistics, and technical support services, and other related elements of logistics and program support.

(iv) *Military Department:* Army (VTE)

(v) *Prior Related Cases, if any:* FMS Case VAT—$13.6M—8 Nov 09

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex.

(viii) *Date Report Delivered to Congress:* 5 December 2013

* as defined in Section 47(6) of the Arms Export Control Act.

*Policy Justification*

*Kingdom of Saudi Arabia—Tube-Launched, Optically-Tracked Wire-Guided Missiles*

The Kingdom of Saudi Arabia has requested the possible sale of 750 BGM–71 2B Tube-launched, Optically-tracked Wire-guided (TOW) missiles, 7 Fly-to-Buy TOW2B missiles, 1,000 BGM–71 2A TOW missiles, 7 Fly-to-Buy TOW2A missiles, containers, spare and repair parts, support equipment, tools and test equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering, logistics, and technical support services, and other related elements of logistics and program support. The estimated cost is $170 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a critical partner who has been, and continues to be, an important force for political stability in the Middle East.

The proposed sale will support the Royal Saudi Land Forces' (RSLF) defense and counter-terrorism missions, contribute to stability in the Kingdom and the region, and increase Saudi Arabia's overall deterrence capability. It will also enhance the RSLF's compatibility with U.S. forces and demonstrate the U.S.'s continued commitment to the RSLF's modernization efforts.

The proposed sale will not alter the basic military balance in the region.

Implementation of this proposed sale will not require additional U.S. Government or contractor representatives in the Kingdom of Saudi Arabia.

The principal contractor will be Raytheon Missile Systems, Tucson, Arizona. There are no known offset agreements proposed in connection with the potential sale.

There will be no adverse impact on U.S. defense readiness as a result of this proposed case.

Transmittal No. 13–52

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b) (1) of the Arms Export Control Act, as amended

Annex

Item No. vii

(vii) Sensitivity of Technology:

1. The TOW 2B is a fly-over, shoot-down version with the actual missile flight path offset above the gunner's aim point. The TOW 2B flies over the target and uses a laser profilometer and magnetic sensor to detect and fire two downward-directed, explosively formed, penetrator warheads into the target. The TOW 2B has a range of 200 to 3750m. A Radio Frequency (RF) Data link replaced the traditional TOW wire guidance link in all new production variants of the TOW beginning in FY 07. No RF TOW AERO technical data will be released during program development without prior approval from the Office of the Deputy Assistant Secretary of the Army for Defense Exports and Cooperation. The hardware for the TOW 2B is Unclassified. Software for performance data, lethality penetration and sensors are classified Secret.

2. The Radio-Frequency (RF) TOW 2A is a direct attack missile designed to defeat armored vehicles, reinforced urban structures, field fortifications and other such targets. The TOW 2A RF missile can be launched from the same launcher platforms as the existing wire-guided TOW 2A missile without modification to the launcher. The TOW 2A missile (both wire and RF) contains two tracker beacons (xenon and thermal) for the launcher to track and guide the missile in flight. Guidance commands from the launcher are provided to the missile by an RF link contained within the missile case. The hardware, software, and technical publications provided with the sale thereof are Unclassified. However, the system itself contains sensitive technology that instructs the system on how to operate in the presence of countermeasures. The highest level of classified information that can be disclosed by sale, testing or reverse engineering is Secret.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar capabilities.

4. A determination has been made that the recipient country can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 2013–30118 Filed 12–18–13; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Transmittal Nos. 13–69]**

### 36(b)(1) Arms Sales Notification

**AGENCY:** Department of Defense, Defense Security Cooperation Agency.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 13–69 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: December 13, 2013.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

DEC 05 2013

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 13-69, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Austria for defense articles and services estimated to cost $137 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

FOR J. W. Rixey
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 5001–06–C

Transmittal No. 13–69

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Austria

(ii) *Total Estimated Value:*

| | |
|---|---|
| Major Defense Equipment .... | $ 72 million |
| Other ..... | $ 65 million |
| Total ..... | $ 137 million |

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

3 UH–60M Black Hawk helicopters in standard USG configuration with designated unique equipment and Government Furnished Equipment (GFE)
3 Aviation Survivability Equipment (ASE)
7 T700–GE–701D Engines (6 installed and 1 spare)
3 Aviation Mission Planning Systems
1 Transportable Black Hawk Operations Simulator (TBOS)
8 AN/AVS–9 Night Vision Goggles
1 Aviation Ground Power Unit
8 Embedded Global Positioning Systems with Inertial Navigation

Also included are Communication Security equipment including AN/ARC–231, AN/ARC–210, AN/ARC–220 and AN/ARC–201D radios, Identification Friend or Foe (IFF) systems, AN/VRC–92 SINCGARS, aircraft warranty, air worthiness support, facility construction, spare and repair parts, support equipment, communication equipment, publications and technical documentation, personnel training and training equipment, site surveys, tool and test equipment, U.S. Government and contractor technical and logistics support services, and other related element of program, technical and logistics support.

(iv) *Military Department:* Army (VAR)

(v) *Prior Related Cases:* None

(vi) *Sales Commission Fee, etc., Paid, Offered, or agreed to be paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* 5 Dec 13

* as defined in Section 47(6) of the Arms Export Control Act.

*Policy Justification*

*Austria—UH–60M Black Hawk Helicopters in Total Package Approach*

The Government of Austria has requested a possible sale of:

3 UH–60M Black Hawk helicopters in standard USG configuration with designated unique equipment and Government Furnished Equipment (GFE)
3 Aviation Survivability Equipment (ASE)
7 T700–GE–701D Engines (6 installed and 1 spare)
3 Aviation Mission Planning Systems
1 Transportable Black Hawk Operations Simulator (TBOS)
8 AN/AVS–9 Night Vision Goggles
1 Aviation Ground Power Unit
8 Embedded Global Positioning Systems with Inertial Navigation

Also included are Communication Security equipment including AN/ARC–231, AN/ARC–210, AN/ARC–220 and AN/ARC–201D radios, Identification Friend or Foe (IFF) systems, AN/VRC–92 SINCGARS, aircraft warranty, air

worthiness support, facility construction, spare and repair parts, support equipment, communication equipment, publications and technical documentation, personnel training and training equipment, site surveys, tool and test equipment, U.S. Government and contractor technical and logistics support services, and other related element of program, technical and logistics support. The estimated cost is $137 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been, and continues to be, an important force for political stability and progress in Europe.

The proposed sale of UH–60 Black Hawk helicopters will improve Austria's capability to conduct domestic search and rescue missions, border surveillance operations, and contribute to international operations. The proposed sale will also contribute to the Austrian military's modernization goals while enhancing interoperability between Austria, the U.S., and other allies. Austria, which has S–70A–42 aircraft in its inventory, will have no difficulty absorbing these additional helicopters and support into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be Sikorsky Aircraft Company in Stratford, Connecticut. The engines will be purchased from General Electric Aircraft Company (GEAC) in Lynn, Massachusetts. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require nine U.S. government or contractor representatives to travel to Austria for a period of up to five years for support.

There will be no adverse impact on the U.S. defense readiness as a result of this proposed sale.

Transmittal No. 13–69

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The UH–60M aircraft is a medium lift aircraft which includes two T–701D Engines, and the Common Avionics Architecture System (CAAS) cockpit, which provides aircraft system, flight, mission, and communication management systems. The CAAS includes five Multifunction Displays (MFDs), two General Purpose Processor Units (GPPUs), two Control Display Units (CDUs) and two Data Concentrator Units (DCUs). The Navigation System will have Embedded GPS/INS (EGIs), two Digital Advanced Flight Control Systems (DAFCS), one ARN–149 Automatic Direction Finder, one ARN–147 (VOR/ILS marker Beacon System), one ARN–153 TACAN, two air data computers, and one Radar Altimeter system. The communication equipment includes the APX–118A IFF, AN/ARC–231 UHF/VHF–AM/FM and the AN/ARC–201D/E VHF–FM. depending on the finalized configuration, the AN/ARC–210 dual multiband radio and AN/ARC–220 HF radio may also be included on the UH–60M.

a. The AN/APX–118A, Transponder is classified Secret if Mode IV or Mode S fill is installed.

b. The AN/ARC–210 radio is a multi mode radio with satellite communications capabilities.

c. The AN/ARC–201D Single Channel Ground and Airborne Radio Systems (SINCGARS) is a tactical FM airborne radio subsystem that provides secure, anti-jam voice and data communication. The Enhanced Data Modes (EDM) of the radio employs a Reed-Solomon Forward Error Correction (FEC) technique that provides enhanced bit-error-rate performance. That EDM Packet Data Mode supports packet data transfer from the airborne host computer to another airborne platform or the ground-based equivalent SINCGARS system. Performance capabilities, Electronic Countermeasures/Electronic Counter Countermeasures specifications and Engineering Change Orders (ECOs) are classified Secret.

d. A commercial variant of the AN/ARC–201D is available to FMS customers.

e. The AN/ARC–231 requires an exportable variant of the AN/ARC–231 radio, the MXF–4027.

f. The Embedded GPS/INS (EGI) unit CN–1689–(H–764GU) contains sensitive GPS technology.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. The benefits to be derived from this sale, as outlined in the Policy Justification outweigh the potential damage that could result if the sensitive technology were revealed to unauthorized persons. The Government of Austria is expected to afford all system related information and technologies the same degree of protection given to it by the United States.

[FR Doc. 2013–30120 Filed 12–18–13; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Transmittal Nos. 13–57]**

### 36(b)(1) Arms Sales Notification

**AGENCY:** Defense Security Cooperation Agency, Department of Defense.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 13–57 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: December 13, 2013.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

DEC 05 2013

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 13-57, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to the Kingdom of Saudi Arabia for defense articles and services estimated to cost $900 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

FWR J. W. Rixey
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified Document Provided Under Separate Cover)

**BILLING CODE 5001–06–C**

Transmittal No. 13–57

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

*(i) Prospective Purchaser:* Kingdom of Saudi Arabia Guard

(ii) *Total Estimated Value:*

| | |
|---|---|
| Major Defense Equipment * .. | $ 899 million |
| Other ..... | $ 1 million |
| Total ..... | $ 900 million |

(iii) (*Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* 9,650 BGM–71 2A Tube-Launched, Optically-Tracked Wire-Guided (TOW) Radio-Frequency (RF) missiles, 4,145 BGM–71 2B Tube-Launched, Optically-Tracked Wire-Guided Aero RF missiles, 91 TOW–2A Fly-to-Buy missiles, 49 TOW–2B Fly-to-Buy missiles, containers, spare and repair parts, support equipment, tools and test equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering, logistics, and technical support services, and other related elements of logistics and program support.

*(iv) Military Department:* Army (ZAF, Amd #1)

(v) *Prior Related Cases:*
FMS case WGD—$13M—01 Nov 95
FMS case JBJ—$12M—28 Sep 90
FMS case WGK—$54M—27 Feb 01
FMS case WAI—$92M—15 Mar 10

*(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None.

*(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex.

*(viii) Date Report Delivered to Congress:* 5 December 2013

* as defined in Section 47(6) of the Arms Export Control Act.

*Policy Justification*

*The Kingdom of Saudi Arabia—Tube-Launched, Optically-Tracked Wire-Guided 2A/2B Radio-Frequency (RF) Missiles*

The Kingdom of Saudi Arabia has requested a possible sale of 9,650 BGM–71 2A Tube-Launched, Optically-Tracked Wire-Guided (TOW) Radio-Frequency (RF) missiles, 4,145 BGM–71 2B Tube-Launched, Optically-Tracked Wire-Guided Aero RF missiles, 91 TOW–2A Fly-to-Buy missiles, 49 TOW–2B Fly-to-Buy missiles, containers, spare and repair parts, support equipment, tools and test equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering, logistics, and technical support services, and other related elements of logistics and program support. The estimated cost is $900 million.

The proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a critical partner who has been, and continues to be, an important force for political stability in the Middle East.

The proposed sale will support the Ministry of the National Guard's defense and counter-terrorism missions. The sale will also improve Saudi Arabia's capability to meet and defeat current and future threats from enemy armored vehicles. Saudi Arabia will use the enhanced capability as a deterrent to regional threats and to strengthen its homeland defense. Saudi Arabia, which already has TOW missiles in its inventory, will have no difficulty absorbing these additional missiles.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be Raytheon Corporation of Tucson, Arizona. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of additional U.S. Government or contractor representatives to the Kingdom of Saudi Arabia (KSA).

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 13–57

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

Annex

Item No. vii

(vii) Sensitivity of Technology:

1. The TOW 2B is a fly-over, shoot-down version with the actual missile flight path offset above the gunner's aim point. The TOW 2B flies over the target and uses a laser profilometer and magnetic sensor to detect and fire two downward-directed, explosively formed, penetrator warheads into the target. The TOW 2B has a range of 200 to 3750m. A Radio Frequency (RF) Data link replaced the traditional TOW wire guidance link in all new production variants of the TOW beginning in FY 07. No RF TOW AERO technical data will be released during program development without prior approval from the Office of the Deputy Assistant Secretary of the Army for Defense Exports and Cooperation. The hardware for the TOW 2B is Unclassified. Software for performance data, lethality penetration and sensors are classified Secret.

2. The Radio-Frequency (RF) TOW 2A is a direct attack missile designed to defeat armored vehicles, reinforced urban structures, field fortifications and other such targets. The TOW 2A RF can be launched from the same launcher platforms as the existing wire-guided TOW 2A missile without modification to the launcher. Both TOW 2A missiles (wire and RF) contain two tracker beacons (xenon and thermal) for the launcher to track and guide the missile in flight. Guidance commands from the launcher are provided to the missile by an RF link contained within the missile case. The hardware, software, and technical publications provided with the sale thereof are Unclassified. However, the system itself contains sensitive technology that instructs the system on how to operate in the presence of countermeasures. The highest level of classified information that can be disclosed by sale, testing or reverse engineering is Secret.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar capabilities.

4. A determination has been made that the recipient country can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 2013–30119 Filed 12–18–13; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP14–26–000]**

### Midwestern Gas Transmission Company; Prior Notice of Activity Under Blanket Certificate

On December 4, 2013, Midwestern Gas Transmission Company (Midwestern) filed with the Federal Energy Regulatory Commission (Commission) an application under section 7 of the Natural Gas Act and Sections 157.205 and 157.208 the Commission's regulations and Midwestern's blanket authorization in CP82–414, 20 FERC 62,411 (1982). Midwestern requests authorization to construct 1.1 miles of 30-inch natural gas pipeline, abandon in place 1.0 mile of 30-inch pipeline and remove 300 feet of 30-inch pipeline located in Will County, Illinois. The facility changes are needed to accommodate the widening of a new highway interchange.

Questions regarding this application may be directed to Denise Adams, Manager Rates and Regulatory Analysis, Midwestern Gas Transmission Company, 100 West 5th Street, ONEOK Plaza, Tulsa, Oklahoma, by calling (918) 732–1408, via fax at 918 732–1363 or Email: *Denise.Adams@oneok.com.*

Pursuant to Section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review (NSER). If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a NSER will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of

the date of issuance of the Commission staff's FEIS or EA.

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such motions or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant, on or before the comment date. It is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and seven copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov.* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 12, 2013.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2013–30184 Filed 12–18–13; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER14–195–001.
*Applicants:* Duke Energy Florida, Inc.
*Description:* Duke Energy Florida, Inc. submits CBR Name Change Correction Filing to be effective 12/27/2013.
*Filed Date:* 12/11/13.
*Accession Number:* 20131211–5100.
*Comments Due:* 5 p.m. ET 12/18/13.

*Docket Numbers:* ER14–196–001.
*Applicants:* Duke Energy Florida, Inc.
*Description:* Duke Energy Florida, Inc. submits Cancellation of Duke Energy Florida OATT Certificate of Concurrence to be effective 12/27/2013.
*Filed Date:* 12/11/13.
*Accession Number:* 20131211–5127.
*Comments Due:* 5 p.m. ET 12/18/13.

*Docket Numbers:* ER14–197–000.
*Applicants:* Duke Energy Florida, Inc.
*Description:* Duke Energy Florida, Inc. submits OATT Name Change Correction to be effective N/A.
*Filed Date:* 12/11/13.
*Accession Number:* 20131211–5134.
*Comments Due:* 5 p.m. ET 12/18/13.

*Docket Numbers:* ER14–198–001.
*Applicants:* Duke Energy Florida, Inc.
*Description:* Duke Energy Florida, Inc. submits Rate Schedules Name Change Filing No. 1 Correction to be effective 12/27/2013.
*Filed Date:* 12/11/13.
*Accession Number:* 20131211–5050.
*Comments Due:* 5 p.m. ET 12/18/13.

*Docket Numbers:* ER14–596–000.
*Applicants:* Southwest Power Pool, Inc.
*Description:* Southwest Power Pool, Inc. submits Distribution of Penalty Revenues to be effective 12/11/2013.
*Filed Date:* 12/11/13.
*Accession Number:* 20131211–5146.
*Comments Due:* 5 p.m. ET 1/2/14.

*Docket Numbers:* ER14–597–000.
*Applicants:* Northern Pass Transmission LLC.
*Description:* Northern Pass Transmission LLC submits NPT—HRE Amendment to TSA to be effective 2/14/2014.
*Filed Date:* 12/11/13.
*Accession Number:* 20131211–5148.
*Comments Due:* 5 p.m. ET 1/2/14.

*Docket Numbers:* ER14–598–000.
*Applicants:* South Carolina Electric & Gas Company.
*Description:* South Carolina Electric & Gas Company submits OATT Order No. 784 to be effective 12/27/2013.
*Filed Date:* 12/12/13.
*Accession Number:* 20131212–5022.
*Comments Due:* 5 p.m. ET 1/2/14.

*Docket Numbers:* ER14–599–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* PJM Interconnection, L.L.C. submits First Revised Service Agreement No. 3410; Queue No. W4–029 & Y1–075 to be effective 11/14/2013.
*Filed Date:* 12/12/13.
*Accession Number:* 20131212–5041.
*Comments Due:* 5 p.m. ET 1/2/14.

*Docket Numbers:* ER14–600–000.
*Applicants:* Florida Power & Light Company.
*Description:* Florida Power & Light Company submits FPL OATT Order No. 784 Compliance Filing to be effective 12/27/2013.
*Filed Date:* 12/12/13.
*Accession Number:* 20131212–5062.
*Comments Due:* 5 p.m. ET 1/2/14.

*Docket Numbers:* ER14–601–000.
*Applicants:* Anahau Energy, LLC.
*Description:* Anahau Energy, LLC submits Revisions to Category Status under Market-Based Rate Tariff to be effective 12/13/2013.
*Filed Date:* 12/12/13.
*Accession Number:* 20131212–5078.
*Comments Due:* 5 p.m. ET 1/2/14.

*Docket Numbers:* ER14–602–000.
*Applicants:* Quest Energy, LLC.
*Description:* Quest Energy, LLC submits Cancel Tariff to be effective 12/12/2013.
*Filed Date:* 12/12/13.
*Accession Number:* 20131212–5081.
*Comments Due:* 5 p.m. ET 1/2/14.

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: December 12, 2013.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2013–30214 Filed 12–18–13; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

November 29, 2013.

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG14–14–000.
*Applicants:* New AERG, LLC.
*Description:* Notice of Self-Certification of Exempt Wholesale Generator Status.
*Filed Date:* 11/29/13.
*Accession Number:* 20131129–5025.
*Comments Due:* 5 p.m. ET 12/20/13.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER13–255–001.
*Applicants:* NV Energy, Inc.
*Description:* Transmission Rate Case—NPC Settlement to be effective 1/1/2013.
*Filed Date:* 11/27/13.
*Accession Number:* 20131127–5174.
*Comments Due:* 5 p.m. ET 12/18/13.

*Docket Numbers:* ER14–489–000.
*Applicants:* Northern States Power Company, a Minnesota Corporation.
*Description:* 2013–11–27–SMMPA Byron TR9 Repl Meter—565–0.0.0 to be effective 11/28/2013.
*Filed Date:* 11/27/13.
*Accession Number:* 20131127–5146.
*Comments Due:* 5 p.m. ET 12/18/13.

*Docket Numbers:* ER14–490–000.
*Applicants:* Hatchet Ridge Wind, LLC.
*Description:* Hatchet Ridge Category 2 to be effective 11/28/2013.
*Filed Date:* 11/27/13.
*Accession Number:* 20131127–5160.
*Comments Due:* 5 p.m. ET 12/18/13.

*Docket Numbers:* ER14–491–000.
*Applicants:* Spring Valley Wind LLC.
*Description:* Spring Valley Category 2 to be effective 11/28/2013.
*Filed Date:* 11/27/13.
*Accession Number:* 20131127–5164.
*Comments Due:* 5 p.m. ET 12/18/13.

*Docket Numbers:* ER14–492–000.
*Applicants:* Ocotillo Express LLC.
*Description:* Ocotillo MBR Revisions to be effective 11/28/2013.
*Filed Date:* 11/27/13.
*Accession Number:* 20131127–5167.
*Comments Due:* 5 p.m. ET 12/18/13.

*Docket Numbers:* ER14–493–000.
*Applicants:* SU FERC, L.L.C.
*Description:* Cancellation to be effective 1/1/2014.
*Filed Date:* 11/27/13.
*Accession Number:* 20131127–5175.
*Comments Due:* 5 p.m. ET 12/18/13.

*Docket Numbers:* ER14–494–000.
*Applicants:* South Bay Energy Corp.
*Description:* South Bay Energy Corp. Market Based Rate Tariff to be effective 1/15/2014.
*Filed Date:* 11/27/13.
*Accession Number:* 20131127–5190.
*Comments Due:* 5 p.m. ET 12/18/13.

*Docket Numbers:* ER14–495–000.
*Applicants:* California Independent System Operator Corporation.
*Description:* OATT Order No. 764 Compliance Filing to be effective 4/1/2014.
*Filed Date:* 11/27/13.
*Accession Number:* 20131127–5193.
*Comments Due:* 5 p.m. ET 12/18/13.

*Docket Numbers:* ER14–496–000.
*Applicants:* NV Energy, Inc.
*Description:* OATT Order No. 784—Regulation and Frequency Response Service to be effective 12/27/2013.
*Filed Date:* 11/27/13.
*Accession Number:* 20131127–5212.
*Comments Due:* 5 p.m. ET 12/18/13.

*Docket Numbers:* ER14–497–000.
*Applicants:* New England Power Pool Participants Committee.
*Description:* December 2013 Membership Filing to be effective 11/1/2013.
*Filed Date:* 11/27/13.
*Accession Number:* 20131127–5224.
*Comments Due:* 5 p.m. ET 12/18/13.

*Docket Numbers:* ER14–498–000.
*Applicants:* Pacific Gas and Electric Company.
*Description:* Western WDT November 2013 Biannual Filing to be effective 2/1/2014.
*Filed Date:* 11/27/13.
*Accession Number:* 20131127–5232.
*Comments Due:* 5 p.m. ET 12/18/13.

*Docket Numbers:* ER14–499–000.
*Applicants:* Pacific Gas and Electric Company.
*Description:* Western IA November 2013 Biannual Filing to be effective 2/1/2014.
*Filed Date:* 11/27/13.
*Accession Number:* 20131127–5235.
*Comments Due:* 5 p.m. ET 12/18/13.

*Docket Numbers:* ER14–500–000.
*Applicants:* New York Independent System Operator, Inc.
*Description:* NYISO tariff revision re: ICAP Demand Curve Reset to be effective 1/28/2014.
*Filed Date:* 11/29/13.
*Accession Number:* 20131129–5000.
*Comments Due:* 5 p.m. ET 12/20/13.

*Docket Numbers:* ER14–501–000.
*Applicants:* Pacific Gas and Electric Company.
*Description:* Notice of Termination for Pristine Sun Fund 10 Fresno PGE, LLC, Service Agreement No. 191, Tariff Volume No. 4 of Pacific Gas and Electric Company.
*Filed Date:* 11/27/13.
*Accession Number:* 20131127–5242.
*Comments Due:* 5 p.m. ET 12/18/13.

*Docket Numbers:* ER14–502–000.
*Applicants:* Pacific Gas and Electric Company.
*Description:* Notice of Termination for Yuba City Solar Millennium Fund, Service Agreement Nos. 212 and 213, Tariff Volume No. 4 of Pacific Gas and Electric Company.
*Filed Date:* 11/27/13.
*Accession Number:* 20131127–5243.
*Comments Due:* 5 p.m. ET 12/18/13.

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.

**Nathaniel J. Davis, Sr.,**
*Deputy Secretary.*

[FR Doc. 2013–30111 Filed 12–18–13; 8:45 am]
BILLING CODE 6717–01–P

## ENVIRONMENTAL PROTECTION AGENCY

**[R08–WR–2013–0007; FRL–9904–28–Region–8]**

### Approval of Application Submitted by Eastern Shoshone Tribe and Northern Arapaho Tribe for Treatment in a Similar Manner as a State Under the Clean Air Act

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of final action.

**SUMMARY:** This notice announces that the EPA Regional Administrator for Region 8 has approved the December 2008 application submitted by the Northern Arapaho Tribe and Eastern Shoshone Tribe (Tribes) of the Wind River Indian Reservation for treatment in a similar manner as a state (TAS) pursuant to the Clean Air Act and the EPA's implementing regulations for

purposes of certain Clean Air Act provisions. None of the provisions for which the Tribes requested eligibility entails the exercise of Tribal regulatory authority under the Clean Air Act.

**DATES:** EPA's decision approving the Tribes' TAS application was issued and took effect on December 6, 2013.

**ADDRESSES:** You may review copies of the Wind River TAS Decision Document, Attachment 1 (Legal Analysis of the Wind River Indian Reservation Boundary), Attachment 2 (Capability Statement), and other supporting information at the EPA Region 8 Office, 1595 Wynkoop Street, Denver, Colorado 80202–1129. If you wish to review the documents in hard copy, EPA requests that you contact the individual listed below to view these documents. You may view the hard copies of these documents Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays. If you wish to examine these documents, you should make an appointment at least 24 hours before the day of your visit. Additionally, these documents are available electronically at: *http://www2.epa.gov/region8/tribal-assistance-program.*

**FOR FURTHER INFORMATION CONTACT:** Carl Daly, Air Program, U.S. Environmental Protection Agency, Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6416, *daly.carl@epa.gov.*

**SUPPLEMENTARY INFORMATION:** On December 17, 2008, as supplemented on December 23, 2008, the Tribes submitted their TAS application as authorized by Clean Air Act section 301(d) (42 U.S.C. 7601(d)) and EPA's regulations at 40 CFR part 49. In their application, the Tribes requested TAS eligibility for purposes of Clean Air Act provisions that generally relate to grant funding (e.g., for air quality planning purposes) (section 105 (42 U.S.C. 7405)); involvement in EPA national ambient air quality redesignations for the Reservation (section 107(d)(3) (42 U.S.C. 7407(d)(3)); receiving notices of, reviewing, and/or commenting on certain nearby permitting and sources (sections 505(a)(2) (42 U.S.C. 7661d(a)(2)) and 126 (42 U.S.C. 7426); receiving risk management plans of certain stationary sources (section § 112(r)(7)(B)(iii) (42 U.S.C. 7412(r)(7)(B)(iii)); and participation in certain interstate and regional air quality bodies (sections 169B (42 U.S.C. 7492), 176A (42 U.S.C. 7506a) and 184 (42 U.S.C. 7511c). None of the provisions for which the Tribes requested eligibility entails the exercise of Tribal regulatory authority under the Clean Air Act. The Tribes' TAS application thus does not request, and EPA's decision to approve the application does not approve, Tribal authority to implement any Clean Air Act regulatory programs or to otherwise implement Tribal regulatory authority under the Clean Air Act.

In accordance with EPA's regulations, as part of its review process, EPA notified all appropriate governmental entities and the public of the Tribes' TAS application and in that notice specified the geographic boundaries of the Wind River Indian Reservation as identified in the Tribes' application. EPA afforded the appropriate governmental entities and the public a period totaling 60 days to provide written comments regarding any dispute concerning the boundary of the Reservation. Several commenters disagreed with the Tribes' Reservation boundary description, asserting that a 1905 Congressional Act, 33 Stat. 1016 (1905) (1905 Act), altered and diminished the Reservation boundary. Consistent with established TAS procedures, EPA afforded the Tribes an opportunity to respond to comments received by EPA on the Tribes' application and has previously made all comments received and the Tribes' responses thereto available to the public. In addition, because EPA was aware of existing disagreements regarding the Reservation boundary, EPA exercised its discretion to consult with the U.S. Department of the Interior (DOI), which has expertise on Indian country issues. On October 26, 2011, EPA received an opinion from the DOI Solicitor addressing the Reservation boundary.

On December 4, 2013, the Tribes sent EPA a letter requesting that EPA not address at this time the lands subject to Section 1 of the 1953 Act, 67 Stat. 592 (1953), and stating that the Tribes would notify EPA in writing if and when they decide to request an EPA decision with respect to those lands.

EPA has carefully considered the application materials, the comments received from appropriate governmental entities and the public and the Tribes' responses to those comments, the opinion of the DOI Solicitor, as well as other materials, relevant case law, applicable statutory and regulatory provisions, and relevant EPA guidance.

EPA has determined that the Northern Arapaho and Eastern Shoshone Tribes have met the requirements of CAA § 301(d)(2) and 40 CFR 49.6 and are therefore approved to be treated in a similar manner as a state for purposes of CAA §§ 105, 505(a)(2), 107(d)(3), 112(r)(7)(B)(iii), 126, 169B, 176A, and 184. EPA's decision also concludes that the boundaries of the Reservation encompass and include, subject to the proviso below concerning the 1953 Act, the area set forth in the 1868 Treaty of Fort Bridger, 15 Stat. 673 (1868), less those areas conveyed by the Tribes under the 1874 Lander Purchase Act, 18 Stat. 291 (1874), and the 1897 Thermopolis Purchase Act, 30 Stat. 93 (1897), and including certain lands located outside the original boundaries that were added to the Reservation under subsequent legislation in 1940, 54 Stat. 628 (1940). With regard to the lands subject to Section 1 of the 1953 Act, 67 Stat. 592 (1953), consistent with the Tribes' request that EPA's TAS decision not address the lands described in the 1953 Act at this time, the lands are not included in the geographic scope of approval for this decision. EPA's TAS decision therefore does not address the 1953 Act area. Thus, EPA approved the Tribes' *Application for Treatment in a Manner Similar to a State Under the Clean Air Act for Purposes of Section 105 Grant Program, Affected State Status and Other Provisions for Which No Separate Tribal Program is Required.*

A detailed explanation of EPA's approval of the Tribes' TAS application is contained within the Decision Document and accompanying attachments referred to in the **ADDRESSES** section of this notice and at *http://www2.epa.gov/region8/tribal-assistance-program.*

*Judicial Review:* Pursuant to section 307(b)(1) of the Clean Air Act (42 U.S.C. 7607(b)(1)), Petitioners may seek judicial review of this approval in the United States Court of Appeals for the Tenth Circuit. Any petition for judicial review shall be filed within 60 days from the date this notice appears in the **Federal Register**, *i.e.,* not later than February 18, 2014.

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

Dated: December 11, 2013.

**Howard M. Cantor,**

*Acting Regional Administrator, Region 8.*

[FR Doc. 2013–30248 Filed 12–18–13; 8:45 am]

BILLING CODE 6560–50–P

## EXPORT-IMPORT BANK

**[Public Notice: 2013–3006]**

## Agency Information Collection Activities: Comment Request

**AGENCY:** Export-Import Bank of the United States.

**ACTION:** Submission for OMB review and comments request.

*Form Title:* EIB 92–50 Short-Term Multi-Buyer Export Credit Insurance Policy Applications (ST Multi-Buyer).

**SUMMARY:** The Export-Import Banks of the United States (Ex-Im Bank), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

This collection of information is necessary, pursuant to 12 U.S.C. Sec. 635(a)(1), to determine eligibility of the applicant for Ex-Im Bank assistance.

The Application for Short-Term Multi-Buyer Export Credit Insurance Policy will be used to determine the eligibility of the applicant and the transaction for Export-Import Bank assistance under its insurance program. Export-Import Bank customers will be able to submit this form on paper or electronically.

Five items have been changed on this form. First, the legal certifications have been updated to reflect a new Web site for performing due diligence. Second, two questions related to level of employment have been removed. Third, additional information about ''Affiliates'' and ''Additional Named Insureds'' is being requested. Fourth, additional information about ''Warehouses'' is being requested. Fifth, additional information about ''Exclusions'' is being requested. The third, fourth and fifth changes are only relevant if the applicant indicates that they have Affiliates, use Warehouses, and/or require Exclusions.

The application tool can be reviewed at: *http://www.exim.gov/pub/pending/Form%20EIB%2092-50.pdf*

**DATES:** Comments must be received on or before January 21, 2014 to be assured of consideration.

**ADDRESSES:** Comments may be submitted electronically on *WWW.REGULATIONS.GOV* (EIB–2013–0047) or by mail to Office of Information and Regulatory Affairs, 725 17th Street, NW,. Washington, DC 20038 Attn: OMB 3048–EIB92–50.

**SUPPLEMENTARY INFORMATION:**

*Title and Form Number:* EIB 92–50 Export-Import Bank of the United States Short-Term Multi-Buyer Export Credit Insurance Policy Applications (ST Multi-Buyer)

*OMB Number:* 3048–0023.

*Type of Review:* Regular.

*Need and Use:* The Application for Short-Term Multi-Buyer Export Credit Insurance Policy will be used to determine the eligibility of the applicant and the transaction for Export-Import Bank assistance under its insurance program.

*Affected Public:* This form affects entities involved in the export of U.S. goods and services.

*Annual Number of Respondents:* 285.

*Estimated Time per Respondent:* 0.5 hours.

*Annual Burden Hours:* 143.

*Frequency of Reporting of Use:* As needed.

*Government Reviewing Time per Year:*

*Reviewing Time per Year:* 285 hours.

*Average Wages per Hour:* $42.50.

*Average Cost per Year (time*wages):* $12,113.

*Benefits and Overhead:* 20%.

*Total Government Cost:* $14,535.

**Kalesha Malloy,**

*Agency Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 2013–30195 Filed 12–18–13; 8:45 am]

**BILLING CODE 6690–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

**DATES:** Written PRA comments should be submitted on or before February 18, 2014. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov <mailto:PRA@fcc.gov>* and to *Cathy.Williams@fcc.gov <mailto:Cathy.Williams@fcc.gov>.*

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0473.

*Title:* Section 74.1251, Technical and Equipment Modifications.

*Type of Review:* Extension of a currently approved collection.

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

*Number of Respondents and Responses:* 100 respondents; 300 responses.

*Estimated Time per Response:* 0.25 hour.

*Frequency of Response:* Recordkeeping requirement; One-time reporting requirement.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this collection is contain in Sections 154(i) and 325(a) of the Communications Act of 1934, as amended.

*Total Annual Burden:* 75 hours.

*Total Annual Cost:* None.

*Privacy Act Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Needs and Uses:* 47 CFR 74.1251(b)(1) states that formal application on FCC Form 349 is required of all permittees and licensees for any of the following changes: Replacement of the transmitter as a whole, except replacement with a transmitter of identical power rating which has been certificated by the FCC for use by FM translator or FM booster stations, or any change which could result in the electrical characteristics or performance of the station. Upon the installation or modification of the transmitting equipment for which prior FCC authority is not required under the

provisions of this paragraph, the licensee shall place in the station records a certification that the new installation complies in all respects with the technical requirements of this part and the terms of the station authorization.

47 CFR 74.1251(c) requires FM translator licensee to notify the FCC, in writing, of changes in the primary FM station being retransmitted.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary, Office of Managing Director.*

[FR Doc. 2013–30191 Filed 12–18–13; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Information Collection Being Reviewed by the Federal Communications Commission

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

**DATES:** Written PRA comments should be submitted on or before February 18, 2014. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to the Federal Communications Commission via email to *PRA@fcc.gov and Cathy.Williams@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0967.

*Title:* Section 79.2, Accessibility of Programming Providing Emergency Information, and Emergency Information; Section 79.105, Video Description and Emergency Information Accessibility Requirements for All Apparatus; Section 79.106, Video Description and Emergency Information Accessibility Requirements for Recording Devices.

*Form Number:* N/A.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit entities; individuals or households; not-for-profit institutions; and State, local, or tribal Governments.

*Number of Respondents and Responses:* 640 respondents; 642 responses.

*Estimated Time per Response:* 0.5 to 5 hours.

*Frequency of Response:* On occasion reporting requirement; Third party disclosure requirement.

*Obligation to Respond:* Voluntary. The statutory authority for this information collection is contained in the Twenty-First Century Communications and Video Accessibility Act of 2010, Public Law 111–260, 124 Stat. 2751, and sections 4(i), 4(j), 303, 330(b), 713, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303, 330(b), 613, and 617.

*Total Annual Burden:* 735 hours.

*Total Annual Cost:* $24,150.

*Nature and Extent of Confidentiality:* Confidentiality is an issue to the extent that individuals and households provide personally identifiable information, which is covered under the FCC's updated system of records notice (SORN), FCC/CGB–1, ''Informal Complaints and Inquiries,'' which became effective on January 25, 2010. The Commission believes that it provides sufficient safeguards to protect the privacy of individuals who file complaints under 47 CFR 79.2(c).

Privacy Impact Assessment: The Privacy Impact Assessment (PIA) for Informal Complaints and Inquiries was completed on June 28, 2007. It may be reviewed at *http://www.fcc.gov/omd/privacyact/Privacy-Impact-Assessment.html.* The Commission is in the process of updating the PIA to incorporate various revisions to it as a result of revisions to the SORN.

*Needs and Uses:* On April 9, 2013, the Commission released a *Report and Order and Further Notice of Proposed Rulemaking,* MB Docket Nos. 12–107, 11–43, FCC 13–45 (the *Report and Order*) adopting rules implementing portions of the Twenty-First Century Communications and Video Accessibility Act of 2010 (the CVAA) related to accessible emergency information, and apparatus requirements for emergency information and video description. These rules are codified at 47 CFR 79.2, 79.105, and 79.106. Pursuant to Section 202 of the CVAA, the *Report and Order* requires that video programming distributors and video programming providers (including program owners) make emergency information accessible to individuals who are blind or visually impaired by using a secondary audio stream to convey televised emergency information aurally, when such information is conveyed visually during programming other than newscasts. Pursuant to Section 203 of the CVAA, the *Report and Order* requires certain apparatus that receive, play back, or record video programming to make available video description services and accessible emergency information.

**The following rule sections and other requirements contain new and revised information collection requirements for which the Commission is seeking approval from the Office of Management and Budget (OMB):**

(a) Complaints alleging violations of the emergency information rules.

Section 79.2(c) of the Commission's rules provides that a complaint alleging a violation of this section may be transmitted to the Consumer and Governmental Affairs Bureau by any reasonable means, such as the Commission's online informal complaint filing system, letter, facsimile transmission, telephone (voice/TRS/TTY), Internet email, audio-cassette recording, and Braille, or some other method that would best accommodate the complainant's disability, and that each complaint should include: The name of the video programming distributor (VPD) or video programming provider (VPP) against whom the complaint is alleged; the date and time of the omission of the emergency information; and the type of emergency.

After the Commission receives the complaint, the Commission notifies the VPD or VPP of the complaint, and the VPD or VPP has 30 days to reply.

(b) Complaints alleging violations of the apparatus emergency information and video description requirements.

The *Report and Order* adopts procedures for consumers to file complaints alleging violations of the rules containing apparatus emergency information and video description requirements, 47 CFR 79.105–79.106. A complaint filed with the Commission may be transmitted to the Consumer and Governmental Affairs Bureau by any reasonable means, such as the Commission's online informal complaint filing system, letter in writing or Braille, facsimile transmission, telephone (voice/TRS/TTY), email, or some other method that would best accommodate the complainant's disability. Given that the population intended to benefit from the rules adopted will be blind or visually impaired, if a complainant calls the Commission for assistance in preparing a complaint, Commission staff will document the complaint in writing for the consumer. Such complaints should include certain information about the complainant and the alleged violation, including:

- The name, postal address, and other contact information, such as telephone number or email address, of the complainant;
- The name and contact information, such as postal address, of the apparatus manufacturer or provider;
- Information sufficient to identify the software or device used to view or to attempt to view video programming with video description or emergency information;
- The date or dates on which the complainant purchased, acquired, or used, or tried to purchase, acquire, or use the apparatus to view video programming with video description or emergency information;
- A statement of facts sufficient to show that the manufacturer or provider has violated or is violating the Commission's rules;
- The specific relief or satisfaction sought by the complainant; and
- The complainant's preferred format or method of response to the complaint.

The Commission will forward such complaints, as appropriate, to the named manufacturer or provider for its response, as well as to any other entity that Commission staff determines may be involved, and may request additional information from any relevant parties when, in the estimation of Commission staff, such information is needed to investigate the complaint or adjudicate potential violations of Commission rules.

(c) Requests for Commission determination of technical feasibility of emergency information and video description apparatus requirements.

The requirements of Section 203 of the CVAA pertaining to apparatus designed to receive or play back video programming apply only to the extent they are ''technically feasible.'' Pursuant to 47 CFR 79.105(a), all apparatus that (i) is designed to receive or play back video programming transmitted simultaneously with sound that is provided by entities subject to 47 CFR 79.2 and 79.3, (ii) is manufactured in the United States or imported for use in the United States, and (iii) uses a picture screen of any size, must have the capability to decode and make available the secondary audio stream if technically feasible. Parties may raise technical infeasibility as a defense when faced with a complaint alleging a violation of the apparatus requirements adopted in the *Report and Order* or, alternatively, may file a request for a ruling under § 1.41 of the Commission's rules as to technical infeasibility before manufacturing or importing the product.

(d) Requests for Commission determination of achievability of emergency information and video description apparatus requirements.

Section 203 provides that apparatus ''that use a picture screen that is less than 13 inches in size'' must meet the requirements of that section only if ''achievable,'' as that word is defined in Section 716 of the Communications Act, and also provides that ''apparatus designed to record video programming transmitted simultaneously with sound'' are only required to comply with the emergency information and video description requirements ''if achievable (as defined in section 716).'' Pursuant to 47 CFR 79.105(b)(3), apparatus that use a picture screen of less than 13 inches in size must comply with the provisions of this section only if doing so is *achievable* as defined in this section. Further, pursuant to 47 CFR 79.106(a), all apparatus that (i) is designed to record video programming transmitted simultaneously with sound that is provided by entities subject to 47 CFR 79.2 and 79.3, and (ii) is manufactured in the United States or imported for use in the United States, must comply with the provisions of this section except that apparatus must only do so if it is *achievable* as defined in § 79.105(b)(3).

Manufacturers of apparatus that use a picture screen of less than 13 inches in size and of recording devices may petition the Commission, pursuant to 47 CFR 1.41, for a full or partial exemption from the video description and emergency information requirements before manufacturing or importing the apparatus. Alternatively, manufacturers may assert that a particular apparatus is fully or partially exempt as a response to a complaint, which the Commission may dismiss upon a finding that the requirements of this section are not achievable. Pursuant to 47 CFR 79.105(b)(3), such a petition for exemption or a response to a complaint must be supported with sufficient evidence to demonstrate that compliance with the requirements of this section is not achievable (meaning with reasonable effort or expense), and the Commission will consider four specific factors when making such a determination. In evaluating evidence offered to prove that compliance is not achievable, the Commission will be informed by the analysis in the *ACS Order.*

(e) Petitions for purpose-based waivers of emergency information and video description apparatus requirements.

Section 203 of the CVAA permits the Commission to waive emergency information and video description apparatus requirements for any apparatus or class of apparatus that is:

(a) Primarily designed for activities other than receiving or playing back video programming transmitted simultaneously with sound, or

(b) Designed for multiple purposes, capable of receiving or playing video programming transmitted simultaneously with sound but whose essential utility is derived from other purposes.

Manufacturers of apparatus may petition the Commission for a full or partial purpose-based waiver of the apparatus requirements adopted in the *Report and Order* pursuant to 47 CFR 79.105(b)(4). The Commission will address any requests for purpose-based waiver on a case-by-case basis, and waivers will be available prospectively for manufacturers seeking certainty prior to the sale of a device.

(f) Submission and review of consumer eligibility information pertaining to DIRECTV, LLC's waiver for provision of aural emergency information during The Weather Channel's programming.

In the *Report and Order,* the Commission grants DIRECTV, LLC (DIRECTV) a waiver with respect to the set-top box models on which it is not able to implement audio functionality for emergency information, but conditions such relief by requiring DIRECTV to provide, upon request and

at no additional cost to customers who are blind or visually impaired, a set-top box model that is capable of providing aural emergency information. DIRECTV may require reasonable documentation of disability as a condition to providing the box at no additional cost. Thus, DIRECTV customers who are blind or visually impaired may be required to submit reasonable documentation of disability to DIRECTV (*e.g.,* documentation from any professional or service provider, such as a social worker, with direct knowledge of the individual's disability).

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary, Office of Managing Director.*

[FR Doc. 2013–30190 Filed 12–18–13; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 3, 2014.

A. Federal Reserve Bank of Cleveland (Nadine Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. *Clay Graham, Bryan Graham, Colby James Graham, Mark David Weiser, Debra Kay Weiser, all of Zanesville, Ohio; Courtney Lynelle Graham, Columbus, Ohio; Adam Hamilton Graham,* Bexley, Ohio; (collectively the Graham Family Control Group) to retain voting shares of North Valley Bancshares, Inc., and thereby indirectly retain voting shares of North Valley Bank, both in Zanesville, Ohio.

Board of Governors of the Federal Reserve System, December 16, 2013.

**Michael J. Lewandowski,**

*Associate Secretary of the Board.*

[FR Doc. 2013–30212 Filed 12–18–13; 8:45 am]

**BILLING CODE 6210–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

**[CFDA Numbers: 93.581, 93.587, 93.612]**

### Request for Public Comment on the Proposed Adoption of Administration for Native Americans Program Policies and Procedures

**AGENCY:** Administration for Native Americans, ACF, HHS.

**ACTION:** Notice for Public Comment.

**SUMMARY:** Pursuant to Section 814 of the Native American Programs Act of 1974 (NAPA), as amended, the Administration for Native Americans (ANA) is required to provide members of the public an opportunity to comment on proposed changes in interpretive rules, general statements of policy, and rules of agency procedure or practice that affect programs, projects, and activities authorized under the NAPA, and to give notice of the final adoption of such changes at least 30 days before the changes become effective. In accordance with notice requirements of NAPA, ANA herein describes its proposed interpretive rules, general statements of policy, and rules of agency procedure or practice as they relate to the Fiscal Year (FY) 2014 Funding Opportunity Announcements (FOA) for the following programs: (1) Social and Economic Development Strategies (hereinafter referred to as SEDS), HHS–2014–ACF–ANA–NA–0776; (2) Sustainable Employment and Economic Development Strategies (hereinafter referred to as SEEDS), HHS–2014–ACF–ANA–NE–0779; (3) Native Language Preservation and Maintenance (hereinafter referred to as Language Preservation), HHS–2014–ACF–ANA–NL–0778; (4) Native Language Preservation and Maintenance—Esther Martinez Immersion (hereinafter referred to as Language—EMI), HHS–2014–ACF–ANA–NA–0780; and (5) Environmental Regulatory Enhancement (hereinafter referred to as ERE), HHS–2014–ACF–ANA–NR–0777.

**DATES:** Submit written or electronic comments on this Notice, on or before January 21, 2014.

**ADDRESSES:** Send comments in response to this notice via email to Lillian A. Sparks, Commissioner, Administration for Native Americans, at *ANACommissioner@acf.hhs.gov.* Comments will be available for inspection by members of the public at the Administration for Native Americans, 901 D Street SW., Washington, DC 20447.

**FOR FURTHER INFORMATION CONTACT:** Carmelia Strickland, Director, Division of Program Operations, ANA, (877) 922–9262.

**SUPPLEMENTARY INFORMATION:**

A. *Name Change of one FOA:* ANA proposes to change the name of the program titled ''Native American Language Preservation and Maintenance—Esther Martinez Initiative'' (HHS–2014–ACF–ANA–NL–0780) to ''Native American Language Preservation and Maintenance—Esther Martinez Immersion.'' The FOA will retain the same acronym ''EMI.'' This proposed change is to address the fact that EMI is no longer a temporary initiative, but an ongoing program in which immersion is a key goal.

B. *Administrative Policies:* ANA proposes to clarify the conflict of interest standards published in the 2013 FOAs [announced in 78 FR 13062–13067] to ensure it aligns with the rule at 45 CFR 1336.50(f), which authorizes the Office of Chief Executive of a federally-recognized Indian tribal government to be paid salary and expenses with ANA grant funds, provided such costs are related to a project funded under ANA FOAs and that the costs exclude any portion of salaries and expenses that are a cost of general government. Given this rule regarding the allowable use of grant funds, we propose a limited exception to previously published conflict of interest standards which did not include the regulatory exception applicable to the Chief Executive of federally recognized Indian tribes.

**Conflict of Interest Standards**

Under the standard terms and conditions for discretionary HHS awards (Grants Policy Statement, page II–7 at *https://www.acf.hhs.gov/grants/terms-and-conditions*), grant recipients are required to establish safeguards to prevent employees, consultants, members of governing bodies and others who may be involved in grant-supported activities from using their positions for purposes that are, or give the appearance of being, motivated by a desire for private financial gain for themselves or others, such as those with whom they have family, business, or other ties. Therefore, with one exception, staff employed through an ANA-funded project cannot also serve as a member of the governing body for the

applicant organization. Under the exception, as authorized by 45 CFR 1336.50(f), the Chief Executive of a federally-recognized Indian tribal government may be paid salary and expenses with ANA grant funds, provided such costs are not a cost of general government and are related to the ANA-funded project.

During the award negotiation phase, ANA will ask the prospective recipient to modify project personnel if a proposed staff member is also a member of the applicant organization's governing body. In addition, there should be a separation of duties between staff and the governing body within an organization to ensure the integrity of internal controls and to minimize disruptions in the continuity of operations.

C. *Federal Evaluation:* ANA proposes to include the following language in *Section I. Funding Opportunity Description* in FY14 FOAs for the programs listed in the summary section above, with the exception of the SEEDS FOA, HHS–2014–ACF–ANA–NE–0779. The SEEDS FOA will retain the same federal evaluation requirements as published in the FY13 SEEDS FOA, HHS–2013–ACF–ANA–NE–0588, available under ''Prior Year Funding Opportunities'' at *http://www.acf.hhs.gov/grants/open/foa/.*

ANA is required by statute to evaluate the impact of its funding. To fulfill this requirement, ANA will implement a federally-sponsored evaluation strategy to assess the success and impact of approved projects. The federal evaluation strategy will include grantee-level documentation. In accepting a grant award, all grantees agree to participate fully in the federal evaluation if selected, and to follow all evaluation protocols established by ANA or its designee contractor.

D. *Name Change of one Disqualification Factor:* ANA proposes to change the name of the disqualification factor titled ''Board Documentation'' to ''Assurance of Community Representation on Board of Directors,'' which will appear in all FY14 ANA FOAs in order to further clarify what is being requested of applicants regarding demonstration of community representation. The content of this requirement will not change, and it will not apply to tribes or Native Alaska villages. All application disqualification factors will appear in *Section III.3. Other* of the FOAs.

E. *Projects Ineligible for Funding:* ANA proposes revising language in this section of *Section III.3. Other* to provide clarification on three of the types of projects that ANA will not fund under regulations at 45 CFR 1336.33(b), as follows:

1. Projects for which a grantee purchases from a third party training and technical assistance (third party T/TA) that is intended to be provided to other tribes or Native American organizations or to non-members of the grantee organization or where such training or technical assistance is duplicative of ANA funded training and technical assistance available to tribes and other entities that are eligible to apply for ANA funding. This does not apply to 'train-the-trainer' capacity building projects.

2. The support of ongoing social service delivery programs or the expansion, or continuation, of existing social service delivery programs. This means that ANA will not fund projects that provide or expand ongoing services that involve cash transfers or other material assistance such as food, medicine, child care, or income support to individuals.

3. Projects from consortia of tribes that do not include documentation from each participating consortium member specifying their role and support. Projects from consortia must have goals and objectives that will encompass the participating communities. ANA will not fund projects by a consortium of tribes that duplicate activities for which participating member tribes also receive funding from ANA.

F. *Community Involvement:* ANA proposes language in *Section IV.2 The Project Description* and *Section V.1 Criteria* to clarify that community involvement in the development of the project is required as well as community involvement in the implementation of the project.

G. *Page Limits for SEEDS Applications:* ANA proposes to change the maximum page limit for applications submitted in response to the FY2014 SEEDS FOA (HHS–2014–ACF–ANA–NE–0779) from 200 pages to 150 pages. This page limit excludes required Standard Forms (SFs) and OMB-approved forms, including ANA's Objective Work Plan (OWP). The change makes the 150 page limit consistent with in all ANA FOAs. Applications that exceed the page limit will have excess pages removed.

H. *Two-File Upload Requirement:* For FY13, ACF introduced a required two-file format for electronically submitted applications. In order to reduce the technical burden on such applicants and to ensure that a lack of technical resources not otherwise required of applicants does not unintentionally act to disqualify an otherwise eligible applicant from applying under ANA FOAs. Applicants submitting their applications electronically under ANA FOAs are exempt from the two-file format requirement. Formatting instructions will be provided in all ANA FOAs in Section IV.2. Form and Content of Application Submission. Formatting and page limitation instructions must be followed or applicants risk having excess pages removed from their applications.

I. *Outcomes Expected for SEEDS Applications:* ANA proposes to require all SEEDS applicants to address two program-wide performance outcomes including full-time equivalent (FTE) positions and the number of Native Americans employed by the funded project. The other three program-wide performance outcomes must be addressed only if they are applicable. Under the FY2013 SEEDS FOA, applicants were required to address 1 of the 5 SEEDS specific outcomes.

J. *Protection of Sensitive and/or Confidential Information:* ANA proposes to add the following requirement to applications submitted under all FY14 FOAs in order to ensure the protection of confidential and/or sensitive information:

If any confidential or sensitive information will be collected during the course of the project, whether from staff (e.g., background investigations) or project participants, and/or project beneficiaries, provide a description of the methods that will be used to ensure that confidential and/or sensitive information is properly handled and safeguarded. Also provide a plan for the disposition of such information at the end of the project period.

K. *ANA Application Evaluation Criteria:* The following changes will appear in *Section V.I Criteria* of the FY 14 FOAs:

1. *Changes to Criteria:* ANA proposes to move the concept articulated previously in the 'Project Integration' evaluation criterion and address the substance of such criterion under the OWP. The evaluation criterion appears in the FOAs at *Section V.I Application Review Information, Criteria.* Consequently, the OWP will be moved from the 'Approach' criterion and will be evaluated using a stand-alone evaluation criterion. No additional requirements will be added to the OWP or to any other component of the FOA as a result of this change. The OMB-approved OWP information collection requires project goals, objectives, results expected, benefits expected, and activities to be addressed. This change is being proposed to more clearly articulate that the integration of multiple project components that will receive focused attention during the objective review.

2. *Titles and Assigned Weight:* ANA proposes to adjust the maximum point values of the evaluation criteria scores to further prioritize elements that are

important to project monitoring and success. For all FY14 FOAs, ANA proposes to use the following criteria values:

Need for Assistance—10 points;
Outcomes Expected—25 points;
Project Approach—30 points;
Objective Work Plan—25 points
Budget and Budget Justification—10 points

3. *Scoring Guidance:* ANA proposes to provide guidance to reviewers to utilize the table below when allocating points for applications in order to ensure consistency and equivalence in the scoring among different panels and panel reviewers. ANA proposes to add the following table to all FY14 FOAs:

| | |
|---|---|
| Excellent | 93–100 |
| Very Good | 86–92 |
| Good | 78–85 |
| Fair | 70–77 |
| Needs Significant Improvement | 0–69 |

L. *ANA Internal Review of Proposed Projects:* ANA proposes to clarify the language in *Section V.2. Review and Selection Process* of the FOAs to clarify of the scope of ANA's discretion to be exercised in making funding decisions as follows:

Based on the ranked order of applications, ANA staff will perform an internal review and analysis of the applications ranked highest as a result of the panel's review and scoring in order to determine the application's consistency with the purposes of NAPA, all relevant statutory and regulatory requirements, and the requirements of the relevant FOA. ANA's Commissioner has discretion to make all final funding and award decisions. In the exercise of such discretion the Commissioner will consider:

- Whether the project, as determined based on ANA's administrative and programmatic expertise, does not to further the purpose of the funding opportunity as described in *Section I. Funding Opportunity Description.*
- Whether the project is determined to be unlikely to be successful or cost effective based on the application submitted for evaluation in response to *Section IV.2. Project Description and Budget and Budget Justification.*
- Whether the project allows any one community, or region, to receive a disproportionate share of the funds available for award.
- Whether the projects is essentially identical or similar in whole or in part to previously funded projects proposed by the same applicant or activities or projects proposed by a consortium that duplicate activities for which any consortium member also receives or has received funding from ANA.
- Whether the project provides couples or family counseling activities that are medically-based.
- Whether the project originated and was designed by consultants, who have provided a major role for themselves in the performance of the project, and who are not members of the applicant organization, tribe, or village.
- Whether the project contains contingent activities that may impede, or indefinitely delay, the progress of the project.
- Whether the project has the potential to cause unintended harm to participants, or that could negatively impact the safety or privacy of individuals.
- Whether the project may be used for the purpose of providing loan capital. Federal funds awarded under this FOA may not be used for the purpose of providing loan capital. This restriction is not related to loan capital authorized under Sec. 803A of NAPA [42 U.S.C. 2991b-1(a)(1)] for the purpose of the Hawaiian Revolving Loan fund.
- Whether the project includes human subject research as defined at 45 CFR 45.102 (d) and (f).
- Whether the project is duplicative of projects funded by other federal agencies.

**Please note:** The funding restriction applied in prior years' FOAs on ''Projects that seek to revive Native American languages that do not have any living speakers'' has been removed from the above list. Projects with this focus are now eligible to receive funding under Language Preservation and EMI FOAs.

M. *Reporting:* ANA proposes to change the frequency of reporting requirements from quarterly to semi-annual for the Objective Progress Reports (OPR) and Financial Status Reports (FSR). Therefore, grantees will be required to submit an OPR and an FSR every 6 months instead of every 3 months. Please note that grantees will still be required to submit a Federal Financial Report—Federal Cash Transaction Report SF–425 (FFR–FCTR) to the Division of Payment Management (DPM) on a quarterly basis.

**Statutory Authority:** This notice for public comment is required by Section 814 of the Native American Programs Act of 1974 (NAPA), as amended.

**Lillian A. Sparks Robinson,**

*Commissioner, Administration for Native American.*

[FR Doc. 2013–30192 Filed 12–18–13; 8:45 am]

BILLING CODE 4184–34–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2013–N–1619]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Current Good Manufacturing Practice in Manufacturing, Packaging, Labeling, or Holding Operations for Dietary Supplements

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice invites comments on the information collection provisions of FDA's regulations regarding current good manufacturing practice (CGMP) for dietary supplements.

**DATES:** Submit either electronic or written comments on the collection of information by February 18, 2014.

**ADDRESSES:** Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** FDA PRA Staff, Office of Operations, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, *PRAStaff@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or

provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

**Current Good Manufacturing Practice in Manufacturing, Packaging, Labeling, or Holding Operations for Dietary Supplements—21 CFR Part 111 (OMB Control Number 0910–0606)—Extension**

On October 25, 1994, the Dietary Supplement Health and Education Act (DSHEA) (Pub. L. 103–417) was signed into law. DSHEA, among other things, amended the Federal Food, Drug, and Cosmetic Act (the FD&C Act) by adding section 402(g) of the FD&C Act (21 U.S.C. 342(g)). Section 402(g)(2) of the FD&C Act provides, in part, that the Secretary of Health and Human Services may, by regulation, prescribe good manufacturing practices for dietary supplements. Section 402(g) of the FD&C Act also stipulates that such regulations will be modeled after CGMP regulations for food and may not impose standards for which there are no current, and generally available, analytical methodology. Section 402(g)(1) of the FD&C Act states that a dietary supplement is adulterated if ''it has been prepared, packed, or held under conditions that do not meet current good manufacturing practice regulations.'' Under section 701(a) of the FD&C Act (21 U.S.C. 371), FDA may issue regulations necessary for the efficient enforcement of the FD&C Act. In the **Federal Register** of June 25, 2007 (72 FR 34752) (the June 25, 2007, final rule), FDA published a final rule that established, in part 111 (21 CFR part 111), the minimum CGMP necessary for activities related to manufacturing, packaging, labeling, or holding dietary supplements to ensure the quality of the dietary supplement.

Records are an indispensable component of CGMP. The records required by FDA's regulations in part 111 provide the foundation for the planning, control, and improvement processes that constitute a quality control system. Implementation of these processes in a manufacturing operation serves as the backbone to CGMP. The records show what is to be manufactured; what was, in fact, manufactured; and whether the controls that the manufacturer put in place to ensure the identity, purity, strength, and composition and limits on contaminants and to prevent adulteration were effective. Further, records will show whether and what deviations from control processes occurred, facilitate evaluation and corrective action concerning these deviations (including, where necessary, whether associated batches of product should be recalled from the marketplace), and enable a manufacturer to assure that the corrective action was effective. In addition, by establishing recordkeeping requirements, FDA can ensure that industry follows CGMP during manufacturing, packaging, labeling, or holding operations. The regulations in part 111 establish the minimum manufacturing practices necessary to ensure that dietary supplements are manufactured, packaged, labeled, or held in a manner that will ensure the quality of the dietary supplements during manufacturing, packaging, labeling or holding operations.

The recordkeeping requirements of the regulations include establishing written procedures and maintaining records pertaining to: (1) Personnel; (2) sanitation; (3) calibration of instruments and controls; (4) calibration, inspection, or checks of automated, mechanical, or electronic equipment; (5) maintaining, cleaning, and sanitizing equipment and utensils and other contact surfaces; (6) water used that may become a component of the dietary supplement; (7) production and process controls; (8) quality control; (9) components, packaging, labels and product received for packaging and labeling; (10) master manufacturing and batch production; (11) laboratory operations; (12) manufacturing operations; (13) packaging and labeling operations; (14) holding and distributing operations; (15) returned dietary supplements; and (16) product complaints.

*Description of Respondents:* Manufacturers, dietary supplement manufacturers, packagers and repackagers, labelers and re-labelers, holders, distributors, warehousers, exporters, importers, large businesses, and small businesses engaged in the dietary supplement industry.

The recordkeeping requirements of the regulations in part 111 are set forth in each subpart. In Table 1 of this document we list the annual burdens associated with recordkeeping, as described in the June 25, 2007, final rule. For some provisions listed in Table 1, we did not estimate the number of records per recordkeeper because recordkeeping occasions consist of frequent brief entries of dates, temperatures, monitoring results, or documentation that specific actions were taken. Information might be recorded a few times a day, week, or month. When the records burden involves frequent brief entries, we entered 1 as the default for the number of records per recordkeeper. For example, many of the records listed under § 111.35 in Table 1, such as § 111.35(b)(2) (documentation, in individual equipment logs, of the date of the use, maintenance, cleaning, and sanitizing of equipment), involve many short sporadic entries over the course of the year, varying across equipment and plants in the industry. We did not attempt to estimate the actual number of recordkeeping occasions for these provisions, but instead entered an estimate of the average number of hours per year. We entered the default value of 1 as the number of records per recordkeeper for these and similar provisions. For § 111.35, the entry for number of records is 1 as a default representing a large number of brief recordkeeping occasions.

In many rows of Table 1 of this document, we list a burden under a single provision that covers the written procedures or records described in several provisions. For example, the burden of the batch production records listed in Table 1 under § 111.260 includes the burden for records listed under § 111.255 because the batch production records must include those records.

The number of records for batch production records (and other records kept on a batch basis in Table 1 of this document) equals the annual number of batches. The estimated burden for records kept by batch includes both records kept for every batch and records kept for some but not all batches. We use the annual number of batches as the number of records that will not necessarily be kept for every batch, such

as test results or material review and disposition records, because such records are part of records, if they are necessary, that will be kept for every batch.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

| 21 CFR Section | Number of recordkeepers | Number of records per recordkeeper | Total annual records | Avg. burden per record-keeping | Total hours |
|---|---|---|---|---|---|
| 111.14, records of personnel practices, including documentation of training | 15,000 | 4 | 60,000 | 1 | 60,000 |
| 111.23, records of physical plant sanitation practices, including pest control and water quality | 15,000 | 1 | 15,000 | 0.2 | 3,000 |
| 111.35, records of equipment and utensils calibration and sanitation practices | 400 | 1 | 400 | 12.5 | 5,000 |
| 111.95, records of production and process control systems | 250 | 1 | 250 | 45 | 11,250 |
| 111.140, records that quality control personnel must make and keep | 240 | 1163 | 279,120 | 1 | 279,120 |
| 111.180, records associated with components, packaging, labels, and product received for packaging and labeling as a dietary supplement | 240 | 1163 | 279,120 | 1 | 279,120 |
| 111.210, requirements for what the master manufacturing record must include | 240 | 1 | 240 | 2.5 | 600 |
| 111.260, requirements for what the batch record must include | 145 | 1408 | 204,160 | 1 | 204,160 |
| 111.325, records that quality control personnel must make and keep for laboratory operations | 120 | 1 | 120 | 15 | 1,800 |
| 111.375, records of the written procedures established for manufacturing operations | 260 | 1 | 260 | 2 | 520 |
| 111.430, records of the written procedures for packaging and labeling operations | 50 | 1 | 50 | 12.6 | 630 |
| 111.475, records of product distribution and procedures for holding and distributing operations | 15,000 | 1 | 15,000 | 0.4 | 6,000 |
| 111.535, records for returned dietary supplements | 110 | 4 | 440 | 13.5 | 5,940 |
| 111.570, records regarding product complaints | 240 | 600 | 144,000 | 0.5 | 72,000 |
| Total | | | | | 929,140 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The average burden per recordkeeping estimates in Table 1 of this document are based on those in the June 25, 2007, final rule, which were based on our institutional experience with other CGMP requirements and on data provided by Research Triangle Institute in the ''Survey of Manufacturing Practices in the Dietary Supplement Industry'' cited in that rule.

The estimates in Table 1 of the number of firms affected by each provision of part 111 are based on the percentage of manufacturers, packagers, labelers, holders, distributors, and warehousers that reported in the survey that they have not established written SOPs or do not maintain records that were later required by the June 25, 2007, final rule. Because we do not have survey results for general warehouses, we entered the approximate number of facilities in that category for those provisions covering general facilities. For the dietary supplement industry, the survey estimated that 1,460 firms would be covered by the final rule, including manufacturers, packagers, labelers, holders, distributors, and warehousers. The time estimates include the burden involved in documenting that certain requirements are performed and in recordkeeping. We used an estimated annual batch production of 1,408 batches per year to estimate the burden of requirements that are related to the number of batches produced annually, such as § 111.260, ''What must the batch production record include?'' The estimate of 1,408 batches per year is near the midpoint of the number of annual batches reported by survey firms.

The length of time that CGMP records must be maintained is set forth in § 111.605. Table 1 of this document reflects the estimated burdens for written procedures, record maintenance, periodically reviewing records to determine if they may be discarded, and for any associated documentation for that activity for records that are required under part 111. We have not included a separate estimate of burden for those sections that require maintaining records in accordance with § 111.605, but have included those burdens under specific provisions for keeping records. For example, § 111.255(a) requires that the batch production records be prepared every time a batch is manufactured, and § 111.255(d) requires that batch production records be kept in accordance with § 111.605. The estimated burdens for both § 111.255(a) and (d) are included under § 111.260 (what the batch record must include).

Dated: December 13, 2013.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2013–30185 Filed 12–18–13; 8:45 am]

BILLING CODE 4160–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2013–N–1588]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Tobacco Products, Exemptions From Substantial Equivalence Requirements

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the

proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on exemptions from substantial equivalence requirements for tobacco products.

**DATES:** Submit either electronic or written comments on the collection of information by February 18, 2014.

**ADDRESSES:** Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** FDA PRA Staff, Office of Operations, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, *PRAStaff@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

**Exemptions From Substantial Equivalence Requirements for Tobacco Products (OMB Control Number 0910–0684)—Extension**

On June 22, 2009, the President signed the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) (Pub. L. 111–31) into law. The Tobacco Control Act amended the Federal Food, Drug, and Cosmetic Act (the FD&C Act) by adding a chapter granting FDA important authority to regulate the manufacture, marketing, and distribution of tobacco products to protect the public health generally and to reduce tobacco use by minors.

The FD&C Act, as amended by the Tobacco Control Act, requires that before a new tobacco product may be introduced or delivered for introduction into interstate commerce, a manufacturer must submit a premarket application to FDA, and FDA must issue an order finding that the new product may be introduced or delivered for introduction into interstate commerce (section 910 of the FD&C Act (21 U.S.C. 387j)). An order under section 910 is not required, however, if a manufacturer submits a report under section 905(j) of the FD&C Act (21 U.S.C. 387e(j) demonstrating the new tobacco product's substantial equivalence to an appropriate predicate product, and FDA issues an order finding the new product to be substantially equivalent to the predicate product and in compliance with the requirements of the FD&C Act.

FDA has established a pathway for manufacturers to request exemptions from the substantial equivalence requirements of the FD&C Act in § 1107.1 (21 CFR 1107.1) of the Agency's regulations. As described in § 1107.1(a), FDA may exempt tobacco products that are modified by adding or deleting a tobacco additive, or increasing or decreasing the quantity of an existing tobacco additive, from the requirement of demonstrating substantial equivalence if the Agency determines that: (1) The modification would be a minor modification of a tobacco product; (2) a report demonstrating substantial equivalence is not necessary for the protection of public health; and (3) an exemption is otherwise appropriate.

Section 1107.1(b) states that a request for exemption under section 905(j)(3) of the FD&C Act may be made only by the manufacturer of a legally marketed tobacco product for a minor modification to that tobacco product and that the manufacturer must submit the request and all information supporting it to FDA. The request must be made in an electronic format that FDA can process, review, and archive (or a written request must be made by the manufacturer explaining in detail why the company cannot submit the request in an electronic format and requesting an alternative means of submission to the electronic format).

An exemption request must contain: (1) The manufacturer's address and contact information; (2) identification of the tobacco product(s); (3) a detailed explanation of the purpose for the modification; (4) a detailed description of the modification, including a statement as to whether the modification involves adding or deleting a tobacco additive, or increasing or decreasing the quantity of the existing tobacco additive; (5) a detailed explanation of why the modification is a minor modification of a tobacco product that can be sold under the FD&C Act; (6) a detailed explanation of why a report under section 905(j)(1) of the FD&C Act intended to demonstrate substantial equivalence is not necessary to ensure that permitting the tobacco product to be marketed would be appropriate for protection of the public health; (7) a certification (i.e., a signed statement by a responsible official of the company) summarizing the supporting evidence and providing the rationale for the official's determination that the modification does not increase the tobacco product's appeal to or use by minors, toxicity, addictiveness, or abuse liability; (8) other information justifying an exemption; and (9) an environmental assessment (EA) under part 25 (21 CFR part 25) prepared in accordance with the requirements of § 25.40.

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321–4347) states national environmental objectives and imposes upon each Federal agency the duty to consider the environmental effects of its actions. Section 102(2)(C) of NEPA requires the preparation of an environmental impact statement for every major Federal action that will significantly affect the quality of the human environment.

The FDA NEPA regulations are contained in part 25. All applications for exemption from substantial

equivalence require the submission of an EA. An EA provides information that is used to determine whether an FDA action could result in a significant environmental impact. Section 25.40(a) and (c) specifies the content requirements for EAs for nonexcluded actions.

The information required by § 1107.1(b) is submitted to FDA so FDA can determine whether an exemption from substantial equivalence to the product is appropriate for the protection of the public health. Section 1107.1(c) states that FDA will review the information submitted and determine whether to grant or deny an exemption based on whether the criteria in section 905(j)(3) of the FD&C Act are met. FDA may request additional information if necessary to make a determination and may consider the exemption request withdrawn if the information is not provided within the requested timeframe.

Section 1107.1(d) provides that FDA may rescind an exemption where necessary to protect the public health.

Section 905(j)(1)(A)(ii) of the FD&C Act states that if an exemption has been requested and granted, a report must be submitted to FDA that demonstrates that the tobacco product is modified within the meaning of section 905(j)(3), the modifications are to a product that is commercially marketed and in compliance with the requirements of the FD&C Act, and all of the modifications are covered by exemptions granted by the Secretary pursuant to section 905(j)(3).

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

| Activity | Number of respondents | Number of responses per respondent | Total annual responses | Average burden per response | Total hours |
|---|---|---|---|---|---|
| 21 CFR 1107.1(b): Preparation of tobacco product exemption from substantial equivalence request | 500 | 1 | 500 | 12 | 6,000 |
| 21 CFR 1107.1(c): Preparation of additional information for tobacco product exemption from substantial equivalence request | 150 | 1 | 150 | 3 | 450 |
| 21 CFR 25.40: Preparation of an environmental assessment | 500 | 1 | 500 | 12 | 6,000 |
| Section 905(j)(1)(A)(ii) of the FD&C Act: If exemption granted, report submitted to demonstrate tobacco product is modified under section 905(j)(3), modifications are to a product that is commercially marketed and compliant product, and modifications are covered by exemptions granted by Secretary pursuant to section 905(j)(3). | 750 | 1 | 750 | 3 | 2,250 |
| Total | | | | | 14,700 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA estimates that 500 requests for exemption will be submitted annually, and that it will take approximately 12 hours to prepare an exemption request. FDA also estimates that up to 30 percent (150) of the initial requests for information may require additional information in support of the initial exemption request, and it is expected that it will take an average of 3 hours to prepare the additional information. FDA also estimates that 750 manufacturers will take approximately 12 hours to prepare and submit an EA under part 25 in accordance with the requirements of § 25.40, as referenced in § 1107.1(b)(9).

FDA estimates that 750 respondents will take 3 hours to prepare a report under section 905(j)(1)(A)(ii) of the FD&C Act, which requires a manufacturer to submit a report at least 90 days prior to making an introduction or delivery into interstate commerce for commercial distribution of a tobacco product. The report will contain the manufacturer's basis that the tobacco product is modified within the meaning of section 905(j)(3) of the FD&C Act, the modifications are to a product that is commercially marketed and compliant with the FD&C Act, the modifications are covered by exemptions granted pursuant to section 905(j)(3), and a listing of actions taken to comply with any applicable requirements of section 907 of the FD&C Act. FDA's estimates are based on experience with and information on other FDA-regulated products and indications from industry.

Dated: December 13, 2013.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2013–30137 Filed 12–18–13; 8:45 am]

BILLING CODE 4160–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2013–D–0636]**

### Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Unique Device Identification System

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Unique Device Identification System'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

**FOR FURTHER INFORMATION CONTACT:** FDA PRA Staff, Office of Operations, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, *PRAStaff@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** On September 30, 2013, the Agency submitted a proposed collection of information entitled ''Unique Device Identification System'' to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0720. The approval expires on December 31, 2016. A copy of the supporting statement for this

information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: December 12, 2013.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2013–30147 Filed 12–18–13; 8:45 am]

BILLING CODE 4160–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2008–D–0150]**

### Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Guidance for Industry on Hypertension Indication: Drug Labeling for Cardiovascular Outcome Claims

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Guidance for Industry on Hypertension Indication: Drug Labeling for Cardiovascular Outcome Claims'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

**FOR FURTHER INFORMATION CONTACT:** FDA PRA Staff, Office of Operations, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, *PRAStaff@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** On September 10, 2013, the Agency submitted a proposed collection of information entitled ''Guidance for Industry on Hypertension Indication: Drug Labeling for Cardiovascular Outcome Claims'' to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0670. The approval expires on December 31, 2016. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: December 12, 2013.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2013–30146 Filed 12–18–13; 8:45 am]

BILLING CODE 4160–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2013–N–0796]**

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Testing Communications on Medical Devices and Radiation-Emitting Products

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Fax written comments on the collection of information by January 21, 2014.

**ADDRESSES:** To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0678. Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** FDA PRA Staff, Office of Operations, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, *PRAStaff@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

#### Testing Communications on Medical Devices and Radiation-Emitting Products—(OMB Control Number 0910–0678)—(Extension)

FDA is authorized by section 1003(d)(2)(D) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 393(d)(2)(D)) to conduct educational and public information programs relating to the safety of regulated medical devices and radiation-emitting products. FDA must conduct needed research to ensure that such programs have the highest likelihood of being effective. Improving communications about medical devices and radiation-emitting products will involve many research methods, including individual indepth interviews, mall-intercept interviews, focus groups, self-administered surveys, gatekeeper reviews, and omnibus telephone surveys.

The information collected will serve three major purposes. First, as formative research it will provide critical knowledge needed about target audiences to develop messages and campaigns about medical device and radiation-emitting product use. Knowledge of consumer and health care professional decision making processes will provide the better understanding of target audiences that FDA needs to design effective communication strategies, messages, and labels. These communications will aim to improve public understanding of the risks and benefits of using medical devices and radiation-emitting products by providing users with a better context in which to place risk information more completely.

Second, as initial testing, it will allow FDA to assess the potential effectiveness of messages and materials in reaching and successfully communicating with their intended audiences. Testing messages with a sample of the target audience will allow FDA to refine messages while still in the developmental stage. Respondents will be asked to give their reaction to the messages in either individual or group settings.

Third, as evaluative research, it will allow FDA to ascertain the effectiveness of the messages and the distribution method of these messages in achieving the objectives of the message campaign. Evaluation of campaigns is a vital link in continuous improvement of communications at FDA.

Annually, FDA projects about 30 studies using a variety of research methods and lasting an average of 0.17 hours each (varying from 0.08–1.5 hours). FDA estimates the burden of this collection of information based on prior recent experience with the various types of data collection methods described earlier. FDA is requesting this burden so as not to restrict the Agency's ability to gather information on public sentiment for its proposals in its regulatory and communications programs.

In the **Federal Register** of July 9, 2013 (78 FR 41066), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

| Activity | Number of respondents | Number of responses per respondent | Total annual responses | Average burden per response | Total hours |
|---|---|---|---|---|---|
| Individual indepth interviews | 360 | 1 | 360 | 0.75 (45 minutes) | 270 |
| General public focus group interviews | 144 | 1 | 144 | 1.50 hours | 216 |
| Intercept interviews: Central location | 200 | 1 | 200 | 0.25 (15 minutes) | 50 |
| Intercept interviews: Telephone | 4,000 | 1 | 4,000 | 0.08 (5 minutes) | 320 |
| Self-Administered surveys | 2,400 | 1 | 2,400 | 0.25 (15 minutes) | 600 |
| Gatekeeper reviews | 400 | 1 | 400 | 0.50 (30 minutes) | 200 |
| Omnibus surveys | 1,200 | 1 | 1,200 | 0.17 (10 minutes) | 204 |
| Total (general public) | 8,704 | | | | 1,860 |
| Physician focus group interviews | 144 | 1 | 144 | 1.50 hours | 216 |
| Total (physician) | 144 | | | | 216 |
| Total (overall) | 8,848 | | | | 2,076 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: December 11, 2013.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2013–30149 Filed 12–18–13; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2013–N–0001]**

### Food and Drug Administration/ American Academy of Ophthalmology Workshop on Developing Novel Endpoints for Premium Intraocular Lenses; Public Workshop

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

The Food and Drug Administration (FDA) is announcing the following public workshop entitled ''FDA/ American Academy of Ophthalmology (AAO) Workshop on Developing Novel Endpoints for Premium Intraocular Lenses.'' The main topic of this workshop is the current challenges in the assessment of innovative intraocular lens (IOL) designs with a focus on endpoint methodologies used in evaluating IOL safety and effectiveness. Experts in subjects ranging from patient reported outcomes to objective measures of accommodation will give talks on the latest developments in the field. Participants will then engage in in-depth discussions of the pros and cons of various methods used to assess premium IOLs, and work to devise a plan to further promote innovation in this device area. The primary goal of the workshop is to improve the regulatory science for evaluating premium IOLs, which in turn may enhance the efficiency with which safe and effective premium IOLs get to the market. This public workshop is being rescheduled due to the government shutdown.

*Date and Time:* The public workshop will be held on March 28, 2014, from 8:30 a.m. to 5:30 p.m. Materials may be picked up starting at 7:30 a.m.

*Location:* The public workshop will be held at FDA's White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (rm. 1503), Silver Spring, MD 20993. Entrance for the public workshop participants (non-FDA employees) is through Building 1 where routine security check procedures will be performed. For parking and security information, please refer to *http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.*

*Contact:* Michelle Tarver, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–5620, FAX: 301–847–8126, email: *michelle.tarver@fda.hhs.gov.*

*Registration:* AAO will charge a registration fee to cover its share of the expenses associated with the workshop. The registration fee is $250 for Academy members and $400 for non-members. Registration is available on a first-come, first-served basis. Persons interested in attending this public workshop must register online. The deadline for online registration is March 27, 2014, at 5 p.m. EDT. There will be no onsite registration on the day of the public workshop. Early registration is recommended because facilities are limited and, therefore, FDA may limit the number of participants from each organization. To register for the public workshop, please visit the AAO Web site (*http://www.aao.org/meetings/iol_workshop.cfm*). Those interested in attending but unable to access the electronic registration site should fax the *PDF form* on the AAO Web site (*http://www.aao.org/meetings/upload/FDA_iol_workshop_reg.pdf*) to 415–561–8575. Those without Internet access should contact AAO Customer Service to register at 415–561–8540 or 866–561–8558 (toll free). Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone number. If there are any questions with registration, please contact the AAO administrative offices at 415–561–8540. Registrants will receive confirmation after they have been accepted. You will be notified if you are on a waiting list.

This public workshop is being rescheduled due to the government shutdown. It was originally scheduled for October 11, 2013. Those who registered for the original workshop date were contacted by AAO individually and offered either a complete refund or the option to have those monies applied to the rescheduled date registration. Any questions about this process should be addressed to AAO Customer Service at 415–561–8540 or 866–561–8558 (toll free).

Food and beverages will be available for purchase by participants during the workshop breaks.

If you need special accommodations due to a disability, please contact Ms. Susan Monahan at *susan.monahan@fda.hhs.gov* or 301–796–5661 no later than March 14, 2014.

For more information on the workshop, please see FDA's Medical Devices News & Events—Workshops & Conferences calendar at *http://*

*www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm*. (Select this public workshop from the posted events list.)

*Streaming Webcast of the Public Workshop:* The morning session but not the afternoon session of this public workshop will also be Webcast. Persons interested in viewing the Webcast must register online by 5 p.m. EDT, March 14, 2014. Early registration is recommended because Webcast connections are limited. Organizations are requested to register all participants, but to view using one connection per location. Webcast participants will be sent technical system requirements after registration and will be sent connection access information after March 24, 2014. If you have never attended a Connect Pro event before, test your connection at *https://collaboration.fda.gov/common/help/en/support/meeting_test.htm*. To get a quick overview of the Connect Pro program, visit *http://www.adobe.com/go/connectpro_overview*. (FDA has verified the Web site addresses in this document, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

*Transcripts:* Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov*. It may be viewed at the Division of Dockets Management, Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to the Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857. A link to the transcript will also be available approximately 45 days after the public workshop on the Internet at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm*. (Select this public workshop from the posted events list.)

**SUPPLEMENTARY INFORMATION:**

## I. Background

Cataract surgery is the most commonly performed elective procedure in the United States with over 3 million patients being implanted with an IOL. Over the past two decades, IOLs have undergone significant design changes allowing them to correct for a spectrum of visual distances and refractive errors. As IOL technology evolves, some endpoints for the evaluation of the technology are also evolving. Endpoints and strategies for assessing the relative safety and effectiveness of these innovative lens designs are in various stages of development. At this workshop, not only will some of these novel endpoints and the challenges with assessments of these endpoints be identified, but these endpoints also will be prioritized for further discussion, development, and validation. Breakout sessions following the didactic portion of the workshop will allow for more in-depth group discussions of potential approaches to address these challenges.

The workshop seeks to involve industry and academia in addressing the challenges in the development of novel endpoints for premium IOLs. By bringing together all of the relevant stakeholders, which include clinicians, researchers, industry representatives, and regulators, to this workshop, we hope to facilitate the improvement of regulatory science in this rapidly evolving product area.

FDA and AAO recognize the unique opportunity this workshop provides for all stakeholders of the ophthalmic device community and that the knowledge and education provided from this workshop will further strengthen our mission of protecting the public health.

## II. Topics for Discussion at the Public Workshop

Topics to be discussed at the public workshop include, but are not limited to:

- Safety assessments for premium IOLs and how they could differ from those for monofocal IOLs.
- Patient-Reported Outcome (PRO) measures and the need to develop and validate them for assessing the safety and effectiveness of premium IOLs.
- Objective assessments of accommodation and their challenges.
- Subjective assessments of accommodation and Extended Depth of Focus (EDF) and their challenges.

These topics will be presented by experts in the associated area and the afternoon will allow for more in-depth discussions of the given topics in small breakout sessions.

Dated: December 12, 2013.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2013–30148 Filed 12–18–13; 8:45 am]

BILLING CODE 4160–01–P

# DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Office of Inspector General

## Statement of Delegation of Authority

Notice is hereby given that I have delegated to the Inspector General, Office of Inspector General, the authority vested in the Secretary of Health and Human Services under section 1116(e)(1) of the Social Security Act (42 U.S.C. 1316(e)(1)) to conduct reconsiderations of disallowances of any item or class of items for which Federal financial participation is claimed under section 1903 of the Social Security Act (42 U.S.C. 1396b) for the establishment or operation of a Medicaid Fraud Control Unit. This authority may be redelegated to the Principal Deputy Inspector General. This delegation excludes the authority to issue regulations.

This delegation is effective upon date of signature.

Dated: December 12, 2013.

**Kathleen Sebelius,**

*Secretary.*

[FR Doc. 2013–30160 Filed 12–18–13; 8:45 am]

BILLING CODE 4152–01–P

# DEPARTMENT OF HEALTH AND HUMAN SERVICES

## National Institutes of Health

## National Institute of Biomedical Imaging and Bioengineering (NIBIB) Announcement of Requirements and Registration for the 2014 NIBIB Design by Biomedical Undergraduate Teams (DEBUT) Challenge

**Authority:** 15 U.S.C. 3719.

**SUMMARY:** The National Institute of Biomedical Imaging and Bioengineering (NIBIB) DEBUT Challenge is open to teams of undergraduate students working on projects that develop innovative solutions to unmet health and clinical problems. NIBIB's mission is to improve health by leading the development and accelerating the application of biomedical technologies. The goals of the DEBUT Challenge are (1) to provide undergraduate students valuable experiences such as working in teams, identifying unmet clinical needs, and designing, building and debugging solutions for such open-ended problems; (2) to generate novel, innovative tools to improve healthcare, consistent with NIBIB's purpose to support research, training, the dissemination of health information, and other programs with respect to

biomedical imaging and engineering and associated technologies and modalities with biomedical applications; and (3) to highlight and acknowledge the contributions and accomplishments of undergraduate students.

**DATES:** The competition begins December 19, 2013.
Submission Period: January 27, 2014 to May 29, 2014, 11:59 p.m. EDT.
Judging Period: June 10, 2014 to July 25, 2014
Winners announced: August 12, 2014
Award ceremony: October 2014, Biomedical Engineering Society Conference (exact date to be announced at *http://www.nibib.nih.gov/training-careers/undergraduate-graduate/design-biomedical-undergraduate-teams-debut-challenge*.)

**FOR FURTHER INFORMATION CONTACT:** *info@nibib.nih.gov* or (301) 451–4792.

**SUPPLEMENTARY INFORMATION:**

*Subject of Challenge Competition:* The NIBIB DEBUT Challenge solicits design projects that develop innovative solutions to unmet health and clinical problems. Areas of interest for the biomedical engineering projects include, but are not limited to: diagnostics, therapeutics, technologies for underserved populations and low resource settings, point-of-care systems, precision medicine, preventive medicine, and technologies to aid individuals with disabilities.

## Rules

1. Who can win: To be eligible to win a prize under this challenge, an individual on the Student Team must

(a) Be a citizen or permanent resident of the United States; and

(b) Meet all the conditions below for eligibility to compete under this challenge.

2. Who can compete: This is a team challenge. To be eligible to compete in this challenge, an individual must:

(a) Be an undergraduate student enrolled full-time in an undergraduate curriculum during at least one full semester (or quarter if the institution is on a quarter system) of the 2013–2014 academic year;

(b) Have his/her own active Department of Better Technology (DOBT) account that he/she has created at *https://dashboard.dobt.co/sign_in.*

(c) Form or join a ''Student Team'' with at least two other individuals for the purpose of developing an entry for submission to this challenge. Each student on the Student Team must satisfy all the requirements for competing in this challenge. While it is expected that most of the individuals participating in the competition may be students from biomedical engineering departments, interdisciplinary teams including students from other fields are welcome and encouraged;

(d) Acknowledge understanding and acceptance of the DEBUT challenge rules by signing the *NIBIB DEBUT Challenge Certification Form* found at *https://www.nibib.nih.gov/sites/default/files/NIBIB%20DEBUT%20Certification%20Form.pdf.* Each entry must include one NIBIB DEBUT Challenge Certification Form, completed with: the printed names of Student Team members, an indication of whether the team member is either a US citizen or permanent resident (as opposed to a foreign student on a visa), and be signed and dated by each individual member of the Student Team. Entries that do not provide a complete Certification Form will be disqualified from the challenge;

(e) Be 13 years of age or older.

(f) Not be a Federal employee acting within the scope of their employment. Federal employees seeking to participate in this challenge outside the scope of their employment should consult their ethics official prior to developing a submission; and

(g) Comply with all the requirements under this section (Section 2).

3. Foreign students who are studying in the United States on a visa are eligible to be part of the competing Student Teams. However, they will not receive a monetary prize or be reimbursed for costs associated with participation in the award ceremony if they are part of a winning Student Team. See Prize section below for the distribution of prizes. As acknowledgement of their participation, however, the names of foreign students who are part of winning Student Teams will be listed among the winning team members when results are announced and at the award ceremony.

4. By participating in this challenge, each individual agrees to abide by all rules of this challenge and the *Terms of Participation* located at *https://contests.dobt.co/terms_of_participation.*

5. Each entry into this challenge must have been conceived, designed, and implemented by the Student Team. Student Teams participating in capstone design projects are especially encouraged to enter the challenge.

6. Each Student Team may submit only one entry into this challenge through one member of the Student Team appointed as ''Team Captain'' by that Student Team. The Team Captain will carry out all correspondence regarding the Student Team's entry. The Team Captain must be a citizen or permanent resident of the United States.

7. The Team Captain will submit a Student Team's entry on behalf of the Student Team by following the links and instructions at *https://contests.dobt.co/debut2014/* and certify that the entry meets all the challenge rules.

8. Each entry must comply with Section 508 standards that require federal agencies' electronic and information technology be accessible to people with disabilities, *http://www.section508.gov/.*

9. Individuals who are younger than 18 must have their parent or legal guardian complete the *Parental Consent Form* found at *https://www.nibib.nih.gov/sites/default/files/Parental%20Consent%20Form.pdf.*

10. Each entry must be submitted as *a single pdf file* and must include the following:

- Cover letter, on department letterhead, from a faculty member from the Biomedical Engineering, Bioengineering or similar department of the institution in which the Student Team members are enrolled, verifying that the entry was achieved by the named Student Team, that each member of the team was enrolled full-time in an undergraduate curriculum during at least one semester or quarter of the academic year 2013–2014, and describing clearly any contribution from the advisor or any other individual outside the Student Team.
- The *NIBIB DEBUT Challenge Certification Form* (downloadable from *https://www.nibib.nih.gov/sites/default/files/NIBIB%20DEBUT%20Certification%20Form.pdf* completed with the printed names, indication of U.S. citizenship or permanent residency, dates, and signatures of each individual member of the Student Team.
- Completed *Cover Page* (downloadable from *https://www.nibib.nih.gov/sites/default/files/NIBIB%20DEBUT%20Cover%20Page.pdf* listing project title and team member information.
- Project Description (not to exceed 6 pages using Arial font and a font size of at least 11 points) that includes the following 4 sections:

(1) Abstract
(2) Description of clinical need or problem, including background and current methods available
(3) Design, including a discussion of the innovative aspects
(4) Evidence of a working prototype (results/graphics obtained with the designed solution)

The 6-page limit includes any graphics, but excludes the cover page, certification form, parental consent form, and any references. Submissions exceeding 6 pages for the Project Description will not be accepted. An optional 2-minute video displaying the operation of the device/method may be included. However, the 6-page Project Description must be a stand-alone explanation of the project.

• A completed *Parental Consent Form,* accessible at *https://www.nibib.nih.gov/sites/default/files/Parental%20Consent%20Form.pdf,* for each individual on the Student Team who is under the age of 18.

11. NIBIB will claim no rights to intellectual property. Individuals on the Student Team will retain intellectual property ownership as applicable arising from their entry. By participating in this challenge, such individuals grant to NIBIB an irrevocable, paid-up, royalty-free, nonexclusive worldwide license to post, link to, share, and display publicly the entry on the Web, newsletters or pamphlets, and other information products. It is the responsibility of the individuals on the Student Team to obtain any rights necessary to use, disclose, or reproduce any intellectual property owned by third parties and incorporated in the entry for all anticipated uses of the entry.

12. All entries must be submitted by the challenge deadline, May 29, 2014, 11:59 p.m. EDT. Entries must not infringe upon any copyright or any other rights of any third party.

13. By participating in this challenge, each individual agrees to assume any and all risks and waive claims against the Federal Government and its related entities, except in the case of willful misconduct, for any injury, death, damage, or loss of property, revenue, or profits, whether direct, indirect, or consequential, arising from participation in this prize challenge, whether the injury, death, damage, or loss arises through negligence or otherwise.

14. Based on the subject matter of the challenge, the type of work that it will possibly require, as well as an analysis of the likelihood of any claims for death, bodily injury, or property damage, or loss potentially resulting from challenge participation, individuals are not required to obtain liability insurance or demonstrate financial responsibility in order to participate in this challenge.

15. By participating in this challenge, each individual agrees to indemnify the Federal Government against third party claims for damages arising from or related to challenge activities.

16. An individual shall not be deemed ineligible because the individual used Federal facilities or consulted with Federal employees during this challenge if the facilities and employees are made available to all individuals participating in the challenge on an equitable basis.

17. NIBIB reserves the right to cancel, suspend, modify the challenge, and/or not award a prize if no entries are deemed worthy.

*Prize:* The 1st, 2nd, and 3rd place prizes will be $20,000, $15,000, and $10,000, respectively, to be distributed only among the members of the winning Student Team eligible to win a prize in this challenge. The prize will be distributed equally among the prize-eligible Student Team members, i.e., students who are either citizens or permanent residents of the United States. Each prize-eligible member of the winning Student Teams must provide his/her bank information to enable electronic transfer of funds. Six honorable mentions will also be awarded, without an accompanying monetary prize or travel reimbursement.

Winning Student Teams will be honored at the NIBIB DEBUT Award Ceremony during the 2014 Annual Meeting of the Biomedical Engineering Society (BMES) in San Antonio, Texas in October 2014. Updated information on the BMES annual meeting can be found at *http://bmes.org/annualmeeting.* Each winning Student Team will receive, in addition to the prize, up to $2,000 toward the travel and registration costs for the prize-eligible members of the Student Team to attend the award ceremony. While members of a winning Student Team who are neither citizens nor permanent residents of the United States are welcome to attend the award ceremony and their names will be listed among the winners, they cannot be reimbursed for their travel and related expenses.

Travel must comply with National Institutes of Health policy and applicable laws and regulations (*http://www.gsa.gov/portal/content/104790*) for example:

—Air travel must be by coach class, unless an alternative is medically necessary and documented.

—If you choose to drive to the meeting instead of taking a common carrier (airplane, train or bus), you may be reimbursed at 51 cents per mile, not to exceed the cost of common carrier.

—Limousine/taxi reimbursements are provided to and from airports as well as to and from meetings. Receipts are required whenever a fare exceeds $75 per trip.

—Per diem rates include lodging, and meals and incidental expenses (M&IE). Reimbursement for these varies by city. The current allowable room rate and the M&IE for the award ceremony location can be found at *http://www.gsa.gov/portal/category/21287.*

Honorable mention awardees are welcome to attend the award ceremony with funds from other sources; NIBIB will not provide travel reimbursement for Student Teams awarded with Honorable Mention.

*Basis Upon Which Winner Will Be Selected:* The winning entries will be selected based on the following criteria:

• Significance of the problem addressed—Does the entry address an important problem or a critical barrier to progress in clinical care or research?

• Impact on potential users and clinical care—How likely is it that the entry will exert a sustained, powerful influence on the problem and medical field addressed?

• Innovative design (creativity and originality of concept)—Does the entry utilize novel theoretical concepts, approaches or methodologies, or instrumentation?

• Working prototype that implements the design concept and produces targeted results—Has evidence been provided (in the form of results, graphs, photographs, films, etc.) that a working prototype has been achieved?

*Additional Information:* For more information and to submit entries, visit *https://contests.dobt.co/debut2014/.*

The NIBIB prize-approving official will be the Director of NIBIB. Prizes will be paid using electronic funds transfer and may be subject to federal income taxes. NIH will comply with the Internal Revenue Service (IRS) withholding and reporting requirements, where applicable.

Dated: December 13, 2013.

**Belinda Seto,**

*Deputy Director, National Institute of Biomedical Imaging and Bioengineering.*

[FR Doc. 2013–30255 Filed 12–18–13; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Library of Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Literature Selection Technical Review Committee.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The portions of the meeting devoted to the review and evaluation of journals for potential indexing by the National Library of Medicine will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended. Premature disclosure of the titles of the journals as potential titles to be indexed by the National Library of Medicine, the discussions, and the presence of individuals associated with these publications could significantly frustrate the review and evaluation of individual journals.

*Name of Committee:* Literature Selection Technical Review Committee.

*Date:* February 20–21, 2014.

*Open:* February 20, 2014, 8:30 a.m. to 10:45 a.m.

*Agenda:* Administrative.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20894.

*Closed:* February 20, 2014, 10:45 a.m. to 5 p.m.

*Agenda:* To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20894.

*Closed:* February 21, 2014, 8:30 a.m. to 2 p.m.

*Agenda:* To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20894.

*Contact Person:* Joyce Backus, M.S.L.S., Associate Director, Division of Library Operations, National Library of Medicine, 8600 Rockville Pike, Building 38, Room 2W04, Bethesda, MD 20892, 301–496–6921, *backusj@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS).

Dated: November 6, 2013.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–30200 Filed 12–18–13; 8:45 am]

**BILLING CODE 4140–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Library of Medicine; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, National Center for Biotechnology Information.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for review, discussion, and evaluation of individual intramural programs and projects conducted by the National Library of Medicine, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Board of Scientific Counselors, National Center for Biotechnology Information.

*Date:* April 29, 2014.

*Open:* 8:30 a.m. to 12 p.m.

*Agenda:* Program Discussion.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

*Closed:* 12 p.m. to 2 p.m.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

*Open:* 2 p.m. to 3 p.m.

*Agenda:* Program Discussion.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

*Contact Person:* David J. Lipman, MD, Director, National Center of Biotechnology Information, National Library of Medicine, Department of Health and Human Services, Building 38A, Room 8N805, Bethesda, MD 20892, 301–435–5985, *dlipman@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS).

Dated: November 6, 2013.

**Michelle Trout,**

*Program Analyst, Office of the Federal Advisory Committee Policy.*

[FR Doc. 2013–30204 Filed 12–18–13; 8:45 am]

**BILLING CODE 4140–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Library of Medicine; Notice of Meetings

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, Lister Hill Center for Biomedical Communications.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for review, discussion, and evaluation of individual intramural programs and projects conducted by the National Library of Medicine, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Board of Scientific Counselors, Lister Hill National Center for Biomedical Communications.

*Date:* April 10–11, 2014.

*Open:* April 10, 2014, 9 a.m. to 12 p.m.

*Agenda:* Review of research and development programs and preparation of reports of the Lister Hill National Center for Biomedical Communications.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

*Closed:* April 10, 2014, 12 p.m. to 4:30 p.m.

*Agenda:* To review and evaluate personal qualifications, performance, and competence of individual investigators.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

*Closed:* April 11, 2014, 9 a.m. to 10 a.m.

*Agenda:* To review and evaluate personal qualifications, performance, and competence of individual investigators.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

*Contact Person:* Karen Steely, Program Assistant, Lister Hill National Center for Biomedical Communications, National Library of Medicine, Building 38A, Room 7S709, Bethesda, MD 20892, 301–435–3137, *ksteely@mail.nih.gov.*

*Open:* April 11, 2014, 10:00 a.m. to 11:00 a.m.

*Agenda:* Review of research and development programs and preparation of reports of the Lister Hill National Center for Biomedical Communications.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

*Contact Person:* Karen Steely, Program Assistant, Lister Hill National Center for Biomedical Communications, National Library of Medicine, Building 38A, Room 7S709, Bethesda, MD 20892, 301–435–3137, *ksteely@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS).

Dated: November 6, 2013.

**Michelle Trout,**

*Program Analyst, Office of the Federal Advisory Committee Policy.*

[FR Doc. 2013–30201 Filed 12–18–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01).

*Date:* January 6, 2014.

*Time:* 3:00 p.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

*Contact Person:* Gregory P. Jarosik, Ph.D., Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–496–0695, *gjarosik@niaid.nih.gov.*

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Peer Review Meeting.

*Date:* January 13–14, 2014.

*Time:* January 13, 2014, 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

*Time:* January 14, 2014, 8:00 a.m. to 2:00 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Yong Gao, Ph.D., Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, 6700B Rockledge Drive, Room 3127, MSC 7616, Bethesda, MD 20892, 301–443–8115, *gaol2@niaid.nih.gov.*

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Cooperative Centers on Human Immunology (U19).

*Date:* January 13–15, 2014.

*Time:* 8:00 a.m. to 6:00 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:* Louis A. Rosenthal, Ph.D., Scientific Review Officer, Scientific Review Program, DHHS/NIH/NIAID/DEA, 6700B Rockledge Drive, MSC–7616, Bethesda, MD 20892, 301–402–8399.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 12, 2013.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–30129 Filed 12–18–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Partnerships for Biodefense (R01).

*Date:* January 8, 2014.

*Time:* 10:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

*Contact Person:* Robert C. Unfer, Ph.D., Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, 6700–B Rockledge Dr., MSC–7616, Bethesda, MD 20892–7616, 301–496–2550, *robert.unfer@nih.gov.*

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Limited Competition—Multicenter AIDS Cohort Study (MACS)—Center for the Coordination, Analysis, and Management of the MACS (CAMACS) (UM1) and Clinical Research Sites (U01).

*Date:* January 14, 2014.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Nancy Lewis Ernst, Ph.D., Scientific Review Official, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–451–7383, *nancy.ernst@nih.gov*.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Innovation For HIV Vaccine Discovery (R01).

*Date:* January 14, 2014.

*Time:* 9:30 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

*Contact Person:* Sujata Vijh, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–594–0985, *vijhs@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 12, 2013.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–30128 Filed 12–18–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Library of Medicine; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of meetings of the Board of Regents of the National Library of Medicine.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

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 USC, as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, 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:* Board of Regents of the National Library of Medicine; Extramural Programs Subcommittee.

*Date:* February 10, 2014.

*Closed:* 2:30 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Conference Room B, 8600 Rockville Pike, Bethesda, MD 20892.

*Contact Person:* Donald A.B. Lindberg, MD, Director, National Library of Medicine, 8600 Rockville Pike, Bethesda, MD 20892, 301–496–6221, *lindberg@mail.nih.gov.*

*Name of Committee:* Board of Regents of the National Library of Medicine; Subcommittee on Outreach and Public Information.

*Date:* February 11, 2014.

*Open:* 7:45 a.m. to 8:45 a.m.

*Agenda:* To review and discuss outreach activities.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Conference Room B, 8600 Rockville Pike, Bethesda, MD 20892.

*Contact Person:* Donald A.B. Lindberg, MD, Director, National Library of Medicine, 8600 Rockville Pike, Bethesda, MD 20892, 301–496–6221, *lindberg@mail.nih.gov.*

*Name of Committee:* Board of Regents of the National Library of Medicine.

*Date:* February 11–12, 2014.

*Open:* February 11, 2014, 9 a.m. to 4:15 p.m.

*Agenda:* Program Discussion.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

*Closed:* February 11, 2014, 4:15 p.m. to 4:45 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

*Open:* February 12, 2014, 9:00 a.m. to 12:00 p.m.

*Agenda:* Program Discussion.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

*Contact Person:* Donald A.B. Lindberg, MD, Director, National Library of Medicine, 8600 Rockville Pike, Bethesda, MD 20892, 301–496–6221, *lindberg@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *www.nlm.nih.gov/od/bor/bor.html,* where an agenda and any additional information for the meeting will be posted when available. This meeting will be broadcast to the public, and available for viewing at *http://videocast.nih.gov* on February 11–12, 2014.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS).

Dated: November 6, 2013.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–30202 Filed 12–18–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Library of Medicine; 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 meetings.

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 grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, 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:* Biomedical Library and Informatics Review Committee.

*Date:* March 6–7, 2014.

*Time:* March 6, 2014, 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

*Time:* March 7, 2014, 8:00 a.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Contact Person:* Arthur A. Petrosian, Ph.D., Chief Scientific Review Officer, Division of Extramural Programs, National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892–7968, 301–496–4253, *petrosia@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: November 6, 2013.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–30203 Filed 12–18–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney and Diseases; 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 grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; RFA–DK–13–008 USRDS Special Study Centers (U01).

*Date:* December 19, 2013.

*Time:* 1 p.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Ann A Jerkins, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 759, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, 301–594–2242, *jerkinsa@niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: November 6, 2013.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–30197 Filed 12–16–13; 4:15 pm]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute; 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 Heart, Lung, and Blood Institute Special Emphasis Panel; SBIR Phase II Contract Review—Powering Ventricular Assist Devices.

*Date:* January 14, 2014.

*Time:* 1:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* National Institutes of Health, Room 7184, 6701 Rockledge Drive Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* YingYing Li-Smerin, Ph.D., MD Scientific Review Officer, Office of Scientific Review/DERA National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7184, Bethesda, MD 20892–7924, 301–435–0276, *lismerin@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: December 13, 2013.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–30127 Filed 12–18–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOMELAND SECURITY

**[Docket No. DHS–2013–0032]**

### Agency Information Collection Activities: Proposed Collection; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

**AGENCY:** National Protection and Programs Directorate, DHS.

**ACTION:** 60-day notice and request for comments; New Information Collection Request: 1670–NEW.

**SUMMARY:** As part of a Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery, the Department of Homeland Security (DHS), National Protection and Programs Directorate (NPPD), Office of the Chief Information Office (OCIO) has submitted a Generic Information Collection Request (ICR): ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery'' to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act (PRA) of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

**DATES:** Comments are encouraged and will be accepted until February 18, 2014. This process is conducted in accordance with 5 CFR 1320.1.

**ADDRESSES:** Written comments and questions about this Generic Information Collection Request should be forwarded to DHS/NPPD/OCIO, 245 Murray Lane, Mail Stop 0380, Arlington, VA 20598–0380. Emailed requests should go to Evette Maynard-Noel, NPPD's PRA Coordinator at *nppd-prac@hq.dhs.gov.* Written comments should reach the contact person listed no later than February 18, 2014. Comments must be identified by ''DHS–2013–0032'' and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *Email:* Include the docket number in the subject line of the message.

*Instructions:* All submissions received 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.

Comments submitted in response to this notice may be made available to the public through relevant Web sites. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, 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. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public

notwithstanding the inclusion of the routine notice.

**SUPPLEMENTARY INFORMATION:** The proposed information collection activity provides a means to garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. NPPD is planning to submit this collection to OMB for approval.

By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between NPPD and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

The solicitation of feedback will target areas such as: timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on the Directorate's services will be unavailable.

NPPD will only submit a collection for approval under this generic clearance if it meets the following conditions:

1. The collections are voluntary;
2. The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
3. The collections are non-controversial and do not raise issues of concern to other Federal agencies;
4. Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
5. Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
6. Information gathered is intended to be used only internally for general service improvement and program management purposes and is not intended for release outside of the NPPD (if released, NPPD must indicate the qualitative nature of the information);
7. Information gathered will not be used for the purpose of substantially informing influential policy decisions; and
8. Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: the target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

As a general matter, information collections will not result in any new system of records containing personal information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

Comments are invited on:

1. Whether the collection of information is necessary for the proper performance of the functions of NPPD, including whether the information shall have practical utility;
2. The accuracy of the NPPD estimate of the burden of the collection of information;
3. Ways to enhance the quality, utility, and clarity of the information to be collected;
4. Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and
5. Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

OMB is particularly interested in comments that:

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 submissions of responses.

NPPD 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.

**Analysis**

*Agency:* Department of Homeland Security, National Protection and Programs Directorate, Office of the Chief Information Officer.

*Title:* Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

*OMB Number:* 1 670–NEW.

*Frequency of Response:* On occasion.

*Affected Public:* Individuals and Households, Businesses and

Organizations, State, Local or Tribal Government.

*Number of Respondents:* 14080. This estimate is based on a review of past behavior of NPPD with an average of 15 activities expected annual with an average of 939 respondents per activity.

*Estimated Time per Respondent:* 34 minutes.

*Total Burden Hours:* 7920.3 annual burden hours.

*Total Burden Cost (capital/startup):* $0.

*Total Burden Costs (operating/maintain):* $0.

Dated: December 12, 2013.

**Scott Libby,**

*Deputy Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.*

[FR Doc. 2013–30258 Filed 12–18–13; 8:45 am]

BILLING CODE 9110–9P–P

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Agency Information Collection Activities: BP Regulations Pertaining to Customs Brokers

**AGENCY:** U.S. Customs and Border Protection (CBP), Department of Homeland Security.

**ACTION:** 60-day notice and request for comments; extension of an existing collection of information: 1651–0034.

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the CBP Regulations Pertaining to Customs Brokers (19 CFR Part 111). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3507).

**DATES:** Written comments should be received on or before February 18, 2014, to be assured of consideration.

**ADDRESS:** Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

*Title:* CBP Regulations Pertaining to Customs Brokers (19 CFR Part 111).

*OMB Number:* 1651–0034.

*Form Numbers:* CBP Forms 3124 and 3124E.

*Abstract:* The information contained in Part 111 of the CBP regulations governs the licensing and conduct of customs brokers. Specifically, an individual who wishes to take the broker exam must complete CBP Form 3124E, ''Application for Customs Broker License Exam,'' or to apply for a broker license, CBP Form 3124, ''Application for Customs Broker License.'' The procedures to request a local or national broker permit can be found in 19 CFR 111.19, and a triennial report is required under 19 CFR 111.30. This information collected from customs brokers is provided for by 19 U.S.C. 1641. CBP Forms 3124 and 3124E may be found at *http://www.cbp.gov/xp/cgov/toolbox/forms/*. Further information about the customs broker exam and how to apply for it may be found at *http://www.cbp.gov/xp/cgov/trade/trade_programs/broker/broker_exam/*.

*Current Actions:* This submission is being made to extend the expiration date with no change to the burden hours or to this collection of information.

*Type of Review:* Extension (without change).

*Affected Public:* Businesses, Individuals.

**CBP Form 3124E, ''Application for Customs Broker License Exam''**

*Estimated Number of Respondents:* 2,300.

*Total Number of Estimated Annual Responses:* 2,300.

*Estimated Time per Response:* 1 hour.

*Estimated Total Annual Burden Hours:* 2,300.

*Estimated Total Annual Cost to the Public:* $460,000.

**CBP Form 3124, ''Application for Customs Broker License''**

*Estimated Number of Respondents:* 300.

*Total Number of Estimated Annual Responses:* 300.

*Estimated Time per Response:* 1 hour.

*Estimated Total Annual Burden Hours:* 300.

*Estimated Total Annual Cost to the Public:* $6,000.

**Triennial Report (19 CFR 111.30)**

*Estimated Number of Respondents:* 3,833.

*Total Number of Estimated Annual Responses:* 3,833.

*Estimated Time per Response:* .5 hours.

*Estimated Total Annual Burden Hours:* 1,917.

*Estimated Total Annual Cost to the Public:* $383,300.

**National Broker Permit Application (19 CFR 111.19)**

*Estimated Number of Respondents:* 500.

*Total Number of Estimated Annual Responses:* 500.

*Estimated Time per Response:* 1 hour.

*Estimated Total Annual Burden Hours:* 500.

*Estimated Total Annual Cost to the Public:* $112,500.

Dated: December 16, 2013.

**Tracey Denning,**

*Agency Clearance Officer, U.S. Customs and Border Protection.*

[FR Doc. 2013–30220 Filed 12–18–13; 8:45 am]

BILLING CODE 9111–14–P

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Agency Information Collection Activities: Haitian Hemispheric Opportunity Through Partnership Encouragement Act of 2006

**AGENCY:** U.S. Customs and Border Protection (CBP), Department of Homeland Security.

**ACTION:** 60-day notice and request for comments; extension of an existing collection of information: 1651–0129.

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2006 (''Haiti HOPE Act''). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3507).

**DATES:** Written comments should be received on or before February 18, 2014, to be assured of consideration.

**ADDRESSES:** Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

*Title:* Haitian Hemispheric Opportunity Through Partnership Encouragement Act of 2006 (''Haiti Hope Act'').

*OMB Number:* 1651–0129.

*Abstract:* Title V of the Tax Relief and Health Care Act of 2006 amended the Caribbean Basin Economic Recovery Act (CBERA 19 U.S.C. 2701–2707) and authorized the President to extend additional trade benefits to Haiti. This trade program, the Haitian Hemispheric Opportunity Through Partnership Encouragement Act of 2006 (''Haiti HOPE Act''), provides for duty-free treatment for certain apparel articles and certain wire harness automotive components from Haiti.

Those wishing to claim duty-free treatment under this program must prepare a declaration of compliance which identifies and details the costs of the beneficiary components of production and non-beneficiary components of production to show that the 50% value content requirement was satisfied. The information collected under the Haiti Hope Act is provided for in 19 CFR 10.848.

*Current Actions:* This submission is being made to extend the expiration date with no change to the burden hours. There is no change to the information being collected.

*Type of Review:* Extension (without change).

*Affected Public:* Businesses.

*Estimated Number of Respondents:* 12.

*Estimated Number of Annual Responses per Respondent:* 17.

*Estimated Number of Total Annual Responses:* 204.

*Estimated Time per Response:* 20 minutes.

*Estimated Total Annual Burden Hours:* 67.

Dated: December 16, 2013.

**Tracey Denning,**

*Agency Clearance Officer, U.S. Customs and Border Protection.*

[FR Doc. 2013–30221 Filed 12–18–13; 8:45 am]

BILLING CODE 9111–14–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLNML00000 L16100000.DS0000]**

### Notice of Intent To Prepare a Supplement to the Tri-County Draft Resource Management Plan and Environmental Impact Statement, New Mexico

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of intent.

**SUMMARY:** In compliance with the National Environmental Policy Act of 1969 (NEPA), as amended, and the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, the Bureau of Land Management (BLM) Las Cruces District Office, Las Cruces, New Mexico, intends to prepare a Supplement to the Tri-County Draft Resource Management Plan (RMP) and Draft Environmental Impact Statement (EIS), and by this notice is announcing the beginning of the scoping process to solicit public comments and identify issues specific to oil and gas development and lands with wilderness characteristics. When completed, the Tri-County RMP will replace the White Sands RMP (1986) and portions of the Mimbres RMP (1993).

**DATES:** This notice initiates the public scoping process for the Supplemental Draft RMP/EIS. Comments on issues specifically addressing oil and gas development and lands with wilderness characteristics may be submitted in writing until January 21, 2014. The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance through local media, newspapers and the BLM Web site at: *http://www.blm.gov/nm/tricountyrmp*

In order to be included in the Supplemental Draft EIS, all comments must be received prior to the close of the 30-day scoping period or 15 days after the last public meeting, whichever is later. We will provide additional opportunities for public participation upon publication of the Supplemental Draft RMP/EIS.

**ADDRESSES:** You may submit comments on issues and planning criteria related to the Supplemental Draft RMP/EIS by any of the following methods:

- *Web site: http://www.blm.gov/nm/tricountyrmp.*
- *Email: BLM_NM_LCDO_Comments@blm.gov.*
- *Fax:* 575–525–4412.
- *Mail:* BLM, Las Cruces District Office, Attention: Tri-County Comments, 1800 Marquess Street, Las Cruces, NM 88005.

Documents pertinent to this proposal may be examined at the Las Cruces District Office at the above address.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Montoya, RMP/EIS Team Lead, at 575–525–4300 or by email at *BLM_NM_LCDO_Comments@blm.gov.* Please contact Ms. Montoya if you wish to have your name added to our mailing list. 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:** This document provides notice that the BLM New Mexico Las Cruces District Office intends to prepare a Supplement to the Draft RMP/EIS for the Tri-County Planning Area; announces the beginning of the scoping process; and seeks public input on issues and planning criteria. The planning area is located in Sierra, Otero, and Doña Ana Counties, New Mexico, and encompasses about 9.3 million acres of land which includes 2.82 million Federal surface acres and 3.98 million acres of Federal mineral estate (subsurface) managed by the BLM Las Cruces District Office. The scope of the Supplemental Draft RMP/EIS is limited to oil and gas development and lands with wilderness characteristics. Other issues involved in managing this planning area have previously been addressed in the Tri-County Draft RMP/EIS published in April 2013. The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the planning process. Preliminary issues for the Supplemental Draft RMP/EIS have been identified by BLM personnel; Federal, State, and local agencies; and other stakeholders. The issues include: Oil and gas development within the Tri-County Planning Area, directional drilling and hydraulic fracturing applications, air quality impacts, impacts to water quality and quantity, habitat fragmentation, and determining how lands with wilderness characteristics will be managed.

The Supplemental Draft RMP/EIS will make allocations for fluid minerals as either open to oil and gas leasing, closed to leasing, or open to leasing with major or moderate constraints, as required by BLM land use planning policy; and will develop objectives, stipulations, and best management practices in areas open to leasing. The Supplemental Draft RMP/EIS will also determine the potential for fluid mineral leasing in the planning area, and will analyze likely development scenarios and varying mitigation methods and levels for areas with moderate or high potential for fluid minerals. The Tri-County Supplemental Draft RMP/EIS will consider a reasonable range of alternatives in fluid mineral leasing and may contain re-evaluations of lands with wilderness characteristics inventory and management decisions in accordance with regulations at 43 CFR part 1610 and 40 CFR part 1500. The preliminary planning criteria that have been identified state that the Tri-County Supplemental Draft RMP/EIS process will:

1. Comply with NEPA, FLPMA, the Transfer Act, and all other applicable laws, regulations, and policies;
2. Contain decisions that only apply to public land and the mineral estate managed by the BLM;
3. Follow the BLM Land Use Planning Handbook H–1601–1 and the BLM NEPA Handbook H–1790–1;
4. Include broad-based public participation;
5. Consider reasonable alternatives in accordance with regulations at 43 CFR part 1610 and 40 CFR part 1500;
6. Consider the identification and management of lands with wilderness characteristics;
7. Include coordination with State, local, and tribal governments to ensure that the BLM considers provisions of pertinent plans, seeks to resolve any inconsistencies among State, local and tribal plans, and provides ample opportunities for State, local and tribal governments to comment on the development of the Supplemental Draft;
8. Use Geographic Information Systems and incorporate geospatial data to the extent practicable and Federal Geographic Data Committee standards and other applicable BLM data standards will be followed;
9. Rely on available inventories of the lands and resources as well as data gathered during the planning process;
10. Incorporate and observe the principles of multiple-use and sustained yield;
11. Recognize valid existing rights;
12. Use analysis in the RMP Amendment/EIS for Fluid Minerals Leasing and Development in Sierra and Otero Counties EIS (BLM 2003) to the extent possible and practicable.

Parties interested in leasing and developing Federal coal in the planning area should provide coal resource data for their area(s) of interest. Specifically, information is requested on the location, quality, and quantity of Federal coal with development potential, and on surface resource values related to the 20 coal unsuitability criteria described in 43 CFR part 3461. This information will be used for any necessary updating of coal screening determinations in the planning area. The coal screening process is described in 43 CFR 3420.1–4. Proprietary data marked as confidential may be submitted in response to this call for coal information. Submit all proprietary information submissions to the address listed above. The BLM will treat submissions marked as ''Confidential'' in accordance with applicable laws and regulations governing the confidentiality of such information.

You may submit comments on issues and planning criteria in writing to the BLM at any public scoping meeting, or you may submit them to the BLM using one of the methods listed in the **ADDRESSES** section above. To be most helpful, you should submit comments by the close of the 30-day scoping period or within 15 days after the last public meeting, whichever is later. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. The BLM will evaluate identified issues to be addressed in the plan, and will place them into one of three categories:

1. Issues to be resolved in the plan;
2. Issues to be resolved through policy or administrative action; or
3. Issues beyond the scope of this plan.

The BLM will provide an explanation in the Supplement to the Draft RMP/EIS as to why an issue was placed in category two or three. The public is also encouraged to help identify any management questions and concerns that should be addressed in the plan.

The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns.

The BLM will use the NEPA public participation requirements to assist the agency in satisfying the public involvement requirements under Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. 470(f)) pursuant to 36 CFR 800.2(d)(3).

The information about historic and cultural resources within the area potentially affected by the proposed action will assist the BLM in identifying and evaluating impacts to such resources in the context of both NEPA and Section 106 of the NHPA.

The BLM will consult with Indian tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration. Federal, State, and local

agencies, along with tribes and other stakeholders that may be interested in or affected by the proposed action that the BLM is evaluating, are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate in the development of the environmental analysis as a cooperating agency.

The BLM will use an interdisciplinary approach to develop the plan in order to consider the variety of resource issues and concerns identified. Specialists with expertise in the following disciplines will be involved in the planning process: Minerals and geology, wilderness, range management, outdoor recreation, archaeology, paleontology, wildlife and fisheries, lands and realty, hydrology, soils, sociology and economics.

**Authority:** 40 CFR 1501.7, 40 CFR 1502.9, 43 CFR 1610.2.

**Aden L. Seidlitz,**

*Associate State Director, New Mexico.*

[FR Doc. 2013–30226 Filed 12–18–13; 8:45 am]

**BILLING CODE 4310–FB–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLWYP070000; L14300000.EU0000; WYW–168342]**

### Notice of Realty Action: Non-Competitive (Direct) Sale of Public Land in Sheridan County, WY

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action.

**SUMMARY:** The Bureau of Land Management proposes to sell eight parcels of public land totaling 208.12 acres in Sheridan County, Wyoming, to Farmland Reserve, Inc. (FRI) under the direct sale provisions of the Federal Land Policy and Management Act of 1976 (FLPMA), for not less than the appraised fair market value of $88,450.

**DATES:** Interested parties may submit comments regarding the proposed sale of the lands until February 3, 2014.

**ADDRESSES:** Send written comments concerning this notice to Field Manager, Bureau of Land Management (BLM), Buffalo Field Office, 1425 Fort Street, Buffalo, WY 82834, or by email to *buffalo_wymail@blm.gov.*

**FOR FURTHER INFORMATION CONTACT:** Claire Oliverius, Realty Specialist, BLM, Buffalo Field Office, at the above address or phone 307–684–1178. 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 following described public lands have been examined and found suitable for direct sale under the authority of Section 203 of FLPMA, as amended (43 U.S.C. 1713):

**Sixth Principal Meridian**

T. 56 N., R. 79 W.,
Tract 51 B;
Sec. 17, lot 1;
Sec. 23, lot 1;
Sec. 26, lots 1 and 2;
T. 55 N., R. 80 W.,
Sec. 23, NE1/4SE1/4;
Sec. 24, SW1/4SW1/4;
Sec. 26, NE1/4SW1/4.

The areas described aggregate 208.12 acres in Sheridan County, Wyoming, according to the official plat of the survey of the said land on file with the BLM.

The proposed direct sale is in conformance with the BLM Buffalo Resource Management Plan (RMP) approved on October 4, 1985. The parcels are identified for disposal in the RMP Record of Decision, pages 13 and 14 and Map 5. Additionally, Maintenance Plan Change #20120720 was added to comply with guidelines of the Department of the Interior and the BLM. The Maintenance Plan Change updated the land disposal map and included a text version of all legal descriptions of parcels identified for consideration for disposal. The BLM is offering the parcels by direct sale pursuant to 43 CFR 2711.3–3(a)(4) due to the adjoining land ownership by FRI. All of the parcels are surrounded by FRI lands, lie within its fenced boundaries, and lack public access. The parcels are not needed for any other Federal purpose and have become difficult and uneconomical to manage. The regulations at 43 CFR 2711.3–3(a) permit the BLM to make direct sales of public lands when a competitive sale is not appropriate and the public interest would be best served by a direct sale.

Conveyance of the identified public lands will be subject to valid existing rights and encumbrances of record, including but not limited to, rights-of-way for roads and public utilities. All minerals will be reserved to the United States. In addition to this Notice of Realty Action (NORA), notice of this sale will also be published once a week for 3 weeks in the *Sheridan Daily Press.* Upon publication of this NORA, and until completion of the sale, the BLM is no longer accepting land use applications affecting the identified public lands, except applications for the amendment of previously filed right-of-way applications or existing authorizations to increase the term of the grants in accordance with 43 CFR 2807.15 and 2886.15.

The public lands will not be offered for sale until February 18, 2014, at the appraised fair market value. The patent, if issued, will be subject to the following reservations:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945); and

2. All minerals, together with the right to prospect for, mine, and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

The patent will be subject to all valid existing rights documented on the official public land records at the time of patent issuance. Interested parties may submit written comments to the BLM, Buffalo Field Manager at the address above. Comments, including names and street addresses of respondents, will be available for public review at the BLM, Buffalo Field Office during regular business hours. 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 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.

Any comments will be reviewed by the Wyoming State Director who may sustain, vacate, or modify this realty action and issue a final determination. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

**Authority:** 43 CFR 2711.

Dated: September 26, 2013.

**Mary Jo Rugwell,**

*Associate State Director.*

[FR Doc. 2013–30223 Filed 12–18–13; 8:45 am]

**BILLING CODE 4310–22–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLWYP070000; L14300000.EU0000; WYW–168374]**

### Notice of Realty Action: Non-Competitive (Direct) Sale of Public Land in Campbell County, WY

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action.

**SUMMARY:** The Bureau of Land Management proposes to sell on a non-competitive basis a parcel of public land totaling 4.15 acres in Campbell County, Wyoming, to the Craig G. and Peggy S. Means Revocable Trust under the provisions of the Federal Land Policy and Management Act of 1976 (FLPMA), for not less than the appraised fair market value of $1,765.

**DATES:** Interested parties may submit comments regarding the proposed sale of the lands until February 3, 2014.

**ADDRESSES:** Send written comments concerning this notice to Field Manager, Bureau of Land Management (BLM), Buffalo Field Office, 1425 Fort Street, Buffalo, WY 82834, or by email to *buffalo_wymail@blm.gov.*

**FOR FURTHER INFORMATION CONTACT:** Claire Oliverius, Realty Specialist, BLM, Buffalo Field Office, at the above address or phone 307–684–1178. 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 following described public land has been examined and found suitable for direct sale under the authority of Section 203 of FLPMA, as amended, (43 U.S.C. 1713):

**Sixth Principal Meridian**

T. 56 N., R. 73 W.,
Sec. 8, lot 17.

The area described contains 4.15 acres in Campbell County, Wyoming according to the official plat of the survey of the said land, on file with the BLM.

The proposed direct sale is in conformance with the BLM Buffalo Resource Management Plan (RMP) approved on October 4, 1985. The parcel is identified for disposal in the RMP Record of Decision, pages 13 and 14 and Map 5. Additionally, Maintenance Plan Change #20120720 was added to comply with guidelines of the Department of the Interior and the BLM. The Maintenance Plan Change updated the land disposal map and included a text version of all legal descriptions of parcels identified for consideration for disposal. The BLM is offering the parcel by direct sale to resolve inadvertent unauthorized use and occupancy of the land pursuant to 43 CFR 2711.3–3(a)(5). The parcel is not needed for any other Federal purpose and has become difficult and uneconomical to manage. The regulations at 43 CFR 2711.3–3(a) permit the BLM to make direct sales of public lands when a competitive sale is not appropriate and the public interest would be best served by a direct sale.

On February 4, 2013, the BLM published a Notice of Realty Action (NORA) in the **Federal Register** (78 FR 7809) to segregate the parcel from appropriation under the public land laws, including the mining laws, for a period of 2 years from the date of publication. In addition to this NORA, notice of this sale will also be published once a week for 3 weeks in the *Gillette News Record.*

Conveyance of the identified public land will be subject to valid existing rights and encumbrances of record including, but not limited to, rights-of-way for roads and public utilities. All minerals will be reserved to the United States. Upon publication of this NORA and until completion of the sale, the BLM is no longer accepting land use applications affecting the identified public land, except applications for the amendment of previously-filed right-of-way applications or existing authorizations to increase the term of the grants in accordance with 43 CFR 2807.15 and 2886.15.

The public land will not be offered for sale until February 18, 2014. The patent, if issued, will be subject to the following reservations:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945); and

2. All minerals, together with the right to prospect for, mine, and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

The patent will be subject to all valid existing rights documented on the official public land records at the time of patent issuance.

Interested parties may submit written comments to the BLM, Buffalo Field Manager at the address above. Comments, including names and street addresses of respondents, will be available for public review at the BLM, Buffalo Field Office during regular business hours. 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 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. Any comments will be reviewed by the Wyoming State Director who may sustain, vacate, or modify this realty action and issue a final determination. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

**Authority:** 43 CFR part 2711.

**Mary Jo Rugwell,**
*Associate State Director.*

[FR Doc. 2013–30206 Filed 12–18–13; 8:45 am]

BILLING CODE 4310–22–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–SERO–FOPU–13991; PX.P0072916D.OO.1]**

### Record of Decision for the General Management Plan/Wilderness Study, Fort Pulaski National Monument, Georgia

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the National Park Service (NPS) announces the availability of the Record of Decision (ROD) for the General Management Plan/Wilderness Study (GMP/WS) for Fort Pulaski National Monument (national monument). On September 30, 2013, the Regional Director, Southeast Region, approved the ROD for the project.

**FOR FURTHER INFORMATION CONTACT:** Superintendent Melissa Memory, Fort Pulaski National Monument, Box 30757, U.S. Hwy 80 East Savannah GA 31410–0757; telephone (912) 786–5787.

**SUPPLEMENTARY INFORMATION:** The NPS evaluated three alternatives for managing use and development of the national monument in the GMP/WS/FEIS, Alternative A—no action Alternative, and two action Alternatives. The preferred alternative (Alternative B) from the GMP/WS/FEIS

is the alternative selected for implementation. Alternative B emphasizes to a high degree the restoration, preservation, and interpretation of historic landscapes and viewsheds of the site (by selected removal of vegetation) for the purpose of providing visitors a greater understanding of the siege and reduction of Fort Pulaski in 1862. The visitor center parking lot will be removed and the site returned to the approximate landscape condition that existed during the principal period of significance (April 1862). The visitor center parking lot will be relocated to a site near the visitor center but outside the viewshed from the top of the fort. The relocated parking lot will be just as near to the visitor center and just as accessible as the current one. The national monument proposes to construct a visitor center annex designed for park visitors, school groups, and staff. This structure will be designed to be technologically current and environmentally friendly and sustainable. In addition to having telecommunications network capabilities, it will provide connections for computers, technical, and audio/visual equipment. This, in addition to the space itself, will make the building ideal for both educational and interpretive programs, lectures, public presentations, staff meetings, staff training, and video conferencing. As part of the general management plan process, the National Park Service conducted a wilderness eligibility assessment to determine whether any lands at Fort Pulaski National Monument are eligible for inclusion in the national wilderness preservation system. This assessment identified approximately 4,500 acres of eligible land within the monument boundary. Under the preferred alternative, all lands identified as eligible in the wilderness eligibility assessment are proposed for designation as wilderness, except for those lands within 100 feet of the edge of the right-of-way of U.S. Highway 80. If finalized and approved by Congress, this proposal will result in approximately 4,500 acres of salt marsh receiving permanent protection as wilderness.

The selected action will provide a comprehensive monument-wide approach to resource and visitor use management. Specific management zones detailing acceptable resource conditions, visitor experience, use levels, appropriate activities and development will be applied to monument lands consistent with this concept. The selected action will continue most current cultural and natural resource management and preservation activities as well as visitor programs and opportunities. The GMP will guide the management of the monument over the next 20+ years.

The responsible official for this FEIS/GMP is the Regional Director, NPS Southeast Region, 100 Alabama Street SW., 1924 Building, Atlanta, Georgia 30303.

Dated: November 18, 2013.

**Sherri L. Fields,**

*Deputy Regional Director, Southeast Region.*

[FR Doc. 2013–30257 Filed 12–18–13; 8:45 am]

**BILLING CODE 4310–JD–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–991 (Second Review)]**

## Silicon Metal From Russia; Scheduling of a Full Five-Year Review Concerning the Antidumping Duty Order on Silicon Metal From Russia

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice of the scheduling of a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty order on silicon metal from Russia would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. 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 through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

**DATES:** *Effective Date:* December 11, 2013.

**FOR FURTHER INFORMATION CONTACT:** Michele Breaux (202–205–2781), 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 September 6, 2013, the Commission determined that responses to its notice of institution of the subject five-year review were such that a full review pursuant to section 751(c)(5) of the Act should proceed (78 FR 61384, October 3, 2013). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

*Participation in the review and public service list.*—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in this review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the review need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.*—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this review available to authorized applicants under the APO issued in the review, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the review. A party granted access to BPI following publication of the Commission's notice of institution of the review need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Staff report.*—The prehearing staff report in the review will be placed in the nonpublic record on March 21, 2014, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

*Hearing.*—The Commission will hold a hearing in connection with the review

beginning at 9:30 a.m. on April 10, 2014 at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before April 3, 2014. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on April 7, 2014 at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

*Written submissions.*—Each party to the review may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is April 1, 2014. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is April 21, 2014. In addition, any person who has not entered an appearance as a party to the review may submit a written statement of information pertinent to the subject of the review on or before April 21, 2014. On May 16, 2014 the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before May 20, 2014, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on E-Filing,* available on the Commission's Web site at *http://edis.usitc.gov*, elaborates upon the Commission's rules with respect to electronic filing.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's 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.

**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.

By order of the Commission.

Issued: December 13, 2013.

**Lisa R. Barton,**

*Acting Secretary to the Commission.*

[FR Doc. 2013–30157 Filed 12–18–13; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 701–TA–490 and 731–TA–1204 (Final)]**

## Hardwood Plywood From China; Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to sections 705(b) and 735(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) and (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports of hardwood plywood from China provided for in subheading(s) 4412.10; 4412.31; 4412.32; 4412.39; 4412.94; and 4412.99 of the Harmonized Tariff Schedule of the United States, that the U.S. Department of Commerce has determined are subsidized and sold in the United States at less than fair value (''LTFV'').[2]

### Background

The Commission instituted these investigations effective September 27, 2012, following receipt of a petition filed with the Commission and Commerce by Columbia Forest Products, Greensboro, NC; Commonwealth Plywood Co., Ltd., Whitehall, NY; Murphy Plywood, Eugene, OR; Roseburg Forest Products Co., Roseburg, OR; States Industries LLC, Eugene, OR; and Timber Products Company, Springfield, OR combined as The Coalition for Fair Trade of Hardwood Plywood. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of hardwood plywood from China were subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)) and dumped within the meaning of 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on June 19, 2013 (78 FR 36791). The hearing was held in Washington, DC, on September 19, 2013, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on November 25, 2013. The views of the Commission are contained in USITC Publication 4434 (November 2013), entitled *Hardwood Plywood From China: Investigation Nos. 701–TA–490 and 731–TA–1204 (Final).*

Issued: December 13, 2013.

By order of the Commission.

**Lisa R. Barton,**

*Acting Secretary to the Commission.*

[FR Doc. 2013–30156 Filed 12–18–13; 8:45 am]

**BILLING CODE 7020–02–P**

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Chairman Irving A. Williamson and Commissioners Shara L. Aranoff, Dean A. Pinkert, David S. Johanson, and Meredith M. Broadbent voted in the negative. Commissioner F. Scott Kieff did not participate in these investigations.

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 701–TA–509 and 731–TA–1244 (Preliminary)]**

## 1,1,1,2-Tetrafluoroethane From China; Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to sections 703(a) and 733(a) of the Tariff

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from China of 1,1,1,2-Tetrafluoroethane, provided for in subheading 2903.39.20 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (''LTFV''), and that are allegedly subsidized by the Government of China.

**Commencement of Final Phase Investigations**

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under sections 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

**Background**

On October 22, 2013, a petition was filed with the Commission and Commerce by Mexichem Fluor Inc., St. Gabriel, LA, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV and subsidized imports of 1,1,1,2-Tetrafluoroethane from China. Accordingly, effective October 22, 2013, the Commission instituted countervailing duty investigation No. 701–TA–509 and antidumping duty investigation No. 731–TA–1244 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of October 28, 2013 (78 FR 64243). The conference was held in Washington, DC, on November 12, 2013, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on December 13, 2013. The views of the Commission are contained in USITC Publication 4444 (December 2013), entitled *1,1,1,2-Tetrafluoroethane from China, Investigation Nos. 701–TA–509 and 731–TA–1244 (Preliminary).*

Dated: December 13, 2013.

By order of the Commission.

**Lisa R. Barton,**

*Acting Secretary to the Commission.*

[FR Doc. 2013–30159 Filed 12–18–13; 8:45 am]

**BILLING CODE 7020–02–P**

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## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–890]**

## Certain Sleep-Disordered Breathing Treatment Systems and Components Thereof; Commission Determination Not To Review an Initial Determination Granting an Unopposed Motion of Complainants Resmed Corp., Resmed Inc., and Resmed Ltd. To Amend the Complaint

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 4) of the presiding administrative law judge granting an unopposed motion of complainants Resmed Corp., Resmed Inc., and Resmed Ltd. to amend the complaint in the above-captioned investigation.

**FOR FURTHER INFORMATION CONTACT:** James A. Worth, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3065. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on Friday, August 23, 2013, based on a complaint filed on July 19, 2013, on behalf of ResMed Corp. of San Diego, California; ResMed Inc. of San Diego, California; and ResMed Ltd. of Bella Vista, Australia (collectively, ''Complainants''). 78 FR 52563 (August 23, 2013). The complaint alleged violations of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the sale for importation, importation, or sale within the United States after importation of certain sleep-disordered breathing treatment systems and components thereof by reason of infringement of one or more of claims 32–37, 53, 79, 80, and 88 of U.S. Patent No. 7,997,267; claims 1–7 of U.S. Patent No. 7,614,398; claim 1 of U.S. Patent No. 7,938,116; claims 30, 37, and 38 of U.S. Patent No. 7,341,060; claims 1, 3, 5, 11, 28, 30, 31, and 56 of U.S. Patent No. 8,312,883; claims 13, 15, 16, 26–28, 51, 52, and 55 of U.S. Patent No. 7,926,487; claims 1, 3, 6, 7, 9, 29, 32, 35, 40, 42, 45, 50, 51, 56, 59, 89, 92, 94, and 96 of U.S. Patent No. 7,178,527; and claims 19–24, 26, 29–36, and 39–41 of U.S. Patent No. 7,950,392. The Commission's notice of investigation named as respondents BMC Medical Co., Ltd. of Beijing, China; 3B Medical, Inc. of Lake Wales, Florida; and 3B Products, L.L.C. of Lake Wales, Florida (collective, ''the Respondents''). A Commission investigative attorney (''IA'') is also participating in this investigation.

On October 30, 2013, Complainants filed an unopposed motion to amend the Complaint to correct an error in its allegations regarding the domestic industry. The motion stated that neither the Respondents nor the IA opposed the motion to amend. On November 21, 2013, the ALJ issued an ID, finding good cause shown and granting Complainants' motion. There were no petitions for review.

Having considered the ID, the Commission has determined not to review the subject ID.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and § 210.42 of the Commission's Rules

of Practice and Procedure (19 CFR 210.42).

By order of the Commission.

Issued: December 13, 2013.

**Lisa R. Barton,**

*Acting Secretary to the Commission.*

[FR Doc. 2013–30115 Filed 12–18–13; 8:45 am]

BILLING CODE 7020–02–P

## DEPARTMENT OF JUSTICE

### Bureau of Alcohol, Tobacco, Firearms and Explosives

**[OMB Number 1140–0017]**

### Agency Information Collection Activities; Proposed Collection; Comments Requested: Annual Firearms Manufacturing and Exportation Report Under United States Code, Firearms

**ACTION:** 60-Day notice.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until February 18, 2014. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Thomas DiDomenico, Firearms and Explosives Services Division at *AFMERQuestions@atf.gov.*

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Summary of Information Collection**

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Annual Firearms Manufacturing and Exportation Report under 18 U.S.C. Chapter 44, Firearms.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 5300.11. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: Federal Government, State, Local, or Tribal Government.

**Need for Collection**

ATF collects this data for the purpose of witness qualifications, congressional investigations, court decision and disclosure and furnishing information to other Federal agencies.

(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 8,500 respondents will complete a 20 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 2,833 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street NE., Room 3W–1407B, Washington, DC 20530.

Dated: December 13, 2013.

**Jerri Murray,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2013–30153 Filed 12–18–13; 8:45 am]

BILLING CODE 4410–FY–P

## DEPARTMENT OF JUSTICE

### Bureau of Alcohol, Tobacco, Firearms and Explosives

**[OMB Number 1140–0098]**

### Agency Information Collection Activities: Proposed Collection; Comments Requested: Prevent All Cigarette Trafficking (PACT) Act Registration Form

**ACTION:** 60-Day notice.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until February 18, 2014. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Joseph Fox, Branch Chief, Alcohol and Tobacco Enforcement Branch, Bureau of Alcohol, Tobacco, Firearms and Explosives at *Joseph.Fox@atf.gov.*

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Summary of Information Collection**

(1) *Type of information collection:* Extension of a currently approved collection.

(2) *The title of the form/collection:* Prevent All Cigarette Trafficking (PACT) Act Registration Form.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Form Number: ATF F 5070.1. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or For-Profit. Other: None.

**Need for Collection**

The purpose of the information collection is to register delivery sellers of cigarettes and/or smokeless tobacco products with the Attorney General in order to continue to sell and/or advertise these tobacco products. Respondents will register the information on ATF F 5070.1.

(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 3,000 respondents will take 1 hour to complete the form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual total burden hours associated with this information collection is 3,000 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street NE., Room 3W–1407B, Washington, DC 20530.

Dated: December 13, 2013.

**Jerri Murray,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2013–30155 Filed 12–18–13; 8:45 am]

**BILLING CODE 4410–FY–P**

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## DEPARTMENT OF JUSTICE

### Bureau of Alcohol, Tobacco, Firearms and Explosives

**[OMB Number 1140–0028]**

### Agency Information Collection Activities; Proposed Collection; Comments Requested: Inventories, Licensed Explosives Importers, Manufacturers, Dealers, and Permittees

**ACTION:** 60-Day notice.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until February 18, 2014. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Anita Scheddel, Explosives Industry Programs Branch at *eipb-informationcollection@atf.gov.*

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Summary of Information Collection**

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Inventories, Licensed Explosives Importers, Manufacturers, Dealers, and Permittees.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF REC 5400/1. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None.

**Need for Collection**

The records show the explosive material inventories of those persons engaged in various activities within the explosives industry and are used by the government as initial figures from which an audit trail can be developed during the course of a compliance inspection or criminal investigation. Licensees and permittees shall keep records on the business premises for five years from the date a transaction occurs or until discontinuance of business or operations by licensees or permittees.

(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 10,466 respondents will take 2 hours to complete the records.

(6) An estimate of the total public burden (in hours) associated with the collection: There are an estimated 20,932 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street NE., Room 3W–1407B, Washington, DC 20530.

Dated: December 13, 2013.

**Jerri Murray,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2013–30154 Filed 12–18–13; 8:45 am]

**BILLING CODE 4410–FY–P**

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## DEPARTMENT OF JUSTICE

### Office of Justice Programs

**[OJP (NIJ) Docket No. 1640]**

### Contraband Screening for Criminal Justice Applications

**AGENCY:** National Institute of Justice, JPO, DOJ.

**ACTION:** Notice of request for information.

**SUMMARY:** The National Institute of Justice (NIJ) is soliciting information on commercially available person screening portals or detectors for use by criminal justice and law enforcement for the detection of contraband. Screening technology is widely used by criminal justice practitioners (in particular, correctional facilities) to improve the safety and security of staff, visitors,

inmates, and suspects. Technologies that can detect non-metallic objects and/or items concealed within body cavities are the primary focus of this Request for Information (RFI), but information on traditional metal detectors will also be accepted. The NIJ Sensor, Surveillance and Biometric Technologies Center of Excellence (SSBT CoE) intends to produce and publish a market survey report on contraband screening technologies to inform the criminal justice community.

*Information Sought:* The NIJ SSBT CoE seeks input to inform the planning and preparation of an upcoming Contraband Screening Technology Report. Vendors who respond to this request for information are invited to provide general comments with regard to this report for the SSBT CoE to consider, including which categories are appropriate for product comparison. Vendors are also invited to provide suggestions for product or technology content related to contraband screening for consideration for inclusion in the report. Content related to screening on non-metallic objects and/or items concealed within body cavities is encouraged. The NIJ SSBT CoE intends to include, at minimum, the following categories of information for each contraband screening system/device:

1. Model Number and Name of the screening system/device.
2. Technology used by the system/device for detection (e.g., transmission x-ray, active millimeter wave).
3. Size Class of the system/device: Fixed, Portable, or Handheld.
4. Physical Dimensions of the system/device.
5. Weight of the system/device.
6. Whether the system/device Detects Metal objects.
a. If YES, whether there are any types of metals that are NOT detected by the system.
7. Whether the system/device Detects Non-Metal objects.
a. If YES, whether any of the following can be detected by the system/device: Liquids (in a container or bag), Gels (in a container or bag), Plastic, Wood, Ceramic, Powder (in a small packet), and/or Paper (e.g., folded currency).
8. Whether the system/device can detect objects Concealed within Body Cavities.
a. If YES, whether any screening limitations exist or if all body cavities are covered by the system/device.
9. For object materials detected by the system/device (Question #6–7), the minimum Detected Size of objects on a person and concealed within body cavities.
10. Scan Rate of the system/device.
11. Total Inspection Time per individual screened with the system/device (i.e. Throughput).
12. Penetration Depth of the system/device's scan when used on a clothed person.
13. Whether the system/device scan penetrates concealed Body Armor. If so, what classifications or types of armor can be imaged through.
14. Spatial Resolution of the system/device scan with respect to concealed object dimensions/features (indicate Not Applicable for a system/device that only provides a detection alarm and no image).
15. When scanning a person, the Information View displayed to the operator—Alarm Only, Body Location Alarm, Anomaly Image, Body Region Image, or Full Body Image.
16. Whether the system/device includes any Privacy safeguards or features (e.g., remote viewing, body masking).
17. Image Visualization Time of the system/device—Alarm Only, Real-Time Dynamic Imaging, Delayed Dynamic Imaging, or Static Imaging.
18. Data Management provided for images and alarms, with respect to saving, archiving, retrieving, and printing subject scan information.
19. Power requirements of the system/device.
20. Regulatory & Compliance Safety requirements and/or standards that the system/device adheres to.
21. Warranty that comes standard with the system/device.
22. Manufacturer Suggested Retail Price (MSRP).
23. Extended Maintenance plans available.
24. Cost(s) of any Service Contracts.
25. Other information or notes that are relevant to the system/device.

If a vendor wishes to submit information on screening technology or product(s), the CoE would prefer that a separate set of responses be submitted for each screening device/portal for which information is being provided. Only products that are commercially available for general purchase in the United States as of January 21, 2014 will be considered for inclusion in the report. It is recommended that the responses follow the information numbering included above for ease of reference.

**DATES:** Responses to this request will be accepted through 11:59 p.m. Eastern Time on January 21, 2014.

**ADDRESSES:** Responses to this request may be submitted electronically in the body of or as an attachment to an email sent to *ssbtcoe@mantech.com* with the recommended subject line ''Contraband Screening **Federal Register** Response''. Questions and responses may also be sent by mail (please allow additional time for processing) to the address: NLECTC Sensor, Surveillance and Biometric Technologies Center of Excellence, ManTech International Corporation, ATTN: Contraband Screening **Federal Register** Response, 1000 Technology Dr. Ste 2310, Fairmont, WV 26554.

**FOR FURTHER INFORMATION CONTACT:** For more information on this request for information contact Lars Ericson (SSBT CoE) at (304) 368–4216 or *lars.ericson@mantech.com*. For more information on the NIJ SSBT CoE, visit *https://www.justnet.org/our_centers/COEs/sensor-tce.html* or contact Mark Greene (NIJ Office of Science and Technology) at (202) 307–3384 or *mark.greene2@usdoj.gov*. Please note that these are not toll-free telephone numbers.

**Gregory K. Ridgeway,**

*Acting Director, National Institute of Justice.*

[FR Doc. 2013–30241 Filed 12–18–13; 8:45 am]

BILLING CODE 4410–18–P

## DEPARTMENT OF JUSTICE

### Office of Justice Programs

**[OJP (NIJ) Docket No. 1638]**

### Body-Worn Cameras for Criminal Justice Applications

**AGENCY:** National Institute of Justice, DOJ.

**ACTION:** Notice of request for information.

**SUMMARY:** The National Institute of Justice (NIJ) is soliciting information on commercially available body-worn cameras (BWCs) marketed for use by criminal justice and law enforcement agencies. These products are also sometimes called officer-worn or wearable cameras. The use of BWCs by criminal justice practitioners (e.g., patrol, corrections, SWAT and other tactical responders) offers potential advantages in keeping officers safe, enabling situational awareness, improving community relations and accountability, and providing evidence for trial. The NIJ Sensor, Surveillance and Biometric Technologies Center of Excellence (SSBT CoE) intends to update and revise the 2011 market survey reference, *Body Worn Camera Information Sheet* (*http://goo.gl/rSWrcV*).

*Information Sought:* The NIJ SSBJ CoE seeks input on its Body Worn Camera

Information Sheet, which the CoE intends to update. Vendors who respond to this request for information are invited to provide general comments with regard to the BWC Information Sheet for the SSBT CoE to consider, including which categories of information are appropriate for comparison. Vendors are also invited to provide suggestions for specific updates or additions to the vendor-provided content on the BWC Information Sheet comparison chart (available at *http://goo.gl/rSWrcV*). The NIJ SSBJ CoE intends to include, at a minimum, the following categories of information for each BWC model:

1. Model Number and Name of the BWC.
2. Where the BWC is Mounted (e.g., Head, Chest, Glasses, Helmet, Various).
3. Maximum Video Resolution of the BWC (e.g., 640x480, 1080p).
4. Recording Speed of the BWC (e.g., 30 fps).
5. Recording Format of the BWC (e.g., MPEG–4, MOV).
6. Whether the BWC captures Still Photos.
7. Whether the BWC embeds a Time/Date Stamp in the recorded video.
8. The Field of View of the BWC (e.g., 75°, 120°).
9. The Lux Rating of the BWC.
10. Whether the BWC has a Night Mode and in what format (e.g., Low Light, IR Lens, etc.).
11. Whether the BWC has a Playback Screen for in-person video viewing.
12. The Audio Format of the BWC (e.g., MP2, AAC).
13. Whether the BWC contains Video Safeguards that limit access or editing by users.
14. Whether the BWC has a Pre-Event Record feature. (And, if so, the buffered time and whether the recording includes audio.)
15. Whether the BWC possess an Event Marking capability.
16. The Recording Life of the BWC battery.
17. The Standby duration of the BWC battery.
18. The Charge Time of the BWC battery (use N/A for disposable batteries only).
19. The Battery Type used by the BWC and whether it is internal or removable (e.g., Li-Ion, AAA, Proprietary).
20. The onboard memory Storage capacity of the BWC.
21. The Recording Time of the BWC under default resolution settings.
22. Whether the BWC possesses a GPS, and if so whether that information is embedded in recorded video.
23. The physical Dimensions (in inches) of the BWC (camera, control unit, and/or battery).
24. The Weight of the BWC and all accessories worn by a user.
25. Whether the BWC has undergone Environment Testing, and if so what standard it passed.
26. Whether a Warranty comes standard with the BWC unit, and what type.
27. Whether Video Software is available for video management of the BWC recordings, and if so whether it is required to use the BWC.
28. Whether there is a default Police Radio Interface for the BWC.
29. Whether the BWC is Vehicle Mountable for dashboard applications.
30. The Manufacturer Suggested Retail Price (MSRP) for the BWC.
31. Whether the BWC has Wireless capabilities to communicate with a computer or external DVR unit.
32. Any Other information or notes that are relevant to the BWC.

If a vendor wishes to submit information on a BWC model or models, the CoE would prefer that a separate set of responses be submitted for each BWC model for which information is being provided. Only BWC products that are commercially available for general purchase in the United States as of January 21, 2014 will be considered for inclusion in the Information Sheet. It is recommended that the responses follow the information numbering included above for ease of reference.

**DATES:** Responses to this request will be accepted through 11:59 p.m. Eastern Time on January 21, 2014.

**ADDRESSES:** Responses to this request may be submitted electronically in the body of or as an attachment to an email sent to *ssbtcoe@mantech.com* with the recommended subject line ''BWC Federal Register Response''. Questions and responses may also be sent by mail (please allow additional time for processing) to the address: NLECTC Sensor, Surveillance and Biometric Technologies Center of Excellence, ManTech International Corporation, ATTN: BWC Federal Register Response, 1000 Technology Dr. Ste 2310, Fairmont, WV 26554.

**FOR FURTHER INFORMATION CONTACT:** For more information on this request for information contact Lars Ericson (SSBT CoE) at (304) 368–4216 or *lars.ericson@mantech.com*. For more information on the NIJ SSBT CoE, visit *https://www.justnet.org/our_centers/COEs/sensor-tce.html* or contact Mark Greene (NIJ Office of Science and Technology) at (202) 307–3384 or *mark.greene2@usdoj.gov*. Please note that these are not toll-free telephone numbers.

**Gregory K. Ridgeway,**

*Acting Director, National Institute of Justice.*

[FR Doc. 2013–30246 Filed 12–18–13; 8:45 am]

BILLING CODE 4410–18–P

## NATIONAL SCIENCE FOUNDATION

### Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

**AGENCY:** National Science Foundation.

**ACTION:** Notice of Permit Applications Received under the Antarctic Conservation Act of 1978, Public Law 95–541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

**DATES:** Interested parties are invited to submit written data, comments, or views with respect to this permit application by January 21, 2014. This application may be inspected by interested parties at the Permit Office, address below.

**ADDRESSES:** Comments should be addressed to Permit Office, Room 755, Division of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

**FOR FURTHER INFORMATION CONTACT:** Adrian Dahood, ACA Permit Officer, at the above address or *ACApermits@nsf.gov* or (703) 292–7149.

**SUPPLEMENTARY INFORMATION:** The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

### Application Details

**Permit Application: 2014–028**

1. *Applicant:* Ari Friedlaender, Hattfield Marine Science Center, Oregon State University

*Activity for Which Permit Is Requested*

*Take and Import to the USA; The applicants propose to collect skin and blubber biopsy samples of minke, humpback and Arnoux's beaked whales. The applicants would address the following basic hypotheses that require collecting of genetic and blubber samples from biopsies. They will investigate the stock structure of whales that inhabit the nearshore waters of the AP which requires genetic information contained in skin samples. These samples can be processed and compared against voucher samples from breeding populations in the Pacific Ocean to determine the population structure of animals feeding in Antarctic waters. Likewise, the sex of individual whales can be determined from genetic markers from the skin samples. Knowing the ratios of males: females can provide information about the growth and structure of the cetacean communities. In order to understand the diet of different marine mammals and if/how these change spatially or over the course of a season, we can compare the stable isotope signatures in blubber to those of their known prey items. This common analysis is potent and can greatly inform studies on the feeding behavior of whales in the region. The applicants would use standard dart-biopsy methods that have been used for more than 2 decades and are proven to be both humane and appropriate. A small sterilized stainless steel tip would be attached to the end of a customized crossbow bolt that has a flotation stopper engineered on to it. When the dart hits the whale, it penetrates the outermost skin and collects a ~10x5 mm sample of both skin and blubber. These samples are placed in sterilized cryovials and kept in -20C freezers until they are shipped frozen back to our labs for analysis. All samples would be collected by investigators with significant experience in the process.*

*Location*

Antarctic Peninsula between Marguerite Bay and the Gerlache Strait, inshore waters.

*Dates*

January 15, 2014 to December 31 2014.

**Nadene G. Kennedy,**

*Polar Coordination Specialist, Division of Polar Programs.*

[FR Doc. 2013–30210 Filed 12–18–13; 8:45 am]

BILLING CODE 7555–01–P

## POSTAL REGULATORY COMMISSION

**[Docket No. CP2014–12; Order No. 1905]**

## New Postal Product

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recent Postal Service filing concerning a contract with Australia Post for the delivery of inbound Air CP and Express Mail Services (EMS). This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* December 20, 2013.

**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:** Stephen L. Sharfman, 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 December 11, 2013, the Postal Service filed Notice, pursuant to 39 CFR 3015.5, that it has entered into a successor negotiated service agreement (Agreement) with Australia's foreign postal operator, Australia Postal Corporation (Australia Post).[1] The Postal Service seeks to have the inbound portion of the Agreement, which concerns delivery of inbound Air CP [2] and Express Mail Services (EMS) in the United States, included within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 (MC2010–34) product on the competitive product list. Notice at 3.

### II. Contents of Filing

The Postal Service's filing consists of the Notice, financial workpapers, and four attachments.[3] Attachment 1 is a copy of the Agreement. Attachment 2 is the certified statement required by 39 CFR 3015.5(c)(2). Attachment 3 is a copy of Governors' Decision No. 10–3. Attachment 4 is an application for non-public treatment of material.

The Agreement's intended effective date is January 1, 2014. Notice at 3. The Agreement is set to expire two years after the effective date, subject to termination pursuant to contractual terms. *Id.* at 3–4.

The Postal Service states that the Agreement is the successor to the 2012 Australia Post Agreement approved in Order No. 956.[4] It also identifies the 2012 Australia Post Agreement as the baseline agreement for purposes of determining functional equivalence. Notice at 2. It asserts that the Agreement fits within applicable Mail Classification Schedule language included in Governors' Decision No. 10–3. *See id.* at 3, Attachment 3. The Postal Service identifies differences between the Agreement and the 2012 Australia Post Agreement, such as revisions to existing articles, but asserts that these differences do not detract from a finding of functional equivalency.[5] *Id.* at 5–6. In addition, it states that both agreements incorporate the same cost attributes and methodology, thereby making the relevant cost and market characteristics similar, if not the same. *Id.* at 6.

### III. Commission Action

*Notice of establishment of docket.* The Commission establishes Docket No. CP2014–12 for consideration of matters raised by the Notice. The Commission appoints John P. Klingenberg to serve as Public Representative in this docket.

Interested persons may submit comments on whether the Postal Service's filing in the above-captioned docket is consistent with the policies of 39 U.S.C. 3632, 3633, and 3642 and the requirements of 39 CFR parts 3015 and 3020. Comments are due no later than December 20, 2013. The public portions of this filing can be accessed via the Commission's Web site (*http://www.prc.gov*). Information on obtaining

[1] Notice of United States Postal Service of Filing Functionally Equivalent Inbound Competitive Multi-Service Agreement with a Foreign Postal Operator (Australian Postal Corporation), December 11, 2013 (Notice).

[2] "CP" is an abbreviation used to identify or reference international parcel post (from the French phrase *colis postaux,* "postal package").

[3] The financial workpapers and Attachments 1 and 3 were filed in redacted and unredacted versions.

[4] Notice at 2; Docket No. CP2012–1, Order Concerning an Additional Inbound Competitive Multi-Service Agreements With Foreign Postal Operators 1 Negotiated Service Agreement, November 9, 2011 (Order No. 956).

[5] *See, e.g.,* in Article 1, the addition of two new purposes for the Agreement, and in Article 22, the time frame in which the parties will meet to discuss renewal prior to expiration. Notice, Attachment 1 at 1–2, 22.

access to sealed material appears in 39 CFR part 3007.

## IV. Ordering Paragraphs

*It is ordered:*

1. The Commission establishes Docket No. CP2014–12 for consideration of 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 (Public Representative) to represent the interests of the general public in this proceeding.

3. Comments are due no later than December 20, 2013.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

**Ruth Ann Abrams,**

*Acting Secretary.*

[FR Doc. 2013–30151 Filed 12–18–13; 8:45 am]

**BILLING CODE 7710–FW–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 30830; File No. 812–14090]**

## Wells Fargo Funds Trust, et al.; Notice of Application

December 13, 2013.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act, as well as from certain disclosure requirements.

**SUMMARY:** *Summary of Application:* Applicants request an order that would permit them to enter into and materially amend subadvisory agreements with Wholly-Owned Sub-Advisors (as defined below) and non-affiliated sub-advisors without shareholder approval and would grant relief from certain disclosure requirements.

**APPLICANTS:** Wells Fargo Funds Trust, Wells Fargo Master Trust, and Wells Fargo Variable Trust (each, a ''Trust'' and together, the ''Trusts''); and Wells Fargo Funds Management, LLC (''Funds Management'').

**DATES:** *Filing Dates:* The application was filed on November 1, 2012, and amended on April 11, 2013, September 27, 2013, November 13, 2013, and December 12, 2013.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application 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 January 7, 2014, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, 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:** Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants, 525 Market Street, 12th Floor, San Francisco, CA 94105.

**FOR FURTHER INFORMATION CONTACT:** David J. Marcinkus, Senior Counsel, at (202) 551–6882, 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. Each Trust is organized as a Delaware trust and is registered with the Commission as an open-end management investment company under the Act. Each Trust may offer one or more series of shares (each, a ''Series'' and collectively the ''Series'') with its own distinct investment objectives, policies and restrictions.[1] Currently, the Trusts offer 135 Series. Funds Management is a limited liability company organized under the laws of the State of Delaware and is registered with the Commission as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act'').

2. Applicants request an order to permit the Advisor,[2] subject to the approval of the board of trustees of each applicable Trust (each a ''Board''), including a majority of the trustees who are not ''interested persons'' of the Series or the Advisor as defined in section 2(a)(19) of the Act (the ''Independent Trustees''), to, without obtaining shareholder approval: (i) Select Sub-Advisors [3] to manage all or a portion of the assets of a Series and enter into Sub-Advisory Agreements (as defined below) with the Sub-Advisors, and (ii) materially amend Sub-Advisory Agreements with the Sub-Advisors.[4] Applicants request that the relief apply to the named applicants, as well as to any future Series and any other existing or future registered open-end management investment company or series thereof that is advised by the Advisor, uses the multi-manager structure described in the application, and complies with the terms and conditions set forth in the application (each, a ''Subadvised Series'').[5] The

[1] Certain Series of the Wells Fargo Master Trust (the ''Master Trust,'' and each such series of Master Trust, a ''Master Fund'') are held by certain Series of Wells Fargo Funds Trust (''Funds Trust'') in a master-feeder structure pursuant to Section 12(d)(1)(E) of the Act. Such series of Funds Trust as well as any future Series and any other investment company or series thereof that is advised by the Advisor (as defined below) may invest substantially all of their assets in a Master Fund pursuant to Section 12(d)(1)(E) of the Act (each a ''Feeder Fund''). No Feeder Fund will engage any sub-advisors other than through approving the engagement of one or more of the Master Fund's sub-advisors.

[2] The term ''Advisor'' includes (i) Funds Management and (ii) any entity controlling, controlled by or under common control with, Funds Management or its successors that serves as investment adviser to the Series. For purposes of the requested order, ''successor'' is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

[3] A ''Sub-Advisor'' for a Series is (a) an indirect or direct ''wholly-owned subsidiary'' (as such term is defined in the Act) of the Advisor for that Series; (b) a sister company of the Advisor for that Series that is an indirect or direct ''wholly-owned subsidiary'' (as such term is defined in the Act) of the same company that, indirectly or directly, wholly owns the Advisor (each of (a) and (b), a ''Wholly-Owned Sub-Advisor'' and collectively, the ''Wholly-Owned Sub-Advisors''), or (c) not an ''affiliated person'' (as such term is defined in section 2(a)(3) of the Act) of the Series, any Feeder Fund invested in one or more Master Funds, the applicable Trust, or the Advisor, except to the extent that an affiliation arises solely because the Sub-Advisor serves as a sub-advisor to a Series (each, a ''Non-Affiliated Sub-Advisor'').

[4] Shareholder approval will continue to be required for any other sub-advisor changes (not otherwise permitted by rule or other action of the Commission or staff) and material amendments to an existing Sub-Advisory Agreement with any sub-advisor other than a Non-Affiliated Sub-Advisor or Wholly-Owned Sub-Advisor (all such changes referred to as ''Ineligible Sub-Advisor Changes'').

[5] All registered open-end investment companies that currently intend to rely on the requested order are named as applicants. All Series that currently are, or that currently intend to be, Subadvised Series (as defined below) are identified in the application. Any entity that relies on the requested order will do so only in accordance with the terms and conditions contained in the application. If the name of any Subadvised Series contains the name of a Sub-Advisor (as defined below), the name of the Advisor (as defined below) that serves as the primary adviser to the Subadvised Series, or a trademark or trade name that is owned by or

requested relief will not extend to any sub-advisor, other than a Wholly-Owned Sub-Advisor, who is an affiliated person, as defined in section 2(a)(3) of the Act, of the Subadvised Series, of any Feeder Fund, or of the Advisor, other than by reason of serving as a sub-advisor to one or more of the Subadvised Series (''Affiliated Sub-Advisor'').

3. Funds Management serves as the investment adviser to each Series pursuant to an investment advisory agreement with the applicable Trust (each an ''Investment Management Agreement'' and together the ''Investment Management Agreements''). Any other Advisor will be registered with the Commission as an investment adviser under the Advisers Act. The Investment Management Agreement for each existing Series was approved by the Board, including a majority the Independent Trustees, and by the shareholders of that Series in the manner required by sections 15(a) and 15(c) of the Act and rule 18f–2 thereunder. The terms of these Investment Management Agreements comply with section 15(a) of the Act. Each other Investment Management Agreement will comply with section 15(a) of the Act and will be similarly approved.

4. Pursuant to the terms of each Investment Management Agreement, Funds Management, subject to the supervision of the Board, provides continuous investment management of the assets of each Series. The Advisor periodically reviews a Series' investment policies and strategies and, based on the need of a particular Series, may recommend changes to the investment policies and strategies of the Series for consideration by the Board. For its services to each Series under the applicable Investment Management Agreement, the Advisor receives an investment management fee from that Series. Consistent with the terms of each Investment Management Agreement, the Advisor may, subject to the approval of the Board, including a majority of the Independent Trustees, and the shareholders of the applicable Subadvised Series (if required), delegate portfolio management responsibilities of all or a portion of the assets of a Subadvised Series to one or more Sub-Advisors. The Advisor continues to have overall responsibility for the management and investment of the assets of each Subadvised Series, and the Advisor's responsibilities include, for example, recommending the removal or replacement of Sub-Advisors and determining the portion of that Subadvised Series' assets to be managed by any given Sub-Advisor and reallocating those assets as necessary from time to time.

5. Funds Management has entered into sub-advisory agreements with various Sub-Advisors (''Sub-Advisory Agreements'') on behalf of the Subadvised Series. An Advisor may also, in the future, enter into Sub-Advisory Agreements on behalf of other Series. The Sub-Advisory Agreements were approved by the Board, including a majority of the Independent Trustees, and the shareholders of the applicable Subadvised Series in accordance with Sections 15(a) and 15(c) of the Act and Rule 18f–2 thereunder. In addition, the terms of each Sub-Advisory Agreement comply fully with the requirements of Section 15(a) of the Act. The Sub-Advisors, subject to the supervision of the Advisor and oversight of the Board, determine the securities and other instruments to be purchased, sold or entered into by a Subadvised Series' portfolio or a portion thereof, and place orders with brokers or dealers that they select. The Advisor will compensate each Sub-Advisor out of the fee paid to the Advisor under the relevant Investment Management Agreement.

6. Subadvised Series will inform shareholders of the hiring of a new Sub-Advisor pursuant to the following procedures (''Modified Notice and Access Procedures''): (a) Within 90 days after a new Sub-Advisor is hired for any Subadvised Series, that Subadvised Series will send its shareholders [6] either a Multi-manager Notice or a Multi-manager Notice and Multi-manager Information Statement; [7] and (b) the Subadvised Series will make the Multi-manager Information Statement available on the Web site identified in the Multi-manager Notice no later than when the Multi-manager Notice (or Multi-manager Notice and Multi-manager Information Statement) is first sent to shareholders, and will maintain it on that Web site for at least 90 days. Applicants state that, in the circumstances described in the application, a proxy solicitation to approve the appointment of new Sub-Advisors provides no more meaningful information to shareholders than the proposed Multi-manager Information Statement. Applicants also state that each Board would comply with the requirements of sections 15(a) and 15(c) of the Act before entering into or amending Sub-Advisory Agreements.

7. Applicants also request an order under section 6(c) of the Act exempting the Subadvised Series from certain disclosure obligations that may require each Subadvised Series to disclose fees paid by the Advisor to each Sub-Advisor. Applicants seek relief to permit each Subadvised Series to disclose (as a dollar amount and a percentage of the Subadvised Series' net assets): (a) The aggregate fees paid to the Advisor and any Wholly-Owned Sub-Advisors; (b) the aggregate fees paid to Non-Affiliated Sub-Advisors; and (c) the fee paid to each Affiliated Sub-Advisor (collectively, the ''Aggregate Fee Disclosure''). An exemption is requested to permit the Series to include only the Aggregate Fee Disclosure. All other items required by Sections 6–07(2)(a), (b) and (c) of Regulation S–X will be disclosed.

**Applicants' Legal Analysis**

1. Section 15(a) of the Act states, in part, that it is unlawful for any person to act as an investment adviser to a registered investment company ''except pursuant to a written contract, which contract, whether with such registered company or with an investment adviser of such registered company, has been approved by the vote of a majority of the outstanding voting securities of such registered company.'' Rule 18f–2 under the Act provides that each series or class of stock in a series investment company affected by a matter must approve that matter if the Act requires shareholder approval.

2. Form N–1A is the registration statement used by open-end investment companies. Item 19(a)(3) of Form N–1A requires a registered investment company to disclose in its statement of additional information the method of computing the ''advisory fee payable'' by the investment company, including

publicly used to identify that Advisor, will precede the name of the Sub-Advisor.

[6] If the Subadvised Series is a Master Fund, for purposes of the Modified Notice and Access Procedures, ''shareholders'' include both the shareholders of the applicable Master Fund and the shareholders of its Feeder Funds.

[7] A ''Multi-manager Notice'' will be modeled on a Notice of Internet Availability as defined in rule 14a–16 under the Securities Exchange Act of 1934 (''Exchange Act''), and specifically will, among other things: (a) Summarize the relevant information regarding the new Sub-Advisor; (b) inform shareholders that the Multi-manager Information Statement is available on a Web site; (c) provide the Web site address; (d) state the time period during which the Multi-manager Information Statement will remain available on that Web site; (e) provide instructions for accessing and printing the Multi-manager Information Statement; and (f) instruct the shareholder that a paper or email copy of the Multi-manager Information Statement may be obtained, without charge, by contacting the Subadvised Series.

A ''Multi-manager Information Statement'' will meet the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Exchange Act for an information statement. Multi-manager Information Statements will be filed with the Commission via the EDGAR system.

the total dollar amounts that the investment company ''paid to the adviser (aggregated with amounts paid to affiliated advisers, if any), and any advisers who are not affiliated persons of the adviser, under the investment advisory contract for the last three fiscal years.''

3. Rule 20a–1 under the Act requires proxies solicited with respect to a registered investment company to comply with Schedule 14A under the Exchange Act. Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the ''rate of compensation of the investment adviser,'' the ''aggregate amount of the investment adviser's fee,'' a description of the ''terms of the contract to be acted upon,'' and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

4. Regulation S–X sets forth the requirements for financial statements required to be included as part of a registered investment company's registration statement and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b), and (c) of Regulation S–X require a registered investment company to include in its financial statement information about the investment advisory fees.

5. Section 6(c) of the Act provides that the Commission by order upon application may conditionally or unconditionally exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or from any rule thereunder, if 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. Applicants state that their requested relief meets this standard for the reasons discussed below.

6. Applicants assert that the shareholders expect the Advisor, subject to the review and approval of the Board, to select the Sub-Advisors who are in the best position to achieve the Subadvised Series' investment objective. Applicants assert that, from the perspective of the shareholder, the role of the Sub-Advisors is substantially equivalent to the role of the individual portfolio managers employed by an investment adviser to a traditional investment company. Applicants believe that permitting the Advisor to perform the duties for which the shareholders of the Subadvised Series are paying the Advisor—the selection, supervision and evaluation of the Sub-Advisors—without incurring unnecessary delays or expenses is appropriate in the interest of the Subadvised Series' shareholders and will allow such Subadvised Series to operate more efficiently. Applicants state that each Investment Management Agreement will continue to be fully subject to section 15(a) of the Act and rule 18f–2 under the Act and approved by the Board, including a majority of the Independent Trustees, in the manner required by sections 15(a) and 15(c) of the Act. Applicants are not seeking an exemption with respect to the Investment Management Agreements.

7. Applicants assert that disclosure of the individual fees that the Advisor would pay to the Sub-Advisors of Subadvised Series that operate in the multi-manager structure described in the application does not serve any meaningful purpose. Applicants contend that the primary reasons for requiring disclosure of individual fees paid to Sub-Advisors are to inform shareholders of expenses to be charged by a particular Subadvised Series and to enable shareholders to compare the fees to those of other comparable investment companies. Applicants believe that the requested relief satisfies these objectives because the advisory fee paid to the Advisor will be fully disclosed and, therefore, shareholders will know what the Subadvised Series' fees and expenses are and will be able to compare the advisory fees a Subadvised Series is charged to those of other investment companies. Applicants assert that the requested disclosure relief would benefit shareholders of the Subadvised Series because it would improve the Advisor's ability to negotiate the fees paid to Sub-Advisors. Applicants state that if the Advisor is not required to disclose the Sub-Advisors' fees to the public, the Advisor may be able to negotiate rates that are below a Sub-Advisor's ''posted'' amounts. Applicants assert that the relief will also encourage Sub-Advisors to negotiate lower sub-advisory fees with the Advisor if the lower fees are not required to be made public.

8. Applicants submit that the requested relief meets the standards for relief under section 6(c) of the Act. Applicants state that each Subadvised Series will be required to obtain shareholder approval to operate as a ''multiple manager'' fund as described in the application before relying on the requested order. Applicants assert that conditions 6, 10, and 11 are designed to provide the Board with sufficient independence and the resources and information it needs to monitor and address any conflicts of interest. Applicants state that, accordingly, they believe the requested relief 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.

**Applicants' Conditions**

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Subadvised Series may rely on the order requested in the application, the operation of the Subadvised Series in the manner described in the application, including the hiring of Wholly-Owned Sub-Advisors, will be approved by a majority of the Subadvised Series' outstanding voting securities as defined in the Act, which in the case of a Master Fund will include voting instructions provided by shareholders of the Feeder Funds investing in such Master Fund or other voting arrangements that comply with section 12(d)(1)(E)(iii)(aa) of the Act or, in the case of a new Subadvised Series whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the sole initial shareholder before offering the Subadvised Series' shares to the public.

2. The prospectus for each Subadvised Series, and in the case of a Master Fund relying on the requested relief, the prospectus for each Feeder Fund investing in such Master Fund, will disclose the existence, substance and effect of any order granted pursuant to the application. Each Subadvised Series (and any such Feeder Fund) will hold itself out to the public as employing the multi-manager structure described in the application. Each prospectus will prominently disclose that the Advisor has the ultimate responsibility, subject to oversight by the Board, to oversee the Sub-Advisors and recommend their hiring, termination, and replacement.

3. The Advisor will provide general management services to a Subadvised Series, including overall supervisory responsibility for the general management and investment of the Subadvised Series' assets. Subject to review and approval of the Board, the Advisor will (a) set a Subadvised Series' overall investment strategies, (b) evaluate, select, and recommend Sub-Advisors to manage all or a portion of a Subadvised Series' assets, and (c) implement procedures reasonably designed to ensure that Sub-Advisors

comply with a Subadvised Series' investment objective, policies and restrictions. Subject to review by the Board, the Advisor will (a) when appropriate, allocate and reallocate a Subadvised Series' assets among Sub-Advisors; and (b) monitor and evaluate the performance of Sub-Advisors.

4. A Subadvised Series will not make any Ineligible Sub-Advisor Changes without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Subadvised Series, which in the case of a Master Fund will include voting instructions provided by shareholders of the Feeder Fund investing in such Master Fund or other voting arrangements that comply with section 12(d)(1)(E)(iii)(aa) of the Act.

5. Subadvised Series will inform shareholders, and if the Subadvised Series is a Master Fund, shareholders of any Feeder Funds, of the hiring of a new Sub-Advisor within 90 days after the hiring of the new Sub-Advisor pursuant to the Modified Notice and Access Procedures.

6. At all times, at least a majority of the Board will be Independent Trustees, and the selection and nomination of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees.

7. Independent Legal Counsel, as defined in rule 0–1(a)(16) under the Act, will be engaged to represent the Independent Trustees. The selection of such counsel will be within the discretion of the then-existing Independent Trustees.

8. The Advisor will provide the Board, no less frequently than quarterly, with information about the profitability of the Advisor on a per Subadvised Series basis. The information will reflect the impact on profitability of the hiring or termination of any sub-advisor during the applicable quarter.

9. Whenever a sub-advisor is hired or terminated, the Advisor will provide the Board with information showing the expected impact on the profitability of the Advisor.

10. Whenever a sub-advisor change is proposed for a Subadvised Series with an Affiliated Sub-Advisor or a Wholly-Owned Sub-Advisor, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Board minutes, that such change is in the best interests of the Subadvised Series and its shareholders, and if the Subadvised Series is a Master Fund, the best interests of any applicable Feeder Funds and their respective shareholders, and does not involve a conflict of interest from which the Advisor or the Affiliated Sub-Advisor or Wholly-Owned Sub-Advisor derives an inappropriate advantage.

11. No Trustee or officer of the Trust, a Fund or a Feeder Fund, or partner, director, manager or officer of the Advisor, will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person) any interest in a Sub-Advisor except for (a) ownership of interests in the Advisor or any entity, except a Wholly-Owned Sub-Advisor, that controls, is controlled by, or is under common control with the Advisor, or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of any publicly traded company that is either a Sub-Advisor or an entity that controls, is controlled by, or under common control with a Sub-Advisor.

12. Each Subadvised Series and any Feeder Fund that invests in a Subadvised Series that is a Master Fund will disclose the Aggregate Fee Disclosure in its registration statement.

13. In the event the Commission adopts a rule under the Act providing substantially similar relief to that requested in the application, the requested order will expire on the effective date of that rule.

For the Commission, by the Division of Investment Management, under delegated authority.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–30182 Filed 12–18–13; 8:45 am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–71076; File No. SR–NYSEArca–2013–116]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to Listing and Trading of Shares of AdvisorShares International Gold ETF; AdvisorShares Gartman Gold/Yen ETF; AdvisorShares Gartman Gold/British Pound ETF; and AdvisorShares Gartman Gold/Euro ETF Under NYSE Arca Equities Rule 8.600

December 13, 2013

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 29, 2013, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares of the following under NYSE Arca Equities Rule 8.600 (''Managed Fund Shares''): AdvisorShares International Gold ETF; AdvisorShares Gartman Gold/Yen ETF; AdvisorShares Gartman Gold/British Pound ETF; and AdvisorShares Gartman Gold/Euro ETF. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to list and trade shares (the ''Shares'') of the following under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares [4]:

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (the ''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock

Continued

AdvisorShares International Gold ETF (''International Gold ETF'') ; AdvisorShares Gartman Gold/Yen ETF (''Gold/Yen ETF''); AdvisorShares Gartman Gold/British Pound ETF (''Gold/British Pound ETF''); and AdvisorShares Gartman Gold/Euro ETF (''Gold/Euro ETF'') (collectively, the ''Funds''). The Gold/Yen ETF, Gold/British Pound ETF and Gold/Euro ETF are also referred to collectively herein as the ''Gartman Funds''.

The Shares will be offered by AdvisorShares Trust (the ''Trust''), [5] a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.[6] The investment adviser to the Funds will be AdvisorShares Investments, LLC (the ''Adviser''). Treesdale Partners, LLC (''Sub-Adviser'') will be the Funds' sub-adviser. Foreside Fund Services, LLC (the ''Distributor'') will be the principal underwriter and distributor of the Funds' Shares. The Bank of New York Mellon (the ''Administrator'') will serve as the administrator, custodian, transfer agent and fund accounting agent for the Funds.

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio. In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio.[7] Commentary .06 to Rule 8.600 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Equities Rule 5.2(j)(3); however, Commentary .06 in connection with the establishment of a ''fire wall'' between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. Neither the Adviser nor the Sub-Adviser is a broker-dealer or affiliated with a broker-dealer.

In the event (a) the Adviser or Sub-Adviser becomes a registered broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer, or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to a portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

AdvisorShares International Gold ETF

Principal Investments

According to the Registration Statement, the International Gold ETF will be considered a ''fund of funds'' that, under normal circumstances,[8] will seek to achieve its investment objective by primarily taking long positions in other exchange-traded funds (''ETFs'') that offer diversified exposure to the international gold market.[9] The Sub-Adviser will seek, as appropriate, to maintain a balanced allocation of the International Gold ETF's assets in ETFs in which it invests, which ETFs may be both affiliated and unaffiliated. The affiliated ETFs are the Gartman Funds. In addition, the Fund may seek to invest in long positions in exchange-traded notes (''ETNs''), [10] closed-end funds [11] and other exchange-traded products (''ETPs'', and, collectively with ETFs, ETNs and closed-end funds, ''Underlying ETPs'') [12] that offer diversified exposure to the international gold market. Under normal circumstances, the Fund will invest at least 80% of its total assets in such Underlying ETPs.

The Sub-Adviser's gold investment strategy will be an active investment strategy that expresses a long position in gold but diversifies the currencies in which the purchase is financed. The International Gold ETF will seek to

index, fixed income securities index or combination thereof.

[5] The Trust is registered under the 1940 Act. On March 29, 2013, the Trust filed with the Commission an amendment to its registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) (''Securities Act''), and under the 1940 Act relating to the Funds (File Nos. 333– and 811–) (''Registration Statement''). The description of the operation of the Trust and the Funds herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 29291 (May 28, 2010) (File No. 812–13677) (''Exemptive Order'').

[6] The Commission has approved listing and trading on the Exchange of a number of actively managed funds under Rule 8.600. *See, e.g.,* Securities Exchange Act Release Nos. 63076 (October 12, 2010), 75 FR 63874 (October 18, 2010) (SR–NYSEArca–2010–79) (order approving Exchange listing and trading of Cambria Global Tactical ETF); 63802 (January 31, 2011), 76 FR 6503 (February 4, 2011) (SR–NYSEArca–2010–118) (order approving Exchange listing and trading of the SiM Dynamic Allocation Diversified Income ETF and SiM Dynamic Allocation Growth Income ETF); and 65468 (October 3, 2011), 76 FR 62873 (October 11, 2011) (SR–NYSEArca–2011–51) (order approving Exchange listing and trading of TrimTabs Float Shrink ETF).

[7] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and Sub-Adviser and their related personnel will be subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violations, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[8] The term ''under normal circumstances'' includes, but is not limited to, the absence of adverse market, economic, political or other conditions, including extreme volatility or trading halts in the equities markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

[9] For purposes of this filing, ETFs include Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Portfolio Depository Receipts (as described in NYSE Arca Equities Rule 8.100); and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600). The ETFs in which a Fund will invest all will be listed and traded on national securities exchanges. The Funds will invest in the securities of ETFs registered under the 1940 Act consistent with the requirements of Section 12(d)(1) of the 1940 Act, or any rule, regulation or order of the Commission or interpretation thereof. The Funds will only make such investments in conformity with the requirements of Regulation M of the Internal Revenue Code of 1986, as amended (the ''Internal Revenue Code'').

[10] ETNs are securities listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(6) (''Index-Linked Securities''). ETNs are senior, unsecured unsubordinated debt securities issued by an underwriting bank that are designed to provide returns that are linked to a particular benchmark less investor fees. ETNs have a maturity date and, generally, are backed only by the creditworthiness of the issuer.

[11] A closed-end fund is a pooled investment vehicle that is registered under the 1940 Act and whose shares are listed and traded on U.S. national securities exchanges.

[12] For purposes of this filing, Underlying ETPs include Trust Issued Receipts (as described in NYSE Arca Equities Rule 8.200); Commodity-Based Trust Shares (as described in NYSE Arca Equities Rule 8.201); Currency Trust Shares (as described in NYSE Arca Equities Rule 8.202); Commodity Index Trust Shares (as described in NYSE Arca Equities Rule 8.203); and Trust Units (as described in NYSE Arca Equities Rule 8.500).

provide an accessible method by which an investor is able to express a view on the value of gold versus any one of a number of liquid currencies, including the U.S. dollar, the Japanese Yen, the European Euro, and the British Pound.

The Sub-Adviser, in determining the International Gold ETF's investment allocation, will follow a proprietary investment process to assess the relative value of gold versus each of the currencies represented in the Underlying ETPs. In general, if the Sub-Adviser determines that the price of gold versus a particular currency offers an expected return that exceeds that offered by gold versus other currencies, the Underlying ETP that offers that exposure, all things being equal, will receive a larger allocation of the International Gold ETF's assets for investment. While the Sub-Adviser will actively determine the allocation of the International Gold ETF's investments among Underlying ETPs, the value of these investments may change on any day due to market fluctuations, thus altering such allocation.

The Sub-Adviser will also consider the relative price volatility of gold versus each of the currencies represented within an Underlying ETP in making allocation decisions. In general, the higher the volatility of the price of gold versus a particular currency (defined as the standard deviation of historical daily returns), the lower the allocation of capital to that Underlying ETP.

In managing the International Gold ETF, the Sub-Adviser will consider the asset size of the International Gold ETF, as well as liquidity conditions in both the Gartman Funds and Underlying ETP markets, in an effort to ensure best execution and minimize potential market disruption.

AdvisorShares Gartman Gold/Yen ETF

Principal Investments

According to the Registration Statement, the Gold/Yen ETF will seek to provide positive returns by utilizing the Japanese Yen to invest its assets in the gold market. In seeking to achieve the Gold/Yen ETF's investment objective, the Sub-Adviser will invest the Gold/Yen ETF's assets in instruments that provide exposure to the international gold market utilizing the Japanese Yen. This strategy will provide an investment vehicle for investors who believe that the value of the Gold/Yen ETF's investments in gold purchased in Japanese Yen will appreciate. Accordingly, in managing the Gold/Yen ETF, the Sub-Adviser will use the Japanese Yen, obtained synthetically through the sale of either exchange-traded currency futures or ''over-the-counter'' (''OTC'') foreign exchange forward contracts, as the currency in which purchases of gold are made. This ''Gold Financed in Yen'' investment strategy will enable the Sub-Adviser to provide an alternate gold investment vehicle that seeks to reduce U.S. dollar exposure.

The Gold/Yen ETF will seek to achieve its investment objective by investing directly (and not through the Gold/Yen ETF Subsidiary, as described below), under normal circumstances, at least 75% of its assets in cash and cash equivalents, plus ''currency-linked derivatives'' (consisting of exchange-traded Japanese Yen futures traded on the Chicago Mercantile Exchange (''CME''), Japanese Yen forward contracts, and currency (and not gold) swaps), with cash and cash equivalents comprising the majority of the Gold/Yen ETF's assets. Up to 25% of the Gold/Yen ETF's total assets will be invested in the Gold/Yen ETF Subsidiary, as described below. The distribution of the Gold/Yen ETF's investments in these currency-linked derivatives will be at the discretion of the Fund's Sub-Adviser. All of the Gold/Yen ETF's investments in these currency-linked derivatives will be backed by collateral of the Fund's assets, as required, and will be diversified across multiple (generally more than 5) counterparties. In addition, these currency-linked derivatives will be subject to the limits on leverage imposed by the 1940 Act. Through its investment in a wholly-owned and controlled subsidiary organized outside the United States in the Cayman Islands (the ''Gold/Yen ETF Subsidiary''), the Gold/Yen ETF will obtain long exposure to the international gold market. Section 18(f) of the 1940 Act and related Commission guidance limit the amount of leverage an investment company, and, in this case, the Gold/Yen ETF Subsidiary, can obtain.

The Gold/Yen ETF may also invest in Underlying ETPs. The Sub-Adviser will rebalance its positions in the Gold/Yen ETF and in the Gold/Yen ETF Subsidiary periodically as the value of gold relative to the value of the Japanese Yen fluctuates in international markets.

The Gold/Yen ETF may invest directly and indirectly in foreign currencies. The Gold/Yen ETF may conduct foreign currency transactions on a spot (*i.e.,* cash) or forward basis (*i.e.,* by entering into forward contracts to purchase or sell foreign currencies). Currency transactions made on a spot basis are for cash at the spot rate prevailing in the currency exchange market for buying or selling currency. Forward contracts are customized transactions that require a specific amount of a currency to be delivered at a specific exchange rate on a specific date or range of dates in the future and can have substantial price volatility. Forward contracts are generally traded in an interbank market directly between currency traders (usually large commercial banks) and their customers.

The Gold/Yen ETF, and certain Underlying ETPs in which the Gold/Yen ETF invests, may enter into swap agreements, including, but not limited to, total return swaps and index swaps. The Gold/Yen ETF may utilize swap agreements in an attempt to gain exposure to the asset in a market without actually purchasing the asset, or to hedge a position. Any swaps used will be cash collateralized as required.[13]

On a daily basis, the Sub-Adviser will evaluate the gold market to determine whether the exchange-traded markets or the OTC markets provide the Gold/Yen ETF with optimal investment opportunities. As part of its daily evaluation, the Sub-Adviser will utilize information from The Gartman Letter, a daily commentary on the global capital markets, including political, economic, and technical trends from both long-term and short-term perspectives.[14] The Sub-Adviser will carefully consider the liquidity of the investment, the cost of executing the purchase or sale, and the

[13] Each of the Gartman Funds will utilize cleared swaps if available, to the extent practicable and not enter into any swap agreement unless the Adviser believes that the other party to the transaction is creditworthy. The Sub-Adviser will evaluate the creditworthiness of counterparties on an ongoing basis. In addition to information provided by credit agencies, the Sub-Adviser's credit analysts will evaluate each approved counterparty using various methods of analysis, including company visits, earnings updates, the broker-dealer's reputation, past experience with the broker-dealer, market levels for the counterparty's debt and equity, the counterparty's liquidity and its share of market participation.

[14] The Adviser has contracted with Gartman Capital Management, L.C. to provide the investment objectives of the Gartman Funds, to provide data to the Adviser and to permit the use of the Gartman name. Gartman Capital Management, L.C. is an affiliate of The Gartman Letter. The Gartman Letter is written by Dennis Gartman. For the services and license provided to the Gartman Funds, the Adviser will pay Gartman Capital Management, L.C. a fee from its legitimate profits and resources. Gartman Capital Management, L.C. and The Gartman Letter, L.C. will have no involvement in the day-to-day management of the Gartman Funds Gartman Capital Management, LC is neither a broker-dealer nor affiliated with a broker-dealer. In the event Gartman Capital Management, LC becomes a broker-dealer, or becomes newly affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the applicable portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

creditworthiness of the counterparty. Similarly, the Sub-Adviser will evaluate the market for the Japanese Yen to achieve the optimal duration at which to finance gold purchases for the Gold/Yen ETF. The Sub-Adviser will not participate in transactions in Japanese Yen where the maximum duration exceeds ninety days.

In managing the Gold/Yen ETF, the Sub-Adviser will consider the asset size of the Gold/Yen ETF, as well as liquidity conditions in both the gold and currency markets, in an effort to ensure best execution and minimize potential market disruption.

As discussed above, the Sub-Adviser will seek to gain additional exposure to gold through its investment in the Gold/Yen ETF Subsidiary. The Gold/Yen ETF's investment in the Gold/Yen ETF Subsidiary may not exceed 25% of the Gold/Yen ETF's total assets at each quarter end of the Gold/Yen ETF's fiscal year. The purpose of the Gold/Yen ETF's investment in the Gold/Yen ETF Subsidiary will be to provide the Gold/Yen ETF with additional exposure to commodity returns within the limits of the federal tax requirements applicable to investment companies, such as the Gold/Yen ETF. The Gold/Yen ETF Subsidiary's investments in ''commodity-linked derivative instruments'' *(i.e.,* futures, forwards and swaps based on the price of gold) will be subject to limits on leverage imposed by the 1940 Act. Section 18(f) of the 1940 Act and related Commission guidance limit the amount of leverage an investment company, and in this case the Gold/Yen ETF Subsidiary, can obtain. Except as noted, references to the investment strategies and risks of the Gold/Yen ETF include the investment strategies and risks of the Gold/Yen ETF Subsidiary. The Gold/Yen ETF Subsidiary's shares will only be offered to the Gold/Yen ETF and the Gold/Yen ETF will not sell any shares of the Gold/Yen ETF Subsidiary to any other investors.

AdvisorShares Gartman Gold/British Pound ETF

Principal Investments

According to the Registration Statement, the Gold/British Pound ETF will seek to provide positive returns by utilizing the British Pound (GBP) to invest its assets in the gold market. In seeking to achieve the Gold/British Pound ETF's investment objective, the Sub-Adviser will invest the Gold/British Pound ETF's assets in instruments that provide exposure to the international gold market utilizing the British Pound. This strategy will provide an investment vehicle for investors who believe that the value of the Gold/British Pound ETF's investments in gold purchased in British Pounds will appreciate. Accordingly, in managing the Gold/British Pound ETF, the Sub-Adviser will use the British Pound, obtained synthetically through the sale of either exchange-traded currency futures or OTC foreign exchange forward contracts, as the currency in which purchases of gold are made. This ''Gold Financed in British Pounds'' investment strategy will enable the Sub-Adviser to provide an alternate gold investment vehicle that seeks to reduce U.S. dollar exposure.

The Gold/British Pound ETF will seek to achieve its investment objective by investing directly (and not through the Gold/British Pound Subsidiary, as described below), under normal circumstances, at least 75% of its assets in cash and cash equivalents, plus currency-linked derivatives (consisting of exchange-traded British Pound futures principally traded on the CME, British Pound forward contracts, and currency (and not gold) swaps), with cash and cash equivalents comprising the majority of the Gold/British Pound ETF's assets. Up to 25% of the Gold/British Pound ETF's total assets will be invested in the Gold/British Pound ETF Subsidiary, as described below. The distribution of the Gold/British Pound ETF's investments in these currency-linked derivatives will be at the discretion of the Fund's Sub-Adviser. All of the Gold/British Pound ETF's investments in these currency-linked derivatives will be backed by collateral of the Fund's assets, as required, and will be diversified across multiple (generally more than 5) counterparties. In addition, these currency-linked derivatives will be subject to the limits on leverage imposed by the 1940 Act. Through its investment in a wholly owned and controlled subsidiary organized outside the United States in the Cayman Islands (the ''Gold/British Pound ETF Subsidiary'') the Gold/British Pound ETF will obtain long exposure to the international gold market. Section 18(f) of the 1940 Act and related Commission guidance limit the amount of leverage an investment company, and in this case, the Gold/British Pound ETF Subsidiary, can obtain.

The Gold/British Pound ETF may also invest in Underlying ETPs. The Sub-Adviser will rebalance its positions in the Gold/British Pound ETF and in the Gold/British Pound ETF Subsidiary periodically as the value of gold relative to the value of the British Pound fluctuates in international markets.

The Gold/British Pound ETF may invest directly, or indirectly, in foreign currencies. The Gold/British Pound ETF may conduct foreign currency transactions on a spot (*i.e.,* cash) or forward basis (*i.e.,* by entering into forward contracts to purchase or sell foreign currencies). Currency transactions made on a spot basis are for cash at the spot rate prevailing in the currency exchange market for buying or selling currency. Forward contracts are customized transactions that require a specific amount of a currency to be delivered at a specific exchange rate on a specific date or range of dates in the future and can have substantial price volatility. Forward contracts are generally traded in an interbank market directly between currency traders (usually large commercial banks) and their customers.

The Gold/British Pound ETF, and certain Underlying ETPs in which the Gold/British Pound ETF invests, may enter into swap agreements, including, but not limited to, total return and index swaps. The Gold/British Pound ETF may utilize swap agreements in an attempt to gain exposure to an asset in a market without actually purchasing the asset, or to hedge a position.[15] Any swaps used will be cash collateralized as required.

On a daily basis, the Sub-Adviser will evaluate the gold market to determine whether the exchange-traded markets or the OTC markets provide the Gold/British Pound ETF with optimal investment opportunities. As part of its daily evaluation, the Sub-Adviser will utilize information from The Gartman Letter, as referenced above. The Sub-Adviser will carefully consider the liquidity of the investment, the cost of executing the purchase or sale and the creditworthiness of the counterparty. Similarly, the Sub-Adviser will evaluate the market for the British Pound to achieve the optimal duration at which to finance gold purchases for the Gold/British Pound ETF. The Sub-Adviser will not participate in transactions in the British Pound where the maximum duration exceeds ninety days.

In managing the Gold/British Pound ETF, the Sub-Adviser will consider the asset size of the Gold/British Pound ETF, as well as liquidity conditions in both the gold and currency markets, in an effort to ensure best execution and minimize potential market disruption.

As discussed above, the Sub-Adviser will seek to gain additional exposure to gold through its investment in the Gold/British Pound ETF Subsidiary. The Gold/British Pound ETF's investment in

[15] *See* note 13, *supra.*

the Gold/British Pound ETF's Subsidiary may not exceed 25% of the Gold/British Pound ETF's total assets at each quarter end of the Gold/British Pound ETF's fiscal year. The purpose of the Gold/British Pound ETF's investment in the Gold/British Pound ETF Subsidiary will be to provide the Gold/British Pound ETF with additional exposure to commodity returns within the limits of the federal tax requirements applicable to investment companies, such as the Gold/British Pound ETF. The Gold/British Pound ETF Subsidiary's investments in commodity-linked derivative instruments (i.e., futures, forwards and swaps based on the price of gold) will be subject to limits on leverage imposed by the 1940 Act. Section 18(f) of the 1940 Act and related Commission guidance limit the amount of leverage an investment company, and in this case the Gold/British Pound ETF Subsidiary, can obtain. Except as noted, references to the investment strategies and risks of the Gold/British Pound ETF include the investment strategies and risks of the Gold/British Pound Subsidiary. The Gold/British Pound ETF Subsidiary's shares will only be offered to the Gold/British Pound ETF and the Gold/British Pound ETF will not sell any shares of the Gold/British Pound Subsidiary to any other investors.

AdvisorShares Gartman Gold/Euro ETF

Principal Investments

According to the Registration Statement, the Gold/Euro ETF will seek to provide positive returns by utilizing the European Union's Euro to invest its assets in the gold market. In seeking to achieve the Gold/Euro ETF's investment objective, the Sub-Adviser will invest the Gold/Euro ETF's assets in instruments that provide exposure to the international gold market utilizing the Euro. This strategy provides an investment vehicle for investors who believe that the value of the Gold/Euro ETF's investments in gold purchased in Euros will appreciate.

Accordingly, in managing the Gold/Euro ETF, the Sub-Adviser will use the Euro, obtained synthetically through the sale of either exchange-traded currency futures or OTC foreign exchange forward contracts, as the currency in which purchases of gold are made. This ''Gold Financed in Euro'' investment strategy will enable the Sub-Adviser to provide an alternate gold investment vehicle that will seek to reduce U.S. dollar exposure.

The Gold/Euro ETF will seek to achieve its investment objective by investing directly (and not through the Gold/Euro ETF Subsidiary, as described below), under normal circumstances, at least 75% of its assets in cash and cash equivalents, plus currency-linked derivatives (consisting of exchange-traded Euro futures traded on the CME, Euro forward contracts, and currency (and not gold) swaps), with cash and cash equivalents comprising the majority of the Gold/Euro ETF's assets. Up to 25% of the Gold/Euro ETF's assets will be invested in the Gold/Euro ETF Subsidiary, as described below. The distribution of the Gold/Euro ETF's investments in these currency-linked derivatives will be at the discretion of the Fund's Sub-Adviser. All of the Gold/Euro ETF's investments in these currency-linked derivatives will be backed by collateral of the Fund's assets, as required, and will be diversified across multiple (generally more than 5) counterparties. In addition, these currency-linked derivatives will be subject to the limits on leverage imposed by the 1940 Act. Through its investment in a wholly owned and controlled subsidiary organized outside the United States in the Cayman Islands (the ''Gold/Euro ETF Subsidiary''), the Gold/Euro ETF will obtain long exposure to the international gold market. The Gold/Euro ETF may also invest in Underlying ETPs. The Sub-Adviser will rebalance its positions in the Gold/Euro ETF and in the Gold/Euro ETF Subsidiary periodically as the value of gold relative to the value of the Euro fluctuates in international markets.

The Gold/Euro ETF may invest directly and indirectly in foreign currencies. The Gold/Euro ETF may conduct foreign currency transactions on a spot (*i.e.,* cash) or forward basis (*i.e.,* by entering into forward contracts to purchase or sell foreign currencies). Currency transactions made on a spot basis are for cash at the spot rate prevailing in the currency exchange market for buying or selling currency. Forward contracts are customized transactions that require a specific amount of a currency to be delivered at a specific exchange rate on a specific date or range of dates in the future and can have substantial price volatility. Forward contracts are generally traded in an interbank market directly between currency traders (usually large commercial banks) and their customers.

The Gold/Euro ETF, and certain Underlying ETPs in which the Gold/Euro ETF invests, may enter into swap agreements, including, but not limited to, total return swaps and index swaps. The Gold/Euro ETF may utilize swap agreements in an attempt to gain exposure to an asset in a market without actually purchasing the asset, or to hedge a position.[16] Any swaps used will be cash collateralized as required.

On a daily basis, the Sub-Adviser will evaluate the gold market to determine whether the exchange-traded markets or the OTC markets provide the Gold/Euro ETF with optimal investment opportunities. As part of its daily evaluation, the Sub-Adviser will utilize information from The Gartman Letter, as referenced above. The Sub-Adviser will carefully consider the liquidity of the investment, the cost of executing the purchase or sale and the creditworthiness of the counterparty. Similarly, the Sub-Adviser will evaluate the market for Euros to achieve the optimal duration at which to finance gold purchases for the Gold/Euro ETF. The Sub-Adviser will not participate in transactions in the Euro where the maximum duration exceeds ninety days.

In managing the Gold/Euro ETF, the Sub-Adviser will consider the asset size of the Gold/Euro ETF, as well as liquidity conditions in both the gold and currency markets, in an effort to ensure best execution and minimize potential market disruption.

As discussed above, the Sub-Adviser seeks to gain additional exposure to gold through its investment in the Gold/Euro ETF Subsidiary. The Gold/Euro ETF's investment in the Gold/Euro ETF Subsidiary may not exceed 25% of the Gold/Euro ETF's total assets at each quarter end of the Gold/Euro ETF's fiscal year. The purpose of the Gold/Euro ETF's investment in the Gold/Euro ETF's Subsidiary will be to provide the Gold/Euro ETF with additional exposure to commodity returns within the limits of the federal tax requirements applicable to investment companies, such as the Gold/Euro ETF. The Gold/Euro ETF's Subsidiary's investments in commodity-linked derivative instruments (i.e., futures, forwards and swaps based on the price of gold) will be subject to limits on leverage imposed by the 1940 Act. Section 18(f) of the 1940 Act and related Commission guidance limit the amount of leverage an investment company, and in this case the Gold/Euro ETF Subsidiary, can obtain. Except as noted, references to the investment strategies and risks of the Gold/Euro ETF include the investment strategies and risks of the Gold/Euro ETF's Subsidiary. The Gold/Euro ETF Subsidiary's shares will only be offered to the Gold/Euro ETF and the Gold/Euro ETF will not sell any shares of the Gold/Euro Subsidiary to any other investors.

[16] *See* note 13, *supra.*

Other Investments

In the absence of normal circumstances [17], a Fund may have temporary defensive positions to respond to adverse market, economic, political or other conditions. A Fund may invest 100% of its total assets, without limitation, either directly or indirectly through Underlying ETPs, in debt securities and money market instruments, shares of other mutual funds, commercial paper, certificates of deposit, bankers' acceptances, U.S. government securities, repurchase agreements or bonds that are rated BBB or higher by Standard & Poor's Ratings Group (''S&P''). A Fund may be invested in this manner for extended periods, depending on the Sub-Adviser's assessment of market conditions.

While each Fund's principal investments, under normal circumstances, will be as described above, a Fund may invest up to 20% of its assets in other investments, as described below.

The International Gold ETF may invest directly and indirectly in foreign currencies. The International Gold ETF may invest in foreign currency transactions on a spot (i.e., cash) or forward basis (i.e., by entering into forward contracts to purchase or sell foreign currencies). Currency transactions made on a spot basis are for cash at the spot rate prevailing in the currency exchange market for buying or selling currency. Forward contracts are customized transactions that require a specific amount of a currency to be delivered at a specific exchange rate on a specific date or range of dates in the future and can have substantial price volatility. Forward contracts are generally traded in an interbank market directly between currency traders (usually large commercial banks) and their customers.

The International Gold ETF, and certain Underlying ETPs in which the International Gold ETF invests, may enter into swap agreements, including, but not limited to, total return and index swaps, which will be expected to only be tied to the price of gold. The International Gold ETF may utilize swap agreements in an attempt to gain exposure to an asset in a market without actually purchasing the asset (in this case, gold), or to hedge a position.[18] The International Gold Fund will utilize cleared swaps if available, to the extent practicable, and will not enter into any swap agreement unless the Adviser believes that the other party to the transaction is creditworthy.[19] Any swaps used will be cash collateralized as required.

The International Gold ETF may also invest a proportion of its assets in Underlying ETPs that do not offer diversified exposure to the international gold market.

Periodically, with respect to the International Gold ETF, the Sub-Adviser may decide to purchase downside market protection to hedge against the risk of a large downward movement in the price of gold, based on a proprietary assessment of the expected return from holding gold over a time horizon of generally no more than ninety days. The Sub-Adviser may implement this portion of its investment strategy by employing a number of option-based strategies using U.S. listed equity options with maturities of no more than 90 days. The Sub-Adviser may pay a premium to buy a put option tied to the price of gold, which should rise in value when the price of gold declines, thus protecting the value of the International Gold ETF in the event of a large downward movement in the price of gold. The Sub-Adviser also may employ a strategy of buying a put option tied to the price of gold and simultaneously selling a call option tied to the price of gold, known as a ''collar'' hedging strategy. Both options should increase in value as the price of gold declines, while the combination of the put and call options is intended to reduce the premium cost of the hedge transaction. However, writing gold options may limit the potential profit the International Gold ETF would earn if the price of gold rises. Regardless of the option-based strategy employed, the Sub-Adviser will not utilize any strategy in which the value of the options sold exceeds the value of the International Gold ETF's portfolio investments, thereby limiting potential losses. The Sub-Adviser will utilize this option strategy only as a means to hedge its long position in gold.

The Gold/British Pound ETF, Gold/Yen ETF, and Gold/Euro ETF may invest in ETFs that are primarily index-based ETFs that hold substantially all of their assets in securities representing a specific index. The Gold/British Pound ETF, Gold/Yen ETF, and Gold/Euro ETF also may invest in ETFs that are actively managed and may invest in closed-end funds.

While the Funds do not anticipate doing so, they may borrow money for investment purposes, a form of leverage. A Fund may also borrow money to facilitate management of a Fund's portfolio by enabling a Fund to meet redemption requests when the liquidation of portfolio instruments would be inconvenient or disadvantageous. Such borrowing will not be for investment purposes, will be repaid by a Fund promptly, and will be consistent with the requirements of the 1940 Act and the rules thereunder.

At the discretion of the Adviser, the Funds may, but are not obligated to, enter into forward currency exchange contracts for hedging purposes to help reduce the risks and volatility caused by changes in foreign currency exchange rates.

While the Funds do not expect to engage in currency hedging, they may (and certain of the Underlying ETPs in which the Funds invest may) use currency transactions in order to hedge the value of portfolio holdings denominated in particular currencies against fluctuations in relative value, including forward currency contracts, exchange-listed currency futures and currency options, exchange-listed and OTC options [20] on currencies and currency swaps, and options on currency futures. The Funds may use futures contracts and related options for bona fide hedging; attempting to offset changes in the value of securities held or expected to be acquired or be disposed of; or other risk management purposes.[21]

[17] *See* note 8, *supra.*

[18] *See* note 13, *supra.*

[19] *See* note 13, *supra.*

[20] The Funds may trade put and call options on securities, securities indices and currencies, as the Sub-Adviser determines is appropriate in seeking a Fund's investment objective, and except as restricted by a Fund's investment limitations. A Fund may buy or sell no more than 10% of its net assets in put and call options on foreign currencies either on exchanges or in the OTC market. A put option on a foreign currency gives the purchaser of the option the right to sell a foreign currency at the exercise price until the option expires. A call option on a foreign currency gives the purchaser of the option the right to purchase the currency at the exercise price until the option expires.

[21] According to the Registration Statement, to the extent a Fund invests in futures, options on futures or other instruments subject to regulation by the Commodity Futures Trading Commission (''CFTC''), it will do so in compliance with CFTC regulations in effect from time to time and in accordance with such Fund's policies. To comply with recent changes to the CFTC regulations pertaining to registered investment companies that invest in derivatives regulated by the CFTC, such as futures contracts, the Funds expect to register with the CFTC as commodity pools and the Adviser expects to register with the CFTC as a commodity pool operator (''CPO'') prior to the Funds' commencement of operations. By registering with the CFTC, the Funds and the Adviser will be subject to regulation by the CFTC and the National Futures Association (''NFA''). The recent changes to CFTC regulations went into effect on December 31, 2012, but because the CFTC has not yet adopted regulations intended to ''harmonize'' the CFTC's regulation of newly registered investment companies with that of the Commission, the impact of registration on the Funds' operations is not yet known. Once the compliance obligations of the

A Fund's or an Underlying ETP's dealings in forward currency contracts and other currency transactions such as futures, options on futures, options on currencies and swaps will be limited to hedging involving either specific transactions (''Transaction Hedging'' [22]) or portfolio positions (''Position Hedging'').[23]

The Funds, or certain Underlying ETPs in which the Funds invest, may also cross-hedge currencies by entering into transactions to purchase or sell one or more currencies that are expected to decline in value relative to other currencies to which the Funds, or certain Underlying ETPs in which the Funds invest, have or in which the Funds, or certain Underlying ETPs in which the Funds invest, expect to have portfolio exposure.

To reduce the effect of currency fluctuations on the value of existing or anticipated holdings of portfolio securities, a Fund, or certain of the Underlying ETPs in which a Fund invests, may also engage in proxy hedging. Proxy hedging is often used when the currency to which the portfolio of a Fund, or of an Underlying ETP in which a Fund invests, is exposed is difficult to hedge or to hedge against the dollar. Proxy hedging entails entering into a forward contract to sell a currency whose changes in value are generally considered to be linked to a currency or currencies in which some or all of a Fund's portfolio securities, or the portfolio securities of an Underlying ETP in which a Fund invests, are or are expected to be denominated, and to buy U.S. dollars. The amount of the contract would not exceed the value of a Fund's securities, or the securities and financial instruments held by the Underlying ETPs in which a Fund invests.

The Funds currently do not intend to enter into forward currency contracts with a term of more than one year, or to engage in Position Hedging with respect to the currency of a particular country to more than the aggregate market value (at the time the hedging transaction is entered into) of its portfolio securities denominated in (or quoted in or currently convertible into or directly related through the use of forward currency contracts in conjunction with money market instruments to) that particular currency.

The Funds may invest in performance indexed paper (''PIPs℠''). PIPs is U.S. dollar-denominated commercial paper the yield of which is linked to certain foreign exchange rate movements. The yield to the investor on PIPs is established at maturity as a function of spot exchange rates between the U.S. dollar and a designated currency as of or about that time (generally, the index maturity two days prior to maturity). The yield to the investor will be within a range stipulated at the time of purchase of the obligation, generally with a guaranteed minimum rate of return that is below, and a potential maximum rate of return that is above, market yields on U.S. dollar-denominated commercial paper, with both the minimum and maximum rates of return on the investment corresponding to the minimum and maximum values of the spot exchange rate two business days prior to maturity.

The Funds, and certain Underlying ETPs in which the Funds invest, may invest in commercial paper. Commercial paper is a short-term obligation with a maturity ranging from one to 270 days issued by banks, corporations and other borrowers. Such investments are unsecured and usually discounted. To the extent a Fund invests in commercial paper, a Fund will seek to invest in commercial paper rated A–1 or A–2 by S&P or Prime-1 or Prime-2 by Moody's Investors Service, Inc. (''Moody's'').

The Funds, and certain of the Underlying ETPs in which the Funds invest, may invest in fixed income securities, as described below.

The Funds, and certain Underlying ETPs in which the Funds invest, may seek to invest in debt securities, which are securities consisting of a certificate or other evidence of a debt (secured or unsecured) on which the issuing company or governmental body promises to pay the holder thereof a fixed, variable, or floating rate of interest for a specified length of time, and to repay the debt on the specified maturity date, as discussed above. Some debt securities, such as zero coupon bonds, do not make regular interest payments but are issued at a discount to their principal or maturity value. Debt securities include a variety of fixed income obligations, including, but not limited to, corporate debt securities, government securities, municipal securities, convertible securities, and mortgage-backed securities. Debt securities include investment-grade securities, non-investment-grade securities, and unrated securities.

The Funds may invest in U.S. government securities. Securities issued or guaranteed by the U.S. government or its agencies or instrumentalities include U.S. Treasury securities, which are backed by the full faith and credit of the U.S. Treasury and which differ only in their interest rates, maturities, and times of issuance. U.S. Treasury bills have initial maturities of one year or less; U.S. Treasury notes have initial maturities of one to ten years; and U.S. Treasury bonds generally have initial maturities of greater than ten years.[24]

The Funds, and certain Underlying ETPs in which the Funds invest, may invest in U.S. Treasury zero-coupon bonds. These securities are U.S. Treasury bonds which have been stripped of their unmatured interest

Funds under the CFTC's regulatory scheme are finalized, the Funds may consider modifying their principal investment strategies and structure by reducing substantially their investment in or exposure to derivative instruments subject to regulation by the CFTC in order to qualify for the exemption from CFTC regulation provided by CFTC Regulation 4.5. Alternatively, the Funds may determine to continue to be subject to CFTC regulation and comply with all applicable requirements, including registration and disclosure requirements governing commodity pools under the Commodity Exchange Act (''CEA''). Compliance with the CFTC's additional regulatory requirements may increase a Fund's operating expenses.

[22] According to the Registration Statement, Transaction Hedging is entering into a currency transaction with respect to specific assets or liabilities of a Fund, or certain Underlying ETPs in which a Fund invests, which will generally arise in connection with the purchase or sale of its portfolio securities or the receipt of income therefrom. A Fund, or certain Underlying ETPs in which a Fund invests, may enter into Transaction Hedging out of a desire to preserve the U.S. dollar price of a security when it enters into a contract for the purchase or sale of a security denominated in a foreign currency.

[23] According to the Registration Statement, Position Hedging is entering into a currency transaction with respect to portfolio security positions denominated or generally quoted in that currency. A Fund, or certain Underlying ETPs in which a Fund invests, may use Position Hedging when the Adviser believes that the currency of a particular foreign country may suffer a substantial decline against the U.S. dollar. A Fund, or certain Underlying ETPs in which a Fund invests, may enter into a forward foreign currency contract to sell, for a fixed amount of dollars, the amount of foreign currency approximating the value of some or all of its portfolio securities denominated in such foreign currency. A Fund, or certain Underlying ETPs in which a Fund invests, will not enter into a transaction to hedge currency exposure to an extent greater, after netting all transactions intended wholly or partially to offset other transactions, than the aggregate market value (at the time of entering into the transaction) of the securities held in its portfolio that are denominated or generally quoted in or currently convertible into such currency, other than with respect to proxy hedging as described below.

[24] Certain U.S. government securities are issued or guaranteed by agencies or instrumentalities of the U.S. government including, but not limited to, obligations of U.S. government agencies or instrumentalities such as the Federal National Mortgage Association (''Fannie Mae''), the Federal Home Loan Mortgage Corporation (''Freddie Mac''), the Government National Mortgage Association (''Ginnie Mae''), the Small Business Administration, the Federal Farm Credit Administration, the Federal Home Loan Banks, Banks for Cooperatives (including the Central Bank for Cooperatives), the Federal Land Banks, the Federal Intermediate Credit Banks, the Tennessee Valley Authority, the Export-Import Bank of the United States, the Commodity Credit Corporation, the Federal Financing Bank, the National Credit Union Administration and the Federal Agricultural Mortgage Corporation (''Farmer Mac'').

coupons, the coupons themselves, and receipts or certificates representing interests in such stripped debt obligations and coupons. Interest is not paid in cash during the term of these securities, but is accrued and paid at maturity.

The Funds may invest in all grades of corporate debt securities including non-investment grade securities, as described below.

The Funds, and certain Underlying ETPs in which the Funds invest, to the extent a Fund invests in non-investment grade debt securities, will seek to invest no more than 10% of a Fund's net assets in such debt securities. Non-investment-grade debt securities, also referred to as ''high yield securities'' or ''junk bonds,'' are debt securities that are rated lower than the four highest rating categories by a nationally recognized statistical rating organization (for example, lower than Baa3 by Moody's or lower than BBB by S&P or are determined to be of comparable quality by a Fund's Sub-Adviser.

The Funds, and certain Underlying ETPs in which the Funds invest, may seek to invest in unrated debt securities. The creditworthiness of the issuer, as well as any financial institution or other party responsible for payments on the security, will be analyzed to determine whether to purchase unrated bonds.

The Funds, and certain Underlying ETPs in which the Funds invest, will seek to invest no more than 10% of their net assets in asset-backed and mortgaged-backed securities.

The Funds, and certain of the Underlying ETPs in which the Funds invest, may invest in U.S. equity securities, including common stock, preferred stock, warrants, convertible securities, master limited partnerships and rights traded in the U.S. or on other registered exchanges.

Each Fund may invest in issuers located outside the United States directly, or in financial instruments or Underlying ETPs that are indirectly linked to the performance of foreign issuers. Such financial instruments may be one of the following: American Depositary Receipts (''ADRs''), Global Depositary Receipts (''GDRs''), European Depositary Receipts (''EDRs''), International Depository Receipts (''IDRs''), ''ordinary shares,'' and ''New York shares'' issued and traded in the U.S (collectively, ''Equity Financial Instruments'').[25]

A Fund, and certain Underlying ETPs in which a Fund invests, may invest in hybrid instruments. According to the Registration Statement, a hybrid instrument is a type of potentially high-risk derivative that combines a traditional stock, bond, or commodity with an option or forward contract. An example of a hybrid instrument could be a bond issued by an oil company that pays a small base level of interest with additional interest that accrues in correlation with the extent to which oil prices exceed a certain predetermined level. Such a hybrid instrument would be a combination of a bond and a call option on oil. Generally, the principal amount, amount payable upon maturity or redemption, or interest rate of a hybrid is tied (positively or negatively) to the price of some security, commodity, currency or securities index or another interest rate or some other economic factor (each a ''benchmark''). The interest rate or (unlike most fixed income securities) the principal amount payable at maturity of a hybrid security may be increased or decreased, depending on changes in the value of the benchmark.

Each Fund may invest in structured notes, which are debt obligations that also contain an embedded derivative component with characteristics that adjust the obligation's risk/return profile. Generally, the performance of a structured note will track that of the underlying debt obligation and the derivative embedded within it. Each Fund has the right to receive periodic interest payments from the issuer of the structured notes at an agreed-upon interest rate and a return of the principal at the maturity date.[26]

The Funds may invest in the securities of exchange-traded pooled vehicles that are not investment companies and, thus, not required to comply with the provisions of the 1940 Act.[27] The International Gold Fund may principally invest in these securities through Underlying ETPs while the other Funds (Gold/British Pound ETF, Gold/Yen ETF and Gold/Euro ETF) may, but are not expected to, invest in these securities as non-principal investments. As a result, as a shareholder of such pooled vehicles, a Fund will not have all of the investor protections afforded by the 1940 Act. Such pooled vehicles may, however, be required to comply with the provisions of other federal securities laws, such as the Securities Act. These pooled vehicles typically hold currency or commodities, such as gold or oil, or other property that is itself not a security.

The Funds, and certain Underlying ETPs in which the Funds invest, may invest in exchange-traded shares of real estate investment trusts (''REITs''). REITs are pooled investment vehicles which invest primarily in real estate or real estate related loans. REITs are generally classified as equity REITs, mortgage REITs or a combination of equity and mortgage REITs.

The Funds, and certain Underlying ETPs in which the Funds invest, may enter into repurchase agreements with financial institutions, which may be deemed to be loans. The Fund will follow certain procedures designed to minimize the risks inherent in such agreements. These procedures will include effecting repurchase transactions only with large, well-capitalized and well-established financial institutions whose condition will be continually monitored by the Sub-Adviser. In addition, the value of the collateral underlying the repurchase agreement will always be at least equal to the repurchase price, including any accrued interest earned on the repurchase agreement.

[25] ADRs are U.S. dollar denominated receipts typically issued by U.S. banks and trust companies that evidence ownership of underlying securities issued by a foreign issuer. The underlying securities may not necessarily be denominated in the same currency as the securities into which they may be converted. The underlying securities are held in trust by a custodian bank or similar financial institution in the issuer's home country. The depositary bank may not have physical custody of the underlying securities at all times and may charge fees for various services, including forwarding dividends and interest and corporate actions. Generally, ADRs in registered form are equity securities designed for use in domestic securities markets and are traded on exchanges or OTC in the U.S. GDRs, EDRs, and IDRs are similar to ADRs in that they are certificates evidencing ownership of shares of a foreign issuer; however, GDRs, EDRs, and IDRs may be issued in bearer form and denominated in other currencies, and are generally designed for use in specific or multiple securities markets outside the U.S. EDRs, for example, are designed for use in European securities markets while GDRs are designed for use throughout the world. Ordinary shares are shares of foreign issuers that are traded abroad and on a U.S. exchange. New York shares are shares that a foreign issuer has allocated for trading in the U.S. ADRs, ordinary shares, and New York shares all may be purchased with and sold for U.S. dollars. ADRs may be sponsored or unsponsored, but unsponsored ADRs will not exceed 10% of a Fund's net assets. With respect to its investments in equity securities (including Equity Financial Instruments), each Fund will invest at least 90% of its assets invested in such equity securities in securities that trade in markets that are members of the Intermarket Surveillance Group (''ISG'') or are parties to a comprehensive surveillance sharing agreement with the Exchange. *See* note 40, *infra.*

[26] In the case of structured notes on credit default swaps, a Fund, or the Underlying ETP in which a Fund invests, will also be subject to the credit risk of the corporate credits underlying the credit default swaps.

[27] Such securities include Trust Issued Receipts (as described in NYSE Arca Equities Rule 8.200); Commodity-Based Trust Shares (as described in NYSE Arca Equities Rule 8.201); Currency Trust Shares (as described in NYSE Arca Equities Rule 8.202); Commodity Index Trust Shares (as described in NYSE Arca Equities Rule 8.203); and Trust Units (as described in NYSE Arca Equities Rule 8.500).

The Funds, and certain Underlying ETPs in which the Funds invest, may enter into reverse repurchase agreements as part of a Fund's investment strategy. However, the Funds do not expect to engage, under normal circumstances, in reverse repurchase agreements with respect to more than 33⅓% of their respective assets. Reverse repurchase agreements involve sales by a Fund of portfolio assets concurrently with an agreement by a Fund to repurchase the same assets at a later date at a fixed price.

The Funds may engage in short sales transactions in which a Fund sells a security it does not own. To complete such a transaction, a Fund must borrow or otherwise obtain the security to make delivery to the buyer. A Fund then is obligated to replace the security borrowed by purchasing the security at the market price at the time of replacement.

The Funds may enter into time deposits and Eurodollar time deposits. The Funds, and certain of the Underlying ETPs in which the Funds invest, may invest in ''Time Deposits'', and specifically ''Eurodollar Time Deposits''. Time Deposits are non-negotiable deposits, such as savings accounts or certificates of deposit, held by a financial institution for a fixed term with the understanding that the depositor can withdraw its money only by giving notice to the institution.

The Funds, and certain Underlying ETPs in which the Funds invest, from time to time, in the ordinary course of business, may purchase securities on a when-issued or delayed-delivery basis (*i.e.,* delivery and payment can take place between a month and 120 days after the date of the transaction). These securities are subject to market fluctuation and no interest accrues to the purchaser during this period.

The Funds may not purchase or sell commodities or commodity contracts unless acquired as a result of ownership of securities or other instruments issued by persons that purchase or sell commodities or commodities contracts; but this shall not prevent a Fund from purchasing, selling and entering into financial futures contracts (including futures contracts on indices of securities, interest rates and currencies), options on financial futures contracts (including futures contracts on indices of securities, interest rates and currencies), warrants, swaps, forward contracts, foreign currency spot and forward contracts or other derivative instruments that are not related to physical commodities.

Other Restrictions

A Fund may not, with respect to 75% of its total assets, purchase securities of any issuer (except securities issued or guaranteed by the U.S. government, its agencies or instrumentalities or shares of investment companies) if, as a result, more than 5% of its total assets would be invested in the securities of such issuer; or (ii) acquire more than 10% of the outstanding voting securities of any one issuer (and for purposes of this policy, the issuer of the underlying security will be deemed to be the issuer of any respective depositary receipt.)[28]

A Fund may not invest 25% or more of its total assets in the securities of one or more issuers conducting their principal business activities in the same industry or group of industries. This limitation does not apply to investments in securities issued or guaranteed by the U.S. government, its agencies or instrumentalities, or shares of investment companies. A Fund will not invest 25% or more of its total assets in any investment company that so concentrates.[29]

Each Fund may invest up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser,[30] consistent with Commission guidance. Each Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of a Fund's net assets are vested in illiquid securities. Illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.[31]

According to the Registration Statement, each Fund will seek to qualify for treatment as a Regulated Investment Company (''RIC'') under the Internal Revenue Code.[32]

Each Fund's investments will be consistent with its investment objective and will not be used to enhance leverage. While a Fund may invest in inverse ETFs, a Fund will not invest in leveraged (*e.g.,* 2X, –2X, 3X or –3X) ETFs.

Net Asset Value

According to the Registration Statement, each Fund will calculate Net Asset Value (''NAV'') by: (i) Taking the current market value of its total assets; (ii) subtracting any liabilities; and (iii) dividing that amount by the total number of Shares owned by shareholders.

In calculating NAV, a Fund will generally value its portfolio investments at market prices. In computing each Fund's NAV, a Fund's securities holdings will be valued based on their last readily available market price. Price information on listed securities and assets, including Underlying ETPs in which a Fund invests, will be taken from the exchange where the security or asset is primarily traded. Other portfolio securities and assets for which market quotations are not readily available or determined to not represent the current fair value will be valued based on fair value as determined in good faith by the Funds' Sub-Adviser in accordance with procedures adopted by a Fund's Board and in accordance with the 1940 Act. Because the International Gold ETF will invest primarily in Underlying ETPs with readily available pricing, it is expected that there will be limited circumstances in which the International Gold ETF would use fair value pricing—for example, if the exchange on which a portfolio security is principally traded closed early or if trading in a particular security was

[28] The diversification standard is set forth in Section 5(b)(1) of the 1940 Act.

[29] *See* Form N–1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. *See, e.g.,* Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

[30] In reaching liquidity decisions, the Adviser may consider the following factors: The frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace in which it trades (*e.g.,* the time needed to dispose of the security, the method of soliciting offers and the mechanics of transfer).

[31] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. *See also,* Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding ''Restricted Securities''); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act of 1933).

[32] 26 U.S.C. 851.

halted during the day and did not resume prior to the time a Fund calculated its NAV.

Each Fund will have an approved pricing matrix at the time of launch. The matrix will be based on pre-determined rules for pricing logic (such as mean) and valuation point (such as market close). Third party pricing sources will be used. For assets such as options, futures, and swaps, in general, Bloomberg will be the primary source and Reuters the secondary source.

Spot currency transactions, hybrid instruments, and non-exchange-traded derivatives, including forwards, swaps and certain options, will normally be valued on the basis of quotes obtained from brokers and dealers or pricing services using data reflecting the earlier closing of the principal markets for those assets. Prices obtained from independent pricing services use information provided by market makers or estimates of market values obtained from yield data relating to investments or securities with similar characteristics. Exchange-traded options will be valued at market closing price.

Futures and options on futures will be valued at the settlement price determined by the applicable exchange.

Unsponsored ADRs will be valued on the basis of the market closing price on the exchange where the stock of the foreign issuer that underlies the ADR is listed.

Domestic and foreign fixed income securities generally trade in the OTC market rather than on a securities exchange. A Fund will generally value these portfolio securities by relying on independent pricing services. A Fund's pricing services will use valuation models or matrix pricing to determine current value. In general, pricing services use information with respect to comparable bond and note transactions, quotations from bond dealers or by reference to other securities that are considered comparable in such characteristics as rating, interest rate, maturity date, option adjusted spread models, prepayment projections, interest rate spreads and yield curves. Matrix price is an estimated price or value for a fixed-income security. Matrix pricing is considered a form of fair value pricing.

The NAV per Share of a Fund will be computed by dividing the value of the net assets of a Fund (*i.e.,* the value of its total assets less total liabilities) by the total number of Shares of a Fund outstanding, rounded to the nearest cent. Expenses and fees, including without limitation, the management, administration and distribution fees, will be accrued daily and taken into account for purposes of determining NAV per Share. The NAV per Share for a Fund will be calculated by the Administrator and determined as of the close of the regular trading session on the New York Stock Exchange (ordinarily 4:00 p.m., Eastern Time) on each day that such exchange is open.

Creation and Redemption of Shares

According to the Registration Statement, the Funds will issue and redeem Shares on a continuous basis at the NAV only in a large specified number of Shares called a ''Creation Unit''. The Shares of the Funds will be ''created'' at their NAV by market makers, large investors and institutions only in block-size Creation Units of at least 25,000 Shares. A ''creator'' will enter into an authorized participant agreement with the Distributor or use a Depository Trust Company participant who has executed such a participant agreement. The consideration for purchase of a Creation Unit of each Fund generally will consist of an in-kind deposit of a designated portfolio of securities—the ''Deposit Securities''—per each Creation Unit constituting a substantial replication, or a representation, of the securities included in a Fund's portfolio and an amount of cash—the ''Cash Component''. Together, the Deposit Securities and the Cash Component constitute the ''Fund Deposit,'' which represents the minimum initial and subsequent investment amount for a Creation Unit of a Fund. The Cash Component is an amount equal to the difference between the NAV of the Shares of a Fund (per Creation Unit) and the market value of the Deposit Securities. The Administrator, through the National Securities Clearing Corporation (''NSCC'') will, make available on each business day, immediately prior to the opening of business on the Exchange (currently 9:30 a.m., Eastern Time), the list of the names and the required number of each Deposit Security to be included in the current Fund Deposit (based on information at the end of the previous business day) for each Fund. Such Fund Deposit is applicable, subject to any adjustments, in order to effect creations of Creation Units of a Fund until such time as the next-announced composition of the Deposit Securities is made available.

Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by a Fund through the Administrator and only on a business day. The Trust will not redeem Shares of a Fund in amounts less than Creation Units. Unless cash redemptions are available or specified for a Fund, the redemption proceeds for a Creation Unit generally will consist of ''Fund Securities''—as announced by the Administrator on the business day of the request for redemption received in proper form—plus cash in an amount equal to the difference between the NAV of the Shares of a Fund being redeemed, as next determined after a receipt of a request in proper form, and the value of the Fund Securities, less a redemption transaction fee. The Administrator, through the NSCC, will make available immediately prior to the opening of business on the Exchange (currently 9:30 a.m., Eastern Time) on each business day, Fund Securities that will be applicable to redemption requests received in proper form on that day.

The Trust reserves the right to offer an ''all cash'' option for creations and redemptions of Creation Units for a Fund.

According to the Registration Statement, if it is not possible to effect deliveries of Fund Securities, the Trust may in its discretion exercise its option to redeem Shares of a Fund in cash, and the redeeming beneficial owner will be required to receive its redemption proceeds in cash. In addition, an investor may request a redemption in cash which a Fund may, in its sole discretion, permit.[33] In either case, the investor will receive a cash payment equal to the NAV of its Shares based on the NAV of Shares of a Fund next determined after the redemption request is received in proper form (minus a redemption transaction fee and additional charge for requested cash redemptions, as described in the Registration Statement). A Fund may also, in its sole discretion, upon request of a shareholder, provide such redeemer a portfolio of securities which differs from the exact composition of the applicable Fund Securities but does not differ in NAV. Redemptions of Shares for Fund Securities will be subject to compliance with applicable federal and state securities laws and a Fund (whether or not it otherwise permits cash redemptions) reserves the right to redeem Creation Units for cash to the extent that a Fund could not lawfully deliver specific Fund Securities upon redemptions or could not do so without first registering Fund Securities under such laws. An authorized participant or an investor for which it is acting subject to a legal restriction with respect to a

[33] The Adviser represents that, to the extent the Trust effects the redemption of Shares in cash, such transactions will be effected in the same manner for all authorized participants.

particular stock included in Fund Securities applicable to the redemption of a Creation Unit may be paid an equivalent amount of cash.

Availability of Information

The Funds' Web site (*www.advisorshares.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Funds that may be downloaded. The Funds' Web site will include additional quantitative information updated on a daily basis, including, for each Fund, (1) daily trading volume, the prior business day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[34] and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Funds' Web site will disclose the Disclosed Portfolio that will form the basis for each Fund's calculation of NAV at the end of the business day.[35]

On a daily basis, the Funds' Web site, or, if applicable, a Fund's Subsidiary's Web site) [sic] will disclose for each portfolio security and other financial instruments (e.g., futures, forwards, swaps) of each Fund and each Fund's Subsidiary, the following information: Ticker symbol (if applicable); name and, when available, the individual identifier (CUSIP) of the security and/or financial instrument; number of shares, if applicable, and dollar value of securities and financial instruments held in the portfolio; and percentage weighting of the security and financial instrument in the portfolio. The Web site information will be publicly available at no charge.

In addition, a basket composition file (*i.e.,* the Deposit Securities), which includes the security names and share quantities (as applicable) required to be delivered in exchange for Fund Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the NYSE via the NSCC. The basket will represent one Creation Unit of a Fund.

Investors will also be able to obtain the Trust's Statement of Additional Information (''SAI''), a Fund's Shareholder Reports, and its Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports will be available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *www.sec.gov.* Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares, Underlying ETPs, REITs, certain Equity Financial Instruments, pooled vehicles and other U.S. exchange-traded equities, will be available via the Consolidated Tape Association (''CTA'') high-speed line, and, for the underlying securities that are U.S. exchange-listed, will be available from the national securities exchange on which they are listed. Price information relating to non-U.S. exchange-traded Equity Financial Instruments will be available from major market data vendors or the foreign exchanges on which such securities are traded. Price information relating to fixed income securities will be available from major market data vendors. Information relating to futures and options on futures also will be available from the exchange on which such instruments are traded. Information relating to exchange-traded options will be available via the Options Price Reporting Authority. Quotation information from brokers and dealers or pricing services will be available for spot currency transactions, hybrid instruments, and non-exchange-traded derivatives, including forwards, swaps and certain options. In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600 (c)(3), will be widely disseminated at least every 15 seconds during the Core Trading Session by one or more major market data vendors.[36] The dissemination of the Portfolio Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of each Fund on a daily basis and will provide a close estimate of that value throughout the trading day.

Additional information regarding the Trust and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions and taxes is included in the Registration Statement. All terms relating to the Funds that are referred to, but not defined in, this proposed rule change are defined in the Registration Statement.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Funds.[37] Trading in Shares of the Funds will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Funds; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Funds may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. Eastern Time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than

[34] The Bid/Ask Price of Shares of each Fund will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of a Fund's NAV. The records relating to Bid/Ask Prices will be retained by a Fund and its service providers.

[35] Under accounting procedures followed by the Funds, 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.

[36] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available Portfolio Indicative Values taken from CTA or other data feeds.

[37] *See* NYSE Arca Equities Rule 7.12.

$1.00 for which the MPV for order entry is $0.0001.

The Shares of each Fund will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. Consistent with NYSE Arca Equities Rule 8.600(d)(2)(B)(ii), the Adviser will implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of a Fund's portfolio. The Exchange represents that, for initial and/or continued listing, each Fund will be in compliance with Rule 10A–3 [38] under the Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares of each Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares of each Fund that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2) will be made available to all market participants at the same time.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[39] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, Underlying ETPs, exchange-listed equity securities (including Equity Financial Instruments), futures, options on futures, exchange-traded options, REITs, and pooled vehicles with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading such securities and financial instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, Underlying ETPs, exchange-listed equity securities (including Equity Financial Instruments), futures, options on futures, exchange-traded options, REITs, and pooled vehicles from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[40]

With respect to its investments in exchange-listed equity securities (including Equity Financial Instruments), a Fund will invest at least 90% of its assets invested in such equity securities in securities that trade in markets that are members of the ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its Equity Trading Permit Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (4) how information regarding the Portfolio Indicative Value is disseminated; (5) the requirement that Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Funds will be subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m. Eastern Time each trading day.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [41] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. Trading in the Shares will be subject to the existing trading surveillances, administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. Neither the Adviser, the Sub-Adviser, nor the Gartman Capital Management, L.C. is a broker-dealer or is affiliated with a broker-dealer. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, Underlying ETPs, exchange-listed equity securities (including Equity Financial Instruments), futures, options on futures, exchange-traded options, REITs, and pooled vehicles with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading such securities and financial instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, Underlying ETPs, Shares, Underlying ETPs, exchange-listed equity securities (including Equity Financial Instruments), futures, options

[38] 17 CFR 240.10A–3.

[39] FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[40] For a list of the current members of ISG, see *www.isgportal.org*. The Exchange notes that not all components of the Disclosed Portfolio for a Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[41] 15 U.S.C. 78f(b)(5).

on futures, exchange-traded options, REITs, and pooled vehicles from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. With respect to its investments in exchange-listed equity securities (including Equity Financial Instruments), a Fund will invest at least 90% of its assets invested in such equity securities in securities that trade in markets that are members of the ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange. The Funds, and certain Underlying ETPs in which the Funds invest, may seek to invest no more than 10% of its net assets in asset-backed and mortgaged-backed securities. A Fund may buy or sell no more than 10% of its net assets in put and call options on foreign currencies either on exchanges or in the OTC market. The Funds will utilize cleared swaps if available, to the extent practicable and not enter into any swap agreement unless the Adviser believes that the other party to the transaction is creditworthy. Any swaps used will be cash collateralized as required. The options in which the Funds invest all will be traded in the U.S. on registered exchanges and OTC. The Underlying ETPs and futures in which the Funds invest all will be traded and listed in the U.S. on registered exchanges. The Funds' investment in unsponsored ADRs will not exceed 10% of a Fund's assets. The Funds may not purchase or hold illiquid securities if, in the aggregate, more than 15% of its net assets would be invested in illiquid securities. A Fund's investments in non-investment-grade securities will be limited to 10% of a Fund's assets. While a Fund may invest in inverse ETFs, a Fund will not invest in leveraged (*e.g.,* 2X, –2X, 3X or –3X) ETFs. A Fund's investments will be consistent with a Fund's investment objective and will not be used to enhance leverage.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information will be publicly available regarding the Funds and the Shares, thereby promoting market transparency. Quotation and last sale information for the Shares, Underlying ETPs, REITs, certain Equity Financial Instruments, pooled vehicles and other U.S. exchange-traded equities, will be available via the CTA high-speed line, and, for the underlying securities that are U.S. exchange-listed, will be available from the national securities exchange on which they are listed. Information relating to futures and options on futures also will be available from the exchange on which such instruments are traded. Information relating to exchange-traded options will be available via the Options Price Reporting Authority. Quotation information from brokers and dealers or pricing services will be available for spot currency transactions, hybrid instruments, and non-exchange-traded derivatives, including forwards, swaps and certain options. In addition, the Portfolio Indicative Value will be widely disseminated by the Exchange at least every 15 seconds during the Core Trading Session. The Funds' Web site will include a form of the prospectus for the Funds that may be downloaded, as well as additional quantitative information updated on a daily basis. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Funds' Web site will disclose the Disclosed Portfolio that will form the basis for each Fund's calculation of NAV at the end of the business day. On a daily basis, the Funds' Web site, or, if applicable, a Fund's Subsidiary's Web site, will disclose for each portfolio security or other financial instrument of each Fund the following information: Ticker symbol, name and, when available, the individual identifier (CUSIP) of the security and/or financial instrument; number of shares or dollar value of securities and financial instruments held in the portfolio; and percentage weighting of the security and/or financial instrument in the portfolio. Moreover, prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Funds will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of a Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Funds' holdings, the Portfolio Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of additional types of actively-managed exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace. In addition, as noted above, investors will have ready access to information regarding the Funds' holdings, the Portfolio Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of additional types of actively-managed exchange-traded products based on the price of gold and non-U.S. currencies that will enhance competition among market participants, to the benefit of investors and the marketplace.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days after publication (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule

change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2013–116 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2013–116. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2013–116 and should be submitted on or before January 9, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[42]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–30179 Filed 12–18–13; 8:45 am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–71078; File No. SR–Phlx–2013–119]**

## Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fee Rebates for Transactions in Qualified Contingent Cross Orders

December 13, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 2, 2013, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to offer an additional rebate applicable to Qualified Contingent Cross (''QCC'') orders.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of this filing is to offer an additional rebate applicable to both electronic QCC Orders (''eQCC'')[3] and Floor QCC Orders[4] (collectively ''QCC Orders''). The Exchange believes that the proposed amendment to its pricing for QCC Orders will enable the Exchange to attract additional QCC Orders by increasing the amount of rebates paid for certain increased thresholds.

Today, the Exchange pays rebates on QCC Orders based on the following five tier rebate schedule:

QCC REBATE SCHEDULE

| Tier | Threshold | Rebate per contract |
|---|---|---|
| Tier 1 | 0 to 299,999 contracts in a month | $0.00 |
| Tier 2 | 300,000 to 499,999 contracts in a month | 0.07 |

[42] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A QCC Order is comprised of an order to buy or sell at least 1000 contracts that is identified as being part of a qualified contingent trade, as that term is defined in Rule 1080(o)(3), coupled with a contra-side order to buy or sell an equal number of contracts. The QCC Order must be executed at a price at or between the National Best Bid and Offer and be rejected if a Customer order is resting on the Exchange book at the same price. A QCC Order shall only be submitted electronically from off the floor to the PHLX XL II System. *See* Rule 1080(o). *See also* Securities Exchange Act Release No. 64249 (April 7, 2011), 76 FR 20773 (April 13, 2011) (SR–Phlx–2011–47) (a rule change to establish a QCC Order to facilitate the execution of stock/option Qualified Contingent Trades (''QCTs'') that satisfy the requirements of the trade through exemption in connection with Rule 611(d) of the Regulation NMS).

[4] A Floor QCC Order must: (i) Be for at least 1,000 contracts, (ii) meet the six requirements of Rule 1080(o)(3) which are modeled on the QCT Exemption, (iii) be executed at a price at or between the National Best Bid and Offer (''NBBO''); and (iv) be rejected if a Customer order is resting on the Exchange book at the same price. In order to satisfy the 1,000-contract requirement, a Floor QCC Order must be for 1,000 contracts and could not be, for example, two 500-contract orders or two 500-contract legs. *See* Rule 1064(e). *See also* Securities Exchange Act Release No. 64688 (June 16, 2011), 76 FR 36606 (June 22, 2011) (SR–Phlx–2011–56).

QCC REBATE SCHEDULE—Continued

| Tier | Threshold | Rebate per contract |
|---|---|---|
| Tier 3 ..... | 500,000 to 699,999 contracts in a month ..... | $0.08 |
| Tier 4 ..... | 700,000 to 999,999 contracts in a month ..... | 0.09 |
| Tier 5 ..... | Over 1,000,000 contracts in a month ..... | 0.11 |

Today, the Exchange pays a rebate on all qualifying executed QCC Orders, as defined in Exchange Rule 1080(o) and Floor QCC Orders, as defined in 1064(e), except where the transaction is either: (i) Customer-to-Customer; or (ii) a dividend,[5] merger,[6] short stock interest [7] or reversal or conversion strategy [8] execution. Today, the maximum rebate the Exchange will pay in a given month for QCC Orders is $375,000. Today, QCC Transaction Fees for a Specialist,[9] Market Maker,[10] Professional,[11] Firm [12] and Broker-Dealer [13] are $0.20 per contract.

The Exchange will continue to pay rebates on QCC Orders as described above. The Exchange proposes to amend the QCC Rebate Schedule to offer an additional rebate of $35,000 if the member organization transacts 1,750,000 of qualifying QCC contracts (''QCC Bonus''). The QCC Bonus will only be available during the month of December 2013 and will be in addition to the maximum QCC Rebate of $375,000, if the $375,000 maximum is reached in December 2013. The QCC Bonus will not count toward the maximum QCC Rebate of $375,000.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act [14] in general, and furthers the objectives of Section 6(b)(4) and (b)(5) of the Act [15] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which Phlx operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that it is reasonable to offer market participants a QCC Bonus because the additional incentive will further incentivize market participants to transact a greater number of QCC Orders on the Exchange during the month of December 2013. With this proposal, a market participant would be entitled to the current QCC Rebates and would have the ability to earn an even greater rebate, during the month of December 2013, if the qualifying volume is transacted.

The Exchange believes that the QCC Bonus is equitable and not unfairly discriminatory because all qualifying market participants are entitled to the added rebate if they transact a qualifying number of QCC Orders during the month of December 2013. All market participants are eligible to transact QCC Orders.

*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. The Exchange believes that its proposal to offer the QCC Bonus does not impose a burden on competition. The Exchange's proposal should continue to encourage market participants to transact a greater number of QCC Orders in order to obtain the QCC Bonus during the month of December 2013. All market participants are eligible to transact QCC Orders.

The Exchange operates in a highly competitive market, comprised of twelve options exchanges, in which market participants can easily and readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or rebates to be inadequate. Accordingly, the fees that are assessed and the rebates paid by the Exchange described in the above proposal are influenced by these robust market forces and therefore must remain competitive with fees charged and rebates paid by other venues and therefore must continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

*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**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[16] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine

[5] A dividend strategy is defined as transactions done to achieve a dividend arbitrage involving the purchase, sale and exercise of in-the-money options of the same class, executed the first business day prior to the date on which the underlying stock goes ex-dividend. *See* Section II of the Pricing Schedule.

[6] A merger strategy is defined as transactions done to achieve a merger arbitrage involving the purchase, sale and exercise of options of the same class and expiration date, executed the first business day prior to the date on which shareholders of record are required to elect their respective form of consideration, i.e., cash or stock. *See* Section II of the Pricing Schedule.

[7] A short stock interest strategy is defined as transactions done to achieve a short stock interest arbitrage involving the purchase, sale and exercise of in-the-money options of the same class. *See* Section II of the Pricing Schedule.

[8] Reversal and conversion strategies are types of transactions that employ calls and puts of the same strike price and the underlying stock. Reversals are established by combining a short stock position with a short put and a long call position that shares the same strike and expiration. Conversions employ long positions in the underlying stock that accompany long puts and short calls sharing the same strike and expiration. *See* Section II of the Pricing Schedule.

[9] A ''Specialist'' is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

[10] A ''Market Maker'' includes Registered Options Traders (Rule 1014(b)(i) and (ii)), which includes Streaming Quote Traders (*see* Rule 1014(b)(ii)(A)) and Remote Streaming Quote Traders (*see* Rule 1014(b)(ii)(B)). Directed Participants are also market makers.

[11] The term ''Professional'' means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). *See* Rule 1000(b)(14).

[12] The term ''Firm'' applies to any transaction that is identified by a member or member organization for clearing in the Firm range at OCC.

[13] The term ''Broker-Dealer'' applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(4), (5).

[16] 15 U.S.C. 78s(b)(3)(A)(ii).

whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2013–119 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2013–119. 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 at 100 F Street NE., Washington, DC 20549–1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2013–119, and should be submitted on or before January 9, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–30181 Filed 12–18–13; 8:45 am]

**BILLING CODE 8011–01–P**

[17] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–71077; File No. SR–Topaz–2013–14]**

## Self-Regulatory Organizations; Topaz Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees

December 13, 2013.

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 December 2, 2013, the Topaz Exchange, LLC (d/b/a ISE Gemini) (the ''Exchange'' or ''Topaz'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change**

Topaz is proposing to amend its Schedule of Fees to decrease Priority Customer taker fees for affiliated Members that achieve the ADV threshold for Tiers 2, 3, or 4. The proposed rule change is available on the Exchange's Internet Web site at *http://www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and the 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 self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to decrease Priority Customer[3] taker fees for affiliated Members that achieve the average daily volume (''ADV'') threshold for Tiers 2, 3, or 4 as described below. The fee changes discussed apply to both Standard Options and Mini Options traded on the Exchange. The Exchange's Schedule of Fees has separate tables for fees applicable to Standard Options and Mini Options. The Exchange notes that while the discussion below relates to fees for Standard Options, the fees for Mini Options, which are not discussed below, are and shall continue to be 1/10th of the fees for Standard Options.

On September 3, 2013 the Exchange filed with the Commission an immediately effective rule filing that established volume-based tiered rebates for adding liquidity on the Exchange.[4] Under the framework proposed in that rule filing, the Exchange established four qualifying tiers based on a Member's ADV in a given month. The Exchange is now proposing to also apply tiers—which currently only apply to rebates for adding liquidity—to Priority Customer fees for removing liquidity. In order to qualify for the lower Priority Customer taker fee being proposed in this filing a Member would, at a minimum, have to qualify for Tier 2 by executing (i) a Total Affiliated Member ADV of 65,000 or more contracts, (ii) a Priority Customer Maker ADV of at least 20,000 contracts, or (iii) a Total Affiliated Member ADV of 40,000 contracts with a Minimum Priority Customer Maker ADV of 15,000 contracts.

Currently all Members pay a Priority Customer taker fee of $0.45 per contract in Penny Symbols and SPY, and $0.82 per contract in non-Penny Symbols. Under the proposed rule change, Members that qualify for Tier 2 or higher will instead be charged taker fees for Priority Customer orders that are $0.01 per contract less than the taker fees currently charged on the Exchange. In particular, Members that have

[3] A Priority Customer is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

[4] *See* Securities Exchange Act Release No. 70426 (September 17, 2013), 78 FR 58359 (September 23, 2013) (Topaz–2013–04).

achieved Tier 2 or higher will pay a taker fee of $0.44 per contract in Penny Symbols and SPY, and $0.81 per contract in non-Penny Symbols, for Priority Customer orders. The Exchange believes that lowering the taker fee for Priority Customer orders for Members that achieve higher volume tiers will incentivize Members to bring more order flow to Topaz, including a higher volume of Priority Customer orders, to the benefit of all market participants that trade on the Exchange. The Exchange is not proposing to modify the fees charged to any other market participants.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and Section 6(b)(4) of the Act,[6] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

The Exchange believes the proposed Priority Customer taker fees for Priority Customers that achieve Tiers 2, 3, or 4 are reasonable and equitably allocated because Topaz has already established volume-based pricing, and is merely proposing to adopt taker fees in line with such pricing in order to further incentivize Members to send additional order flow to the Exchange. The Exchange believes that charging lower taker fees to Priority Customer orders, and in particular Priority Customer orders from Members that have achieved specified volume thresholds, attracts that order flow to Topaz and thereby creates liquidity to the benefit of all market participants who trade on the Exchange. Moreover, the proposed fees are within the range of fees currently charged by other maker/taker options exchange such as NYSE Arca Options (''Arca''), which charges a customer fee for taking liquidity of $0.45 per contract in penny pilot names, and $0.82 per contract in non-penny pilot names.[7]

The Exchange further believes that it is equitable and not unfairly discriminatory to lower the fees only for Priority Customer orders in order to attract that order flow to the Exchange. A Priority Customer is by definition not a broker or dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). This limitation does not apply to participants on the Exchange whose behavior is substantially similar to that of market professionals, including Professional Customers, who will generally submit a higher number of orders (many of which do not result in executions) than Priority Customers. Moreover, the Exchange does not believe that it is unfairly discriminatory to apply the proposed lower fee only to those Members that have achieved at least Tier 2 based on ADV, as this is in line with the Exchange's tiered approach to fees and rebates, and incentivizes Members to bring more order flow to the Exchange.

The Exchange notes that it has determined to charge fees in Mini Options at a rate that is 1/10th the rate of fees the Exchange provides for trading in Standard Options. The Exchange believes it is reasonable and equitable and not unfairly discriminatory to assess lower fees to provide market participants an incentive to trade Mini Options on the Exchange. The Exchange believes the proposed fees are reasonable and equitable in light of the fact that Mini Options have a smaller exercise and assignment value, specifically 1/10th that of a standard option contract, and, as such, is providing fees that are 1/10th of those applicable to Standard Options.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

In accordance with Section 6(b)(8) of the Act,[8] the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed fees are within the range of fees currently charged by other maker/taker options exchanges, as explained above, and will increase competition between Topaz and other markets by incentivizing Members to execute more volume on the Exchange in order to qualify for the lower Priority Customer taker fee. While the lower proposed fees only apply to Priority Customers, this is consistent with current practices of charging lower fees and providing higher rebates to Priority Customers. The proposed rule change will encourage Members to send additional Priority Customer order flow to the Exchange, to the benefit of all market participants.

The Exchange operates in a highly competitive market in which market participants can readily direct their order flow to competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and rebates to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed fee changes reflect this competitive environment.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[9] and subparagraph (f)(2) of Rule 19b–4 thereunder,[10] because it establishes a due, fee, or other charge imposed by Topaz.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the 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 No. SR–Topaz–2013–14 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4).

[7] *See* Arca Fees and Charges, Trade-Related Charges for Standard Options.

[8] 15 U.S.C. 78f(b)(8).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

All submissions should refer to File No. SR–Topaz–2013–14. 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 offices 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–Topaz–2013–14, and should be submitted on or before January 9, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–30180 Filed 12–18–13; 8:45 am]

**BILLING CODE 8011–01–P**

[11] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–71074; File No. SR–Topaz–2013–13]**

## Self-Regulatory Organizations; Topaz Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees

December 13, 2013.

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 December 2, 2013, the Topaz Exchange, LLC (d/b/a ISE Gemini) (the ''Exchange'' or ''Topaz'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

### I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Topaz is proposing to amend its Schedule of Fees to charge a ''taker'' fee to non-Priority Customers orders executed during the opening rotation. The proposed rule change is available on the Exchange's Internet Web site at *http://www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and the 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 self-regulatory organization 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 the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to amend the Schedule of Fees to specify that the Exchange will charge its ''taker'' fee for non-Priority Customer orders executed during the opening rotation as described below. The fee changes discussed apply to both Standard Options and Mini Options traded on the Exchange. The Exchange's Schedule of Fees has separate tables for fees applicable to Standard Options and Mini Options. The Exchange notes that while the discussion below relates to fees for Standard Options, the fees for Mini Options, which are not discussed below, are and shall continue to be 1/10th of the fees for Standard Options.

The Exchange currently treats all volume executed during the opening rotation as adding liquidity for the purpose of determining applicable fees and rebates. This has resulted in a negative rate per contract for the Exchange during the opening rotation as both sides of each trade are paid the applicable rebate for adding liquidity, *i.e.,* the ''maker'' rebate. As volume executed on the opening rotation continues to grow, and in order to avoid a situation where the Exchange must pay a significant rebate on both sides of these trades, the Exchange proposes to charge its ''taker'' fee to non-Priority Customer orders executed during the opening rotation. Thus, based on current fee levels, the Exchange will charge a fee of $0.48 per contract in Penny Symbols and SPY to Market Maker,[3] non-Topaz Market Maker,[4] Firm Proprietary/Broker-Dealer,[5] and Professional Customer orders.[6] In non-Penny Symbols the Exchange will charge a fee of $0.84 per contract for Market Maker orders, and a fee of $0.87 per contract for non-Topaz Market Maker, Firm Proprietary/Broker-Dealer, and Professional Customer orders. In order to attract Priority Customer orders,[7] the Exchange will continue to pay Priority Customers the ''maker'' rebate, which currently ranges from $0.25 per contract for Tier 1 Priority Customers to $0.48 per contract for Tier 4 Priority Customers,[8] for orders executed during the opening rotation.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(4) of the Act,[10] in particular, in that it provides for an equitable allocation of reasonable fees

[3] The term Market Maker refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. Market Maker orders sent to the Exchange by an Electronic Access Member are assessed fees and rebates at the same level as Market Maker orders. *See* footnote 2, Schedule of Fees, Section I and II.

[4] A Non-Topaz Market Maker, or Far Away Market Maker (''FarMM''), is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended, registered in the same options class on another options exchange.

[5] A Firm Proprietary order is an order submitted by a Member for its own proprietary account. A Broker-Dealer order is an order submitted by a Member for a non-Member broker-dealer account.

[6] A Professional Customer is a person who is not a broker/dealer and is not a Priority Customer.

[7] A Priority Customer is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

[8] The Exchange provides rebates to Members for adding liquidity based on tiers that reflect their Total Affiliated Member Average Daily Volume (''ADV''), Priority Customer Maker ADV, or a combination of the two. *See* Securities Exchange Act Release No. 70426 (September 17, 2013) 78 FR 58359 (September 23, 2013).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

and other charges among Exchange Members and other persons using its facilities.

The Exchange believes that it is fair and equitable to charge its ''taker'' fee for non-Priority Customer orders executed during the opening rotation in order to avoid the negative economics associated with paying a rebate on both sides of each trade. The Exchange notes that other options exchanges have implemented opening-only pricing. For example, the BOX Options Exchange (''BOX'') LLC fee schedule provides that transactions that occur on the opening or re-opening of trading will be deemed to neither ''add'' nor ''remove'' liquidity, and will therefore be exempt from certain fees and credits.[11] The Exchange is proposing to charge non-Priority Customers its ''taker'' fee rather than waiving fees and rebates for all market participants so that it can attract Priority Customer orders, which will continue to be paid rebates. The Exchange does not believe that it is unfairly discriminatory not to similarly charge its ''taker'' fee to Priority Customers. In general, Priority Customers are provided higher rebates and lower fees than other market participants on the Exchange. The Exchange believes continuing to provide rebates to Priority Customer orders executed during the opening rotation will attract that order flow to Topaz and thereby create liquidity to the benefit of all market participants who trade on the Exchange. A Priority Customer is by definition not a broker or dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). This limitation does not apply to participants on the Exchange whose behavior is substantially similar to that of market professionals, including Professional Customers, who will generally submit a higher number of orders (many of which do not result in executions) than Priority Customers.

The Exchange notes that it has determined to charge fees in Mini Options at a rate that is 1/10th the rate of fees the Exchange provides for trading in Standard Options. The Exchange believes it is reasonable and equitable and not unfairly discriminatory to assess lower fees to provide market participants an incentive to trade Mini Options on the Exchange. The Exchange believes the proposed fees are reasonable and equitable in light of the fact that Mini Options have a smaller exercise and assignment value, specifically 1/10th that of a standard option contract, and, as such, is providing fees that are 1/10th of those applicable to Standard Options.

*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 intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As described above, this proposed rule change is intended to remedy the negative economics associated with paying a rebate to market participants on both sides of trades executed during the opening rotation. While only Priority Customers will continue to receive a rebate for trades executed during the opening rotation, this is consistent with current practices of charging lower fees and providing higher rebates to Priority Customers, and will encourage Members to send additional Priority Customer order flow to the Exchange, to the benefit of all market participants. The Exchange operates in a highly competitive market in which market participants can readily direct their order flow to competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and rebates to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed fee changes reflect this competitive environment.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[12] and subparagraph (f)(2) of Rule 19b–4 thereunder,[13] because it establishes a due, fee, or other charge imposed by Topaz.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the 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 No. SR–Topaz–2013–13 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–Topaz–2013–13. 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 offices 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

[11] *See* BOX Fee Schedule, Section II. Liquidity Fees and Credits, Exempt Transactions.

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 240.19b–4(f)(2).

should refer to File No. SR–Topaz–2013–13, and should be submitted on or before January 9, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–30178 Filed 12–18–13; 8:45 am]

**BILLING CODE 8011–01–P**

[14] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

### Reporting and Recordkeeping Requirements Under OMB Review

**AGENCY:** Small Business Administration.

**ACTION:** Notice of 30 day reporting requirements submitted for OMB review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required 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.

**DATES:** Submit comments on or before January 21, 2014. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

*Copies:* Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

**ADDRESSES:** Address all comments concerning this notice to: Agency Clearance Officer, Curtis Rich, Small Business Administration, 409 3rd Street SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, 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.*

*Abstract:*

Small Business Administration collects this information from lenders who participate in the secondary market program. The information is used to facilitate and administer secondary market transactions in accordance with 15 U.S.C. 634(f)3 and to monitor the program for compliance with 15 U.S.C. 639(h).

**SUPPLEMENTARY INFORMATION:**

*Title:* Secondary Participation Guaranty Agreement.

*Frequency:* On Occasion.

*SBA Form Number No's:* 1941A, B, C.

*Description of Respondents:* Investment Companies.

*Responses:* 625.

*Annual Burden:* 42,500.

**Curtis Rich,**

*Management Analyst.*

[FR Doc. 2013–30059 Filed 12–18–13; 8:45 am]

**BILLING CODE 8025–01–M**

## SMALL BUSINESS ADMINISTRATION

### National Small Business Development Center Advisory Board

**AGENCY:** U.S. Small Business Administration (SBA).

**ACTION:** Notice of open Federal Advisory Committee meetings.

**SUMMARY:** The SBA is issuing this notice to announce the location, date and time and agenda for the 2nd quarter meetings of the National Small Business Development Center (SBDC) Advisory Board.

**DATES:** The meetings for the 2nd quarter will be held on the following dates:

Tuesday, January 21, 2014 at 1:00 p.m. EST

Tuesday, February 18, 2014 at 1:00 p.m. EST

Tuesday, March 18, 2014 at 1:00 p.m. EST

**ADDRESSES:** This meeting will be held via conference call.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a) of the Federal Advisory Committee Act (5 U.S.C. Appendix 2), SBA announces the meetings of the National SBDC Advisory Board. This Board provides advice and counsel to the SBA Administrator and Associate Administrator for Small Business Development Centers.

The purpose of these meetings is to discuss following issues pertaining to the SBDC Advisory Board:

—SBA Update

—Annual Meetings

—Board Assignments

—Member Roundtable

**FOR FURTHER INFORMATION CONTACT:** The meetings are open to the public however advance notice of attendance is requested. Anyone wishing to be a listening participant must contact Monika Cuff by fax or email. Her contact information is Monika Cuff, Program Specialist, 409 Third Street SW., Washington, DC 20416, Phone, 202–205–7310, Fax 202–481–5624, email, *monika.cuff@sba.gov*

Additionally, if you need accommodations because of a disability or require additional information, please contact Monika Cuff at the information above.

**Diana Doukas,**

*Committee Management Officer.*

[FR Doc. 2013–29875 Filed 12–18–13; 8:45 am]

**BILLING CODE 8025–01–M**

## SMALL BUSINESS ADMINISTRATION

### Small Business Size Standards: Waiver of the Nonmanufacturer Rule

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice of Final Action: Granting Class Waiver of the Nonmanufacturer Rule for Commercial-Type Ovens, Ranges, and Gas ranges as listed under the North American Industry Classification System (NAICS) code 333318 (Other Commercial and Service Industry Machinery Manufacturing).

**SUMMARY:** The U.S. Small Business Administration (SBA) is granting a class waiver of the Nonmanufacturer Rule for Ovens, commercial-type, Ranges, commercial-type, and Gas ranges, commercial-type, Product or Service Code (PSC) 7310 (Food Cooking, Baking, and Serving Equipment), under NAICS code 333318 (Other Commercial and Service Industry Machinery Manufacturing). The basis for the waiver is that there are not two or more small business manufacturers that have been awarded or have performed a contract to supply this class of products to the Federal Government within the past 24 months, or that have submitted an offer on a solicitation for this class of products within that time frame. The effect of this waiver is to allow otherwise qualified small businesses to supply the products of any manufacturer on a Federal contract set aside for small businesses, Service-Disabled Veteran-Owned (SDVO) small businesses, Participants in SBA's 8(a) Business Development (BD) Program, or Women-Owned Small Business (WOSB) concerns.

**DATES:** *Effective Date:* This waiver is effective on the date this notice is published.

**FOR FURTHER INFORMATION CONTACT:** Mr. Edward Halstead, Procurement Analyst, by telephone at (202) 205–9885 or email at *edward.halstead@sba.gov.*

**SUPPLEMENTARY INFORMATION:** Sections 8(a)(17) and 46 of the Small Business Act (the Act), 15 U.S.C. 637(a)(17) and 657s, and SBA's implementing regulations require that recipients of

Federal supply contracts set-aside for small businesses, SDVO small businesses, WOSB concerns, or Participants in the SBA's 8(a) BD Program provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule. *See* 13 CFR 121.406(b), 125.15(c), 127.505. Sections 8(a)(17)(B)(iv)(II) and 46(a)(4)(B) of the Act authorize SBA to waive the Nonmanufacturer Rule for any ''class of products'' (known as a ''class waiver'') for which there are no small business manufacturers or processors available to participate in the Federal market. In order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal Government within the last 24 months. 13 CFR 121.1202(c). SBA defines ''class of products'' as an individual subdivision within a NAICS Industry Number as established by the Office of Management and Budget in the NAICS Manual. 13 CFR 121.1202(d). In addition, SBA uses PSCs to further identify particular products within the NAICS Code to which a waiver would apply. SBA may then identify a specific item with a PSC and NAICS code to which a class waiver would apply.

SBA received a request to waive the Nonmanufacturer Rule for commercial ovens and broilers, PSC 7310, under NAICS code 333319 (Other Commercial and Service Industry Machinery Manufacturing). (Note: On October 1, 2012, the NAICS code for Ovens, commercial-type, manufacturing, Ranges, commercial-type, manufacturing and Gas ranges, commercial-type, manufacturing changed from 333319 to 333318.)

On May 22, 2013, SBA published in the **Federal Register** a notice of intent to waive the Nonmanufacturer Rule for the above-listed class of products. 78 FR 12108. SBA announced in the notice that it was soliciting comments and sources of small business manufacturers of this class of products. In addition, SBA used the Dynamic Small Business Search (DSBS) database to conduct independent market research. This research did not reveal any small business manufacturers that participated in the Federal market during the previous 24 months.

In response to this notice, SBA received two comments. One respondent, a small business commercial appliance equipment dealer, claimed their market research found no small business manufacturers of this type of equipment that had conducted business with the Federal government within 24 months prior to June 1, 2013. Both respondents supported the granting of a class waiver of the Nonmanufacturer Rule for commercial-type ovens, ranges, and gas ranges. Both respondents stated that a class waiver of the Nonmanufacturer Rule would increase set-aside contract opportunities for all small businesses in an industry dominated by large businesses.

SBA considered all of the comments submitted, and after conducting thorough market research analysis, has concluded that there are no small business manufacturers of Commercial-type Ovens, Ranges, and Gas ranges. As a result, SBA is granting a class waiver of the Nonmanufacturer Rule for Commercial-type Ovens, Commercial-type Ranges, and Commercial-Type Gas ranges, under PSC 7310, NAICS Code 333318. The effect of this class waiver is to allow otherwise qualified small businesses to supply the products of other than small manufacturers or processors on intended small business set-aside contracts. However, it must be emphasized that this class waiver of the Nonmanufacturer Rule does not waive other legal requirements applicable to Government procurements, such as the Buy American Act and the Trade Agreements Act.

**Judith A. Roussel,**

*Director, Office of Government Contracting.*

[FR Doc. 2013–29873 Filed 12–18–13; 8:45 am]

BILLING CODE 8025–01–P

## DEPARTMENT OF STATE

**[Public Notice 8561]**

## In the Matter of the Designation of Al-Mulathamun Battalion, Also Known as al-Mulathamun Brigade, Also Known as al-Muwaqqi'un bil-Dima, Also Known as Those Signed in Blood Battalion, Also Known as Signatories in Blood, Also Known as Those Who Sign in Blood, Also Known as Witnesses in Blood, Also Known as Signed-in-Blood Battalion, Also Known as Masked Men Brigade, Also Known as Khaled Abu al-Abbas Brigade, Also Known as al-Mulathamun Masked Ones Brigade, Also Known as al-Murabitoun, Also Known as The Sentinels, as a Foreign Terrorist Organization pursuant to Section 219 of the Immigration and Nationality Act, as Amended

Based upon a review of the Administrative Record assembled in this matter and in consultation with the Attorney General and the Secretary of the Treasury, I conclude that there is a sufficient factual basis to find that the relevant circumstances described in section 219 of the Immigration and Nationality Act, as amended (hereinafter ''INA'') (8 U.S.C. 1189), exist with respect to the al-Mulathamun Battalion, also known as al-Mulathamun Brigade, also known as al-Muwaqqi'un bil-Dima, also known as Those Signed in Blood Battalion, also known as Signatories in Blood, also known as Those who Sign in Blood, also known as Witnesses in Blood, also known as Signed-in-Blood Battalion, also known as Masked Men Brigade, also known as Khaled Abu al-Abbas Brigade, also known as al-Mulathamun Masked Ones Brigade, also known as al-Murabitoun, also known as The Sentinels.

Therefore, I hereby designate the aforementioned organization and its aliases as a Foreign Terrorist Organization pursuant to section 219 of the INA.

This determination shall be published in the **Federal Register**.

Dated: December 6, 2013.

**John F. Kerry,**

*Secretary of State.*

[FR Doc. 2013–30254 Filed 12–18–13; 8:45 am]

BILLING CODE 4710–02–P

## DEPARTMENT OF STATE

**[Public Notice 8562]**

### In the Matter of the Designation of Al-Mulathamun Battalion, Also Known as al-Mulathamun Brigade, Also Known as al-Muwaqqi'un bil-Dima, Also Known as Those Signed in Blood Battalion, Also Known as Signatories in Blood, Also Known as Those who Sign in Blood, Also Known as Witnesses in Blood, Also Known as Signed-in-Blood Battalion, Also Known as Masked Men Brigade, Also Known as Khaled Abu al-Abbas Brigade, Also Known as al-Mulathamun Masked Ones Brigade, Also Known as al-Murabitoun, Also Known as The Sentinels; as a Specially Designated Global Terrorist Pursuant to Section 1(b) of Executive Order 13224, as Amended.

Acting under the authority of and in accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, I hereby determine that the entity known as the al-Mulathamun Battalion, also known as al-Mulathamun Brigade, also known as al-Muwaqqi'un bil-Dima, also known as Those Signed in Blood Battalion, also known as Signatories in Blood, also known as Those who Sign in Blood, also known as Witnesses in Blood, also known as Signed-in-Blood Battalion, also known as Masked Men Brigade, also known as Khaled Abu al-Abbas Brigade, also known as al-Mulathamun Masked Ones Brigade, also known as al-Murabitoun, also known as The Sentinels, committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that ''prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously,'' I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: December 6, 2013.

**John F. Kerry,**

*Secretary of State.*

[FR Doc. 2013–30252 Filed 12–18–13; 8:45 am]

BILLING CODE 4710–10–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Twentieth Meeting: RTCA Special Committee 214/EUROCAE WG–78: Standards for Air Traffic Data Communication Services

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

**ACTION:** RTCA Special Committee 214 held jointly with EUROCAE WG–78: Standards for Air Traffic Data Communication Services meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of nineteenth meeting of RTCA Special Committee 214 to be held jointly with EUROCAE WG–78: Standards for Air Traffic Data Communication Services.

**DATES:** The meeting will be held January 13–17 from 9:00 a.m. to 5:00 p.m.

**ADDRESSES:** The meeting will be held at RTCA, Inc., 1150 18th Street NW., Suite 910, Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** Sophie Bousquet, 202–330–0663, *sbousquet@rtca.org* or The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 214/EUROCAE WG–78: Standards for Air Traffic Data Communication Services. The agenda will include the following:

**Monday, January 13**

- Welcome, Introductions, & Administrative
- Remarks/Welcome/Introduction/Administrative Remarks
- Approval of the Agenda
- Approval of the Minutes of Plenary 19 and Review Action Item Status
- Coordination Activities: ICAO OPLINK and ICAO AC
- Status/discussion of SPR & INT Baseline 2 (Initial) documents
- Status/discussion of DO–280B/ED–110B Change 1
- Status/discussion of DO–281B/ED–92B Change 1 and DO–224C Change 1
- Review of Position Papers and Contributions
- Approval of Sub-Group Meeting Objectives

**Tuesday, January 14**

9:00 a.m.–5:00 p.m.: Sub-Group Sessions

**Wednesday, January 15**

9:00 a.m.–5:00 p.m.: Sub-Group Sessions

**Thursday, January 16**

- Approval of the Final version of Baseline 2 (Initial) documents
- Approval of the Final version of DO–281B/ED–92B Change 1 and DO–224C Change 1
- Approval of the Final version of the DO–280B/ED–110B Change 1
- Confirm high-level roadmap for Revision A (Final) to Baseline 2 standards
- Review need for upcoming meetings and approve dates and locations of Plenary and SG Meetings
- Any Other Business
- Adjourn

**Friday, January 17**

9:00 a.m.–5:00 p.m.: Sub-Group Sessions

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 12, 2013.

**Paige L. Williams,**

*Management Analyst, Business Operations Group, ANG–A12, Federal Aviation Administration.*

[FR Doc. 2013–30247 Filed 12–18–13; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### MAP–21 Comprehensive Truck Size and Weight Limits Study Materials

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of extension of deadline and comment period.

**SUMMARY:** The FHWA is extending the deadline and comment period for

materials related to the Moving Ahead for Progress in the 21st Century Act (MAP–21) Comprehensive Truck Size and Weight Limits Study, which were referenced in a notice published on November 29, 2013, at 78 FR 71707. The original meeting notice asked for comments by January 3, 2014. The extension is based on input received from DOT stakeholders that the January 3, 2014 closing date does not provide sufficient time for submission of comments to the Department. The FHWA agrees that the deadline and the comment period should be extended. Therefore, the closing date for submission of comments on the materials is extended to January 17, 2014. Late-filed comments received after this date will be considered to the fullest extent practicable until January 31, 2014. This will provide others interested in commenting additional time to submit comments while maintaining the schedule required to deliver this study to Congress within the required timeframe.

**DATES:** Comments must be received on or before January 17, 2014 for full consideration. Late-filed comments received after this date will be considered to the fullest extent practicable, until January 31, 2014.

**ADDRESSES:** Comments should be sent to:

*Email: CTSWStudy@dot.gov.*

*Mail:* Federal Highway Administration, Office of Freight Management and Operations, 1200 New Jersey Ave. SE., E84–471, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** For questions about this program, contact Thomas Kearney, FHWA Office of Freight Management and Operations, (518) 431–8890, or by email at *Tom.Kearney@dot.gov.* For legal questions, please contact Michael Harkins, FHWA Office of the Chief Counsel, (202) 366–4928, or by email at *Michael.Harkins@dot.gov.* Business hours for the FHWA are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

## Background

On November 29, 2013, at 78 FR 71707, the FHWA published in the **Federal Register** a notice to announce two upcoming public meetings on the MAP–21 Comprehensive Truck Size and Weight Limits Study and to announce the comment period for certain material related to the study. These materials included draft Desk Scans, project plans, selected truck configurations, and an updated project schedule. The materials have been posted at: *http://www.ops.fhwa.dot.gov/freight/sw/map21tswstudy/index.htm.*

The original comment period for the materials referenced in the notice closes on January 3, 2014. However, DOT stakeholders have indicated that this closing date does not provide sufficient time for submission of comments to the Department. To allow time for interested parties to submit comments, while maintaining the schedule required to deliver this Study to Congress within the required timeframe, the closing date is changed from January 3, 2014, to January 17, 2014. In addition late-filed comments will be considered to the fullest extent practicable, until January 31, 2014.

**Authority:** Section 32801 of Pub. L. 112–141.

Dated: December 13, 2013.

**Jeffrey Lindley,**

*FHWA Associate Administrator for Operations.*

[FR Doc. 2013–30193 Filed 12–18–13; 8:45 am]

BILLING CODE 4910–22–P

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## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

**[Docket ID OCC–2013–0020]**

### Federal Reserve System

**[Docket No. OP–1474]**

### Federal Deposit Insurance Corporation

### Proposed Addendum to the Interagency Policy Statement on Income Tax Allocation in a Holding Company Structure

**AGENCY:** Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and Office of the Comptroller of the Currency, Department of the Treasury.

**ACTION:** Proposed joint guidance with request for comment.

**SUMMARY:** The Agencies are proposing to issue jointly an Addendum (Proposed Addendum) to the ''Interagency Policy Statement on Income Tax Allocation in a Holding Company Structure'' (63 FR 64757, Nov. 23, 1998) to ensure that insured depository institutions (IDIs) in a consolidated group maintain an appropriate relationship regarding the payment of taxes and treatment of tax refunds. The Proposed Addendum would instruct IDIs and their holding companies to review their tax allocation agreements to ensure that the agreements expressly acknowledge that the holding company receives a tax refund from a taxing authority as agent for the IDI and are consistent with certain of the requirements of sections 23A and 23B of the Federal Reserve Act. The Proposed Addendum includes a sample paragraph that IDIs would include in their tax allocation agreements to facilitate the Agencies' instructions.

**DATES:** Comments must be received by January 21, 2014.

**ADDRESSES:** Interested parties are encouraged to submit written comments jointly to all of the Agencies. You may submit comments, identified by ''Addendum to the Interagency Policy Statement on Income Tax Allocation in a Holding Company Structure'' by any of the following methods:

**Office of the Comptroller of the Currency**

Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email, if possible. Please use the title ''Proposed Addendum to the Interagency Policy Statement on Income Tax Allocation in a Holding Company Structure'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Web site: Federal eRulemaking Portal—''Regulations.gov'':* Go to *http://www.regulations.gov.* Enter ''Docket ID OCC–2013–0020'' in the Search Box and click ''Search.''. Results can be filtered using the filtering tools on the left side of the screen. Click on ''Comment Now'' to submit public comments. Click on the ''Help'' tab on the Regulations.gov home page to get information on using Regulations.gov.
- *Email:* mail to: *regs.comments@occ.treas.gov.*
- *Mail:* Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.
- *Fax:* (571) 465–4326.
- *Hand Delivery:* 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.

*Instructions:* Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by the Federal eRulemaking Portal or email, if possible. Please use the title ''Addendum to the Interagency Policy Statement on Income Tax Allocation in a Holding Company Structure'' to facilitate the organization and distribution of the comments. In

general, OCC will enter all comments received into the docket and publish them on the Regulations.gov Web site without change, including any business or personal information that you provide such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. To view comments electronically: Go to *http://www.regulations.gov.* Enter ''Docket ID OCC–2013–0020'' in the Search box and click ''Search.''. Comments can be filtered by agency using the filtering tools on the left side of the screen. Click on the ''Help'' tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period. You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

**The Board of Governors of the Federal Reserve System**

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include the Board's docket number in the subject line of the message.
- *Facsimile:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.
- *Instructions:* All public comments are available from the Board's Web site at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments also may be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets NW.) between 9:00 a.m. and 5:00 p.m. on weekdays.

**Federal Deposit Insurance Corporation**

- *Agency Web site: http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow instructions for submitting comments on the Agency Web site.
- *Email: Comments@fdic.gov.* Include ''Addendum to Interagency Policy Statement on Income Tax Allocation in a Holding Company Structure,'' on the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.
- *Instructions:* All comments received must include the agency name and ''Addendum to Interagency Policy Statement on Income Tax Allocation in a Holding Company Structure.'' All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose.html,* including any personal information provided. Paper copies of public comments may be ordered from the FDIC Public Information Center, 3501 North Fairfax Drive, Room E–1002, Arlington, VA 22226, by telephone at (877) 275–3342 or (703) 562–2200.

**FOR FURTHER INFORMATION CONTACT:**

*Office of the Comptroller of the Currency:* Steven Key, Assistant Director for Bank Activities and Structure, Bank Activities and Structure Division, Chief Counsel's Office, 202–649–5594 or *steven.key@occ.treas.gov;* Gary Jeffers, Counsel, Bank Activities and Structure Division, Chief Counsel's Office, 202–649–6208 or *gary.jeffers@occ.treas.gov,* Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

*Board of Governors of the Federal Reserve System:* Laurie Schaffer, Associate General Counsel, (202) 452–2272, Benjamin McDonough, Senior Counsel, (202) 452–2036, Pamela Nardolilli, Senior Counsel, (202) 452–3289, or Will Giles, Counsel, (202) 452–3351, Legal Division; or Matthew Kincaid, Sr. Accounting Policy Analyst, (202) 452–2028, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551. Users of Telecommunication Device for Deaf (TDD) only, call (202) 263–4869.

*Federal Deposit Insurance Corporation:* Robert Storch, Chief Accountant, 202–898–8906 or *rstorch@fdic.gov;* Mark G. Flanigan, Counsel, Legal Division, 202–898–7426 or *mflanigan@fdic.gov;* Jeffrey E. Schmitt, Counsel, Legal Division, 703–562–2429 or *jschmitt@fdic.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

In 1998, the Agencies and the Office of Thrift Supervision issued the ''Interagency Policy Statement on Income Tax Allocation in a Holding Company Structure'' (Interagency Policy Statement) to provide guidance to IDIs and their holding companies and other affiliates (Consolidated Groups) regarding the payment of taxes on a consolidated basis.[1] One of the principal goals of the Interagency Policy Statement is to protect IDIs' ownership rights in tax refunds, while permitting the Consolidated Group to file consolidated tax returns. The Interagency Policy Statement states that: (1) tax settlements between an IDI and its holding company should be conducted in a manner that is no less favorable to the IDI than if it were a separate taxpayer; and (2) a holding company receives a tax refund from a taxing authority as agent for the IDI.

Since adoption of the Interagency Policy Statement, there have been many disputes between holding companies in bankruptcy and failed IDIs regarding the ownership of tax refunds generated by the IDIs. In these disputes, some courts have found that tax refunds generated by an IDI were the property of its holding company based on certain language contained in their tax allocation agreement that the courts interpreted as creating a debtor-creditor relationship. Accordingly, the Agencies are proposing to issue an Addendum to the Interagency Policy Statement (Proposed Addendum) to ensure that IDIs in a Consolidated Group maintain an appropriate relationship regarding the payment of taxes and treatment of tax refunds.

## II. Description of Proposed Addendum

The Proposed Addendum is intended to clarify and supplement the Interagency Policy Statement to ensure that tax allocation agreements expressly acknowledge an agency relationship between a holding company and its subsidiary IDI to protect the IDI's ownership rights in tax refunds. The Proposed Addendum also would clarify

[1] 63 FR 64757 (Nov. 23, 1998).

how certain of the requirements of sections 23A and 23B of the Federal Reserve Act (FRA) apply to tax allocation agreements between IDIs and their affiliates.

The Proposed Addendum states that, to further the goals of the Interagency Policy Statement, IDIs and their holding companies should review and ensure that their tax allocation agreements explicitly acknowledge that an agency relationship exists between the holding company and its subsidiary IDIs with respect to tax refunds and do not contain other language to suggest a contrary intent. The Proposed Addendum includes a sample paragraph for IDIs and their holding companies to use in their tax allocation agreements, which the Agencies generally would deem to adequately acknowledge that an agency relationship exists for purposes of the Interagency Policy Statement, the Proposed Addendum, and sections 23A and 23B of the FRA.

The Proposed Addendum also would clarify that all tax allocation agreements are subject to the requirements of section 23B of the FRA, and tax allocation agreements that do not clearly acknowledge that an agency relationship exists may be subject to additional requirements under section 23A of the FRA. Moreover, the Proposed Addendum would clarify that section 23B of the FRA requires a holding company to promptly transmit tax refunds received from a taxing authority to its subsidiary IDI. The sample paragraph in the Proposed Addendum would incorporate this expectation.

## III. Request for Comment

The Agencies invite comment on all aspects of the Proposed Addendum.

1. What other or additional mechanisms, if any, should the Agencies consider to clarify their expectations regarding tax allocation agreements between an IDI and any parent holding company?

2. What modifications, if any, could the Agencies make to the Proposed Addendum, including the sample paragraph, that would reduce burden on IDIs and their parent holding companies?

## IV. Administrative Law Matters

### *Paperwork Reduction Act*

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR part 1320, Appendix A.1), the Agencies reviewed the Proposed Addendum guidance for any collection of information. The Agencies may not conduct or sponsor, and an organization is not required to respond to, an information collection unless the information collection displays a currently valid Office of Management and Budget control number. There is no collection of information contained in the Proposed Addendum.

## V. Text of the Proposed Addendum

The text of the Proposed Addendum follows:

**Addendum to Interagency Policy Statement on Income Tax Allocation in a Holding Company Structure**

In 1998, the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC) (collectively, the Agencies), and the Office of Thrift Supervision (OTS) issued the ''Interagency Policy Statement on Income Tax Allocation in a Holding Company Structure'' (the ''Interagency Policy Statement'').[2] Under the Interagency Policy Statement, members of a consolidated group, comprised of one or more insured depository institutions (IDIs) and their holding company and affiliates (the Consolidated Group), may prepare and file their federal and state income tax returns as a group so long as the act of filing as a group does not prejudice the interests of any one of the IDIs. That is, the Interagency Policy Statement affirms that intercorporate tax settlements between an IDI and its parent company should be conducted in a manner that is no less favorable to the IDI than if it were a separate taxpayer and that any practice that is not consistent with the policy statement may be viewed as an unsafe and unsound practice prompting either informal or formal corrective action.

The Interagency Policy Statement also addresses the nature of the relationship between an IDI and its parent company. It states in relevant part that:

- ''[A] parent company that receives a tax refund from a taxing authority obtains these funds as agent for the consolidated group on behalf of the group members,'' and
- A Consolidated Group's tax allocation agreement should not ''characterize refunds attributable to a subsidiary depository institution that the parent receives from a taxing authority as the property of the parent.''

Since the issuance of the Interagency Policy Statement, courts have reached varying conclusions regarding whether tax allocation agreements create a debtor-creditor relationship between a holding company and its IDI.[3] Some courts have found that the tax refunds in question were the property of the holding company in bankruptcy (rather than property of the subsidiary IDI) and held by the holding company as the IDI's debtor.[4] The Agencies are issuing this addendum to the Interagency Policy Statement (Addendum) to explain that Consolidated Groups should review their tax allocation agreements to ensure the agreements achieve the objectives of the Interagency Policy Statement. This Addendum also clarifies how certain of the requirements of sections 23A and 23B of the Federal Reserve Act (FRA) apply to tax allocation agreements between IDIs and their affiliates.

In reviewing their tax allocation agreements, Consolidated Groups should ensure the agreements (1) clearly acknowledge that an agency relationship exists between the holding company and its subsidiary IDIs with respect to tax refunds, and (2) do not contain other language to suggest a contrary intent.[5] In addition, all Consolidated Groups should amend their tax allocation agreements to include the following paragraph or substantially similar language:

The [holding company] is an agent for the [IDI and its subsidiaries] (the ''Institution'') with respect to all matters related to consolidated tax returns and refund claims, and nothing in this agreement shall be construed to alter or modify this agency relationship. If the [holding company] receives a tax refund from a taxing authority, these funds are obtained as agent for the Institution. Any tax refund attributable to income earned, taxes paid, and losses incurred by the Institution is the property of and owned by the Institution, and shall be held in trust by the [holding company] for the benefit of the Institution. The [holding company] shall forward promptly the amounts held in trust to the Institution. Nothing in this agreement is intended to be or should be construed to provide the [holding company] with an ownership interest in a tax refund that is attributable to income earned, taxes paid, and losses incurred by the Institution. The [holding company] hereby agrees that this tax sharing agreement does not give it an ownership interest in a tax refund generated by the tax attributes of the Institution. Going forward, the Agencies generally will deem tax allocation agreements that contain this or similar language to acknowledge that an agency relationship exists for purposes of the Interagency Policy Statement, this Addendum, and sections 23A and 23B of the FRA.

All tax allocation agreements are subject to the requirements of section 23B of the FRA, and tax allocation agreements that do not clearly acknowledge that an agency relationship exists may be subject to additional requirements under section 23A of

[2] 63 FR 64757 (Nov. 23, 1998). Responsibilities of the OTS were transferred to the Board, FDIC, and OCC pursuant to Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

[3] Case law on this issue is mixed. *Compare Zucker* v. *FDIC, as Receiver for BankUnited,* 2013 WL 4106387, *6 (11th Cir. Aug. 15, 2013) (''The relationship between the Holding Company and the Bank is not a debtor-creditor relationship. When the Holding Company received the tax refunds it held the funds intact—as if in escrow—for the benefit of the Bank and thus the remaining members of the Consolidated Group.'') *with In re IndyMac Bancorp, Inc.,* 2012 WL 1951474, *2 (C.D. Ca. May 30, 2012) (''According to both bankruptcy law and California contract law, the [tax allocation agreement in question] creates a debtor/creditor relationship.'').

[4] *See e.g., In re IndyMac Bancorp, Inc.,* 2012 WL 1951474 (C.D. Ca. May 30, 2012).

[5] This Addendum clarifies and supplements but does not replace the Interagency Policy Statement.

the FRA.[6] In general, section 23B requires affiliate transactions to be made on terms and under circumstances that are substantially the same, or at least as favorable to the IDI, as comparable transactions involving nonaffiliated companies or, in the absence of comparable transactions, on terms and circumstances that would in good faith be offered to non-affiliated companies.[7] Tax allocation agreements should require the holding company to forward promptly any payment due the IDI under the tax allocation agreement and specify the timing of such payment. Agreements that allow a holding company to hold and not promptly transmit tax refunds received from the taxing authority and owed to an IDI are inconsistent with the requirements of section 23B and subject to supervisory action. However, an Agency's determination of whether such provision, or the tax allocation agreement in total, is consistent with section 23B will be based on the facts and circumstances of the particular tax allocation agreement and any associated refund.

Dated: December 9, 2013.

**Thomas J. Curry,**

*Comptroller of the Currency.*

By order of the Board of Governors of the Federal Reserve System.

December 12, 2013.

**Robert deV. Frierson,**

*Secretary of the Board.*

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Dated at Washington, DC this 30th day of October, 2013.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 2013–30130 Filed 12–18–13; 8:45 am]

BILLING CODE 4810–33–P;6210–01–P;6714–01–P

[6] Section 23A requires, among other things, that loans and extensions of credit from a bank to its affiliates be properly collateralized. 12 U.S.C. 371c(c).

[7] 12 U.S.C. 371c–1(a). Transactions subject to section 23B include the payment of money by a bank to an affiliate under contract, lease, or otherwise and transactions in which the affiliate acts as agent of the bank. *Id.* at § 371c–1(a)(2) & (a)(4).

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form W–12

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form W–12 IRS Paid Preparer Tax Identification Number (PTIN).

**DATES:** Written comments should be received on or before February 18, 2014 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Katherine Dean, at Internal Revenue Service, room 6242, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *katherine.b.dean@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* IRS Paid Preparer Tax Identification Number (PTIN).

*OMB Number:* 1545–2190.

*Form Number:* Form W–12.

*Abstract:* Paid tax return preparers are required to get a preparer tax identification number (PTIN), and to pay the fee required with the application. A third party administers the PTIN application process. Most applications are filled out on-line. Form W–12 is used to collect the information required by the regulations, and to collect the information the third party needs to administer the PTIN application process. Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Businesses and other for-profit organizations.

*Estimated Number of Respondents:* 1,200,000.

*Estimated Total Annual Burden Hours:* 1,464,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

*Comments are invited on:* (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 22, 2013.

**Yvette Lawrence,**

*OMB Reports Clearance Officer.*

[FR Doc. 2013–30122 Filed 12–18–13; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing Final Regulation, TD 9467, Measurement of Assets and Liabilities for Pension Funding Purposes.

**DATES:** Written comments should be received on or before February 18, 2014 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulations should be directed to Katherine Dean at Internal

Revenue Service, room 6242, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *katherine.b.dean@irs.gov*.

**SUPPLEMENTARY INFORMATION:**

*Title:* Measurement of Assets and Liabilities for Pension Funding Purposes.

*OMB Number:* 1545–2095.

*Regulation Project Number:* REG–139236–07 (TD 9467).

*Abstract:* (These final regulations were issued in two separate NPRMs, which received separate OMB control numbers of 1545–2095 and 1545–2112. The NPRMs have been combined into a single set of final regulations and the IRS is changing the Information Collection Request (ICR) under OMB control number 1545–2095 and abandoning the ICR under OMB control number 1545–2112. The collections that were under 1545–2112 are being added to 1545–2095.)

In order to implement the statutory provisions under sections 430 and 436, this final regulation contains collections of information in §§ 1.430(f)–1(f), 1.430(h)(2)–1(e), 1.436–1(f), and 1.436–1(h). The information required under § 1.430(f)–1(f) is required in order for plan sponsors to make elections regarding a plan's credit balances upon occasion. The information under § 1.430(g)–1(d)(3) is required in order for a plan sponsor to include as a plan asset a contribution made to avoid a restriction under section 436. The information required under § 1.430(h)(2)–1(e) is required in order for a plan sponsor to make an election to use an alternative interest rate for purposes of determining a plan's funding obligations under § 1.430(h)(2)–1. The information required under §§ 1.436–1(f) and 1.436–1(h) is required in order for a qualified defined benefit plan's enrolled actuary to provide a timely certification of the plan's adjusted funding target attainment percentage (AFTAP) for each plan year to avoid certain benefit restrictions.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Revision of a currently approved collection.

*Affected Public:* Individuals, business or other for-profit organizations, not-for-profit institutions and Federal, state, local or tribal governments.

*Estimated Number of Respondents:* 72,000.

*Estimated Time per Respondent:* 1.5 hrs.

*Estimated Total Annual Burden Hours:* 54,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request For Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 22, 2013.

**Yvette Lawrence,**

*OMB Reports Clearance Officer.*

[FR Doc. 2013–30123 Filed 12–18–13; 8:45 am]

**BILLING CODE 4830–01–P**

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing Final Regulation, TD 8796, Notice, Consent, and Election Requirements Under Sections 411(a)(11) and 417 (§§ 1.411(a)–11T and 1.417(e)–1T).

**DATES:** Written comments should be received on or before February 18, 2014 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulations should be directed to Katherine Dean at Internal Revenue Service, room 6242, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *katherine.b.dean@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Notice, Consent, and Election Requirements Under Sections 411(a)(11) and 417.

*OMB Number:* 1545–1471.

*Regulation Project Number:* REG–209626–93 (TD 8796).

*Abstract:* These regulations provide guidance concerning the notice consent requirements under Code section 411(a)(11) and the notice and election requirements of Code section 4l7, Regulation section 1.411(a)–11(c) provides that a participant's consent to a distribution under code section 411(a)(11) is not valid unless the participant receives a notice of his or her rights under the plan no more than 90 and no less than 30 days prior to the annuity starting date. Regulation section 1.417(e)–1 sets forth the same 90/30-day time period for providing the notice explaining the qualified joint and survivor annuity and waiver rights under Code section 417(a)(3).

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals, business or other for-profit organizations, not-for-profit institutions and Federal, state, local or tribal governments.

*Estimated Number of Respondents:* 750.000.

*Estimated Time per Respondent:* .011 hr.

*Estimated Total Annual Burden Hours:* 8,333.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material

in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request For Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 22, 2013.

**Yvette Lawrence,**

*OMB Reports Clearance Officer.*

[FR Doc. 2013–30124 Filed 12–18–13; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for the IRS Taxpayer Burden Surveys

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning the 2013, 2014, and 2015 IRS Taxpayer Burden Surveys.

**DATES:** Written comments should be received on or before February 18, 2014 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622–3634, at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *RJoseph.Durbala@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* IRS Taxpayer Burden Surveys.

*OMB Number:* 1545–2212.

*Form Number:* CS–11–276.

*Abstract:* Each year, individual taxpayers in the United States submit more than 140 million tax returns to the Internal Revenue Service (IRS). The IRS uses the information in these returns, recorded on roughly one hundred distinct forms and supporting schedules, to administer a tax system whose rules span thousands of pages. Managing such a complex and broad-based tax system is costly but represents only a fraction of the total burden of the tax system. Equally, if not more burdensome, is the time and out-of-pocket expenses that taxpayers spend in order to comply with tax laws and regulations.

The IRS has conducted prior surveys of individual taxpayers pre-filing and filing burden in 1984, 1999, 2000, 2007, 2010, 2011, and 2012. The IRS conducted the Individual Taxpayer Compliance Burden Survey (individual taxpayer post-filing issues) in 2012.

The purpose of the IRS entity surveys is to gather data regarding the time and money spent by corporations, partnerships, limited liability companies, tax-exempt organizations, and government entities in complying with federal rules and regulations (or resolving a post-filing issue in the case of the Business Compliance Burden Survey). The IRS conducted a business taxpayer burden survey in 2009 and 2012. The IRS has not conducted a Business Compliance Burden in the past. The IRS conducted the Tax-Exempt Organization Burden Survey in 2010, which gathered data regarding the time and money spent by tax-exempt organizations the file Forms 990, 990–EZ, and 990–PF. The IRS has not surveyed small tax-exempt organizations that file Form 990–N.

The purpose of the employment tax burden survey is to provide the IRS with information about the time and money spent by employers to comply with the federal wage information reporting and payroll tax return requirements. The IRS conducted an employment tax survey in 2004.

The purpose of the Information Return Burden Survey is to provide the IRS with information about time and cost incurred by issuers of information reporting documents not related to employment, such as Form 1099–INT, 1099–MISC, 1099–K and 5498. This is the first IRS survey of this type.

The critical items on the surveys concern respondents' time and cost burden estimates for complying with tax filing requirement (or resolving a post-filing issue in the case of the Individual and Business Taxpayer Compliance Surveys). Additional items on the survey will serve as contextualizing variables for interpretation of the burden items. These items include information regarding tax preparation methods and activities, tax-related recordkeeping, gathering materials, learning about tax law, using IRS and/or non-IRS taxpayer services, and tax form completion.

Changes in tax regulations, tax administration, tax preparation methods, and taxpayer behavior continue to alter the amount and distribution of taxpayer burden. Data from updated surveys will better reflect the current tax rules and regulations, the increased usage of tax preparation software, increased efficiency of such software, changes in tax preparation regulations, the increased use of electronic filing, the behavioral response of taxpayers to the tax system, the changing use of services, both IRS and external, and related information collection needs.

*Current Actions:* New surveys are being added to this collection. Surveys Covered Under This Clearance Request.

*Individual Taxpayers:*

2013 Individual Taxpayer Burden Survey,

2014 Individual Taxpayer Burden Survey,

2014 Taxpayer Compliance Burden Survey, and

2015 Individual Taxpayer Burden Survey.

*Entity Taxpayers:*

2014 Tax-Exempt Organization Burden Survey,

2014 Small Tax-Exempt Organization Burden Survey,

2014 Business Compliance Burden Survey (including focus group sessions during survey instrument development phase),

2015 Business Taxpayer Burden Survey.

Other

2013 Information Reporting Burden Survey (including focus group sessions during survey instrument development phase),

2013 Employment Tax Burden Survey (fielded in conjunction with Information Reporting Burden Survey)

This form is being submitted for renewal purposes only.

*Type of Review:* Revision of a currently approved collection.

*Affected Public:* Individuals, Businesses, Tax-Exempt Organizations.

Each survey respondent will receive a letter inviting them to complete the survey which they may spend about one minute reading. Each potential respondent will participate only once. The potential response rate, which varies depending on the type of survey, is indicated in the burden estimate charts below.

Estimated time to complete the surveys is based on results from prior cognitive interviews. We estimate that it will take approximately the same time to complete the mail, web and phone versions of the questionnaire. The content included in each instrument will be the same.

Prior to conducting a survey with a new taxpayer group, focus groups will be conducted with internal and external stakeholders during the survey instrument development phase to ensure that the instrument survey items cover the main burden drivers for that group.

The total annual burden estimates for the covered surveys are as follows:

2013 Surveys—6,493.17 hours
2014 Surveys—10,969.67 hours
2015 Surveys—6,233.33 hours

The estimated burden for each survey is itemized below:

| Activity | Number of respondents | Frequency of response | Average time | Annual hour burden |
|---|---|---|---|---|
| **2013 Individual Taxpayer Burden Survey** | | | | |
| Reading prenote & reminder postcards | 20,000 | 1 | 1 | 333.33 |
| Survey Completion | 10,000 | 1 | 15 | 2,500.00 |
| Total | | | | 2,833.33 |
| **2013 Information Return Burden Survey** | | | | |
| Cognitive Testing* | 18 | 1 | 60 | 18 |
| Reading invitation letter and postcards | 15,000 | 1 | 1 | 250 |
| Survey Completion | 7,500 | 1 | 15 | 1,875 |
| Total | | | | 2,143 |
| **2013 Employment Tax Burden Survey (fielded in conjunction with the 2013 Information Return Burden Survey)** | | | | |
| Reading invitation letter and postcards | 10,000 | 1 | 1 | 166.67 |
| Survey Completion | 5,000 | 1 | 15 | 1,250.00 |
| Total | | | | 1,416.67 |
| **2013 Focus Groups (Information Return Burden and Employment Tax Burden Surveys)** | | | | |
| Answering screener questions | 250 | 1 | 1 | 4.17 |
| Participating in the focus group | 96 | 1 | 60 | 96.00 |
| Total | | | | 100.17 |
| **2014 Individual Taxpayer Burden Survey** | | | | |
| Reading prenote & reminder postcards | 20,000 | 1 | 1 | 333.33 |
| Survey Completion | 10,000 | 1 | 15 | 2,500 |
| Total | | | | 2,833.33 |
| **2014 Tax-Exempt Organization Burden Survey** | | | | |
| Reading invitation letter & reminder postcards | 15,000 | 1 | 1 | 250 |
| Survey Completion | 7,500 | 1 | 15 | 1,875 |
| Total | | | | 2,125 |
| **2014 Taxpayer Compliance Burden Survey** | | | | |
| Reading invitation letter & reminder postcards | 16,000 | 1 | 1 | 266.67 |
| Survey Completion | 4,800 | 1 | 15 | 1,200.00 |
| Total | | | | 1,466.67 |
| **2014 Small Tax-Exempt Organization Burden Survey** | | | | |
| Reading invitation letter & reminder postcards | 15,000 | 1 | 1 | 250 |
| Survey Completion | 7,500 | 1 | 5 | 625 |
| Total | | | | 875 |

| Activity | Number of respondents | Frequency of response | Average time | Annual hour burden |
|---|---|---|---|---|
| **2014 Business Compliance Burden Survey** | | | | |
| Cognitive Testing* | 27 | 1 | 60 | 27.00 |
| Reading invitation letter & reminder postcards | 25,000 | 1 | 1 | 416.67 |
| Survey Completion | 12,500 | 1 | 15 | 3,125.00 |
| Total | | | | 3,568.67 |
| **2014 Focus Groups (Business Compliance Burden Survey)** | | | | |
| Answering screener questions | 300 | 1 | 1 | 5 |
| Participating in the focus group | 96 | 1 | 60 | 96 |
| Total | | | | 101 |
| **2015 Individual Taxpayer Burden Survey** | | | | |
| Reading prenote & reminder postcards | 20,000 | 1 | 1 | 333.33 |
| Survey Completion | 10,000 | 1 | 15 | 2,500.00 |
| Total | | | | 2,833.33 |
| **2015 Business Taxpayer Burden Survey** | | | | |
| Reading invitation letter & reminder postcards | 24,000 | 1 | 1 | 400 |
| Survey Completion | 12,000 | 1 | 15 | 3,000 |
| Total | | | | 3,400 |

The annual burden cost to respondents is estimated to total $138,629.18 (6,493.17 hours × $21.35) for 2013, $234,202.45 (10,969.67 hours × $21.35) for 2014, and $133,081.60 (6,233.33 hours × $21.35) for 2015. This estimate is derived using $21.35. the May 2013 average wage rate from the Bureau of Labor and Statistics Occupational Employment Statistics Survey.

*The FY2013 Information Return Burden Survey and FY2014 Business Compliance Burden Survey will be the first effort to collect information regarding the compliance burden for these groups. To better inform our survey efforts and to ensure adequate feedback from relevant survey strata during the cognitive testing phase, we are requesting additional respondents for survey testing for these surveys.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

**Yvette Lawrence,**

*IRS Reports Clearance Officer.*

[FR Doc. 2013–30126 Filed 12–18–13; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Notices 2010–83 and 2011–3

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 2010–83, Funding Relief for Multiemployer Defined Benefit Plans under PRA 2010 and Notice 2011–3, Special Rules Relating to Funding Relief for Single-Employer Pension Plans under PRA 2010.

**DATES:** Written comments should be received on or before February 18, 2014 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Sara Covington, at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Sara.L.Covington@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Funding Relief for Multiemployer Defined Benefit Plans under PRA 2010 and Special Rules Relating to Funding Relief for Single-Employer Pension Plans under PRA 2010.

*OMB Number:* 1545–2196.

*Form Number:* Notice 2010–83 and Notice 2011–3.

*Abstract:* One notice provides guidance in the form of questions and answers for sponsors of multiemployer defined benefit plans with respect to the special funding rules under § 431(b)(8), as added by section 211(a)(2) of the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 (PRA 2010), Public Law 111–192. The other notice provides guidance on the special rules relating to funding relief for single-employer defined benefit pension plans (including multiple employer defined benefit pension plans) under the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 (PRA 2010), Public Law 111–192.

*Current Actions:* There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Not-for-profit institutions.

*Estimated Number of Respondents:* 47,500.

*Estimated Time per Respondent:* 34 minutes.

*Estimated Total Annual Burden Hours:* 26,700.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 10, 2013.

**Allan Hopkins,**

*IRS Tax Analyst.*

[FR Doc. 2013–30125 Filed 12–18–13; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

### Privacy Act of 1974; System of Records

**AGENCY:** Department of Veterans Affairs (VA).

**ACTION:** Notice of Amendment to System of Records.

**SUMMARY:** As required by the Privacy Act of 1974, 5 U.S.C. 552a(e), notice is hereby given that the Department of Veterans Affairs (VA) is amending the system of records currently titled ''Income Verification Records—VA'' (89VA16) as set forth in the **Federal Register** (73 FR 26192–26197), dated May 8, 2008. VA is amending the System Number, System Location, Access, Routine Uses of Records Maintained in the System, Storage, Safeguards, and Records Source Categories. VA is republishing the system notice in its entirety.

**DATES:** Comments on the amendment of this system of records must be received no later than January 21, 2014. If no public comment is received, the amended system will become effective January 21, 2014.

**ADDRESSES:** Written comments may be submitted through www.Regulations.gov; by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 (this is not a toll-free number) for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System at *www.Regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** Veterans Health Administration Privacy Officer, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; telephone (704) 245–2492.

**SUPPLEMENTARY INFORMATION:**

### Background

Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990, provides VA the authority to verify Veterans' self-reported income to determine eligibility for medical benefits. VA's Health Eligibility Center (HEC) in Atlanta, Georgia, originally established as the Income Verification Match Center, has authority under section 8051 to verify Veterans' self-reported income with the Internal Revenue Service (IRS) and Social Security Administration (SSA).

The system number is changed from 89VA16 to 89VA10NB to reflect the current organizational alignment.

The System Location, Access, and Safeguard sections have been amended to change the Austin Automation Center to what is now known as the Austin Information Technology Center.

Routine use nineteen (19) has been added to state that disclosures to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

The section titled ''Storage'' is being amended to state that records are maintained at a secure off-site facility in Atlanta and Austin. In January 2013, VA implemented a new electronic data transmission process called Direct Connect, which is a secure Virtual Private Network (VPN) tunnel to transmit and receive Veterans' household income from IRS. VPN only affects the means in which the data is transmitted; it does not affect the storage of the data.

''Safeguard'' is being amended under number three (3) to include that the card has restricted access capability, which allows restriction of unauthorized personnel to secured areas. HEC Security Officer has been replaced with

HEC Personal Card Issuer. Number twelve (12) has been amended to replace the Center with the HEC Information Security Office (ISO).

The section titled ''Records Source Categories'' has been amended to change 24VA19 to 24VA10P2 and ''Compensation, Pension, Education and Rehabilitation Records—VA'' (58VA21/22) to ''VA Compensation, Pension, Education, and Vocational Rehabilitation and Employment Records—VA'' (58VA21/22/28).

The Report of Intent To Amend a System of Records Notice and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Approved: December 2, 2013.

**Jose D. Riojas,**

*Chief of Staff, Department of Veteran Affairs.*

## SOR #: 89VA10NB

### SYSTEM NAME:

''Income Verification Records—VA''

### SYSTEM LOCATION:

Records are maintained at VA's Health Eligibility Center (HEC) in Atlanta, Georgia, and the Austin Information Technology Center (AITC) in Austin, Texas. Records are also stored at contracted locations in McLean, Virginia, and Atlanta, Georgia.

### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Veterans who have applied for or have received VA health care benefits under Title 38, United States Code, Chapter 17; Veterans' spouses and other dependents as provided for in other provisions of Title 38, United States Code.

### CATEGORIES OF RECORDS IN THE SYSTEM:

The category of records in the system includes:

Federal Tax Information (FTI) and social security information generated as a result of computer matching activity with records from the IRS and SSA. The records may also include, but are not limited to, correspondence between HEC, Veterans, their family members, and Veterans' representatives such as Veterans Service Officers (VSO); copies of death certificates; Notice of Separation; disability award letters; IRS documents (e.g., Form 1040s, Form 1099s, W–2s); workers compensation forms; and various annual earnings statements, as well as pay stubs and miscellaneous receipts.

**Note:** VA may not disclose to any person in any manner any document that contains FTI received from IRS or SSA in accordance with the Internal Revenue Code (IRC) 26 U.S.C. 6103(l)(7). In addition, VA may not allow access to FTI by any contractor or subcontractor.

### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, Sections 501(a), 1705, 1710, 1722, and 5317.

### PURPOSE(S):

Information in this system of records is used to verify the household income of certain Veterans and, if relevant, their spouses or dependents receiving VA health care benefits. The information in this system of records is also used to validate Veterans' and their spouses' social security numbers; provide educational materials related to income verification; respond to Veteran and non-Veteran inquiries related to income verification; and compile management reports.

### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the extent that records contained in the system include information protected by 45 CFR Parts 160 and 164, (i.e., individually identifiable health information and 38 U.S.C. 7332), (i.e., medical treatment information related to drug abuse, alcoholism or alcohol abuse, sickle cell anemia or infection with the human immunodeficiency virus), that information cannot be disclosed under a routine use unless there is also specific statutory authority in 38 U.S.C. 7332 and regulatory authority in 45 CFR Parts 160 and 164 permitting disclosure.

1. VA may disclose the record of an individual who is covered by this system to a member of Congress or staff person acting for the member in response to an inquiry made at the request of that individual.

2. VA may disclose any information in this system of records, except FTI, as deemed necessary and proper to named individuals serving as accredited service organization representatives and other individuals named as approved agents or attorneys for a documented purpose, period of time, or specific income year, to aid beneficiaries in the preparation and presentation of their cases during the verification and/or due process procedures and in the presentation and prosecution of claims under laws administered by VA.

3. VA may disclose, on its own initiative, any information in this system, except the names, home addresses, or FTI of Veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal, or regulatory in nature and whether arising by general or program statute or by regulation, rule, or order issued pursuant thereto, to a Federal, State, local, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule, or order. Additionally, VA may also disclose the names and addresses of Veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal, or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule, or order issued pursuant thereto.

4. VA may disclose relevant information in this system, except FTI, in the course of presenting evidence to a court, magistrate, or administrative tribunal; in matters of guardianship, inquests, and commitments; to private attorneys representing Veterans rated incompetent in conjunction with issuance of Certificates of Incompetency; and to probation and parole officers in connection with court-required duties.

5. VA may disclose information in this system, except FTI, to a VA Federal fiduciary or a guardian ad litem in relation to his or her representation of a Veteran in any legal proceeding, but only to the extent necessary to fulfill the duties of the fiduciary or the guardian ad litem.

6. VA may disclose relevant information in this system, except FTI, to attorneys, insurance companies, employers, third parties liable or potentially liable under health plan contracts, and to courts, boards, or commissions, but only to the extent necessary to aid VA in the preparation, presentation, and prosecution of claims authorized under Federal, State, or local laws, and regulations promulgated there under.

7. VA may disclose information in this system of records to the Department of Justice (DOJ), either on VA's initiative or in response to DOJ's request for the information, after either VA or DOJ determines that such information is relevant to DOJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that disclosure of the records to DOJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal

proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

8. VA may disclose any information in this system, except FTI, to National Archives and Records Administration (NARA) and General Services Administration in records management inspections conducted under Title 44 of United States Code.

9. VA may disclose information in this system, except FTI, to a third party, except consumer reporting agencies, in connection with any proceeding for the collection of an amount owed to the United States by virtue of a person's participation in any benefit program administered by VA, but only to the extent that it is reasonably necessary to (a) assist VA in the collection of costs of services provided individuals not entitled to such services; and (b) initiate civil or criminal legal actions for collecting amounts owed to the United States and/or for prosecuting individuals who willfully or fraudulently obtained or seek to obtain Title 38 medical benefits. This disclosure is consistent with 38 U.S.C. 5701(b)(6).

10. VA may disclose the names and addresses of Veterans or their dependents and other information as is reasonably necessary to identify such individuals concerning that those individuals' indebtedness to the United States by virtue of their participation in a benefits program administered by VA to a consumer reporting agency for purposes of assisting in the collection of such indebtedness, provided that the provisions of 38 U.S.C. 5701(g)(4) have been met.

11. VA may disclose information from this system, except FTI, or information security review purposes to other source Federal agencies who are parties to computer matching agreements involving the information maintained in this system, but only to the extent that the information is necessary and relevant to the review.

12. VA may disclose the name and other identifying information of Veterans and their spouses to reported payers of earned or unearned income in order to verify the identifier address, income paid, period of employment, and health insurance information provided on the means test, and to confirm income and demographic data provided by other Federal agencies during income verification computer matching.

13. VA may disclose identifying information other than FTI, such as Veterans' and their dependents' social security numbers, to other Federal agencies for purposes of conducting computer matches to obtain valid identifying, demographic, and income information and to verify eligibility of certain Veterans who are receiving VA medical benefits under Title 38, United States Code, or for the purpose of conducting a computer match to obtain information to validate social security numbers maintained in VA records.

14. VA may disclose the name and social security number of a Veteran, spouse, and dependents, and other identifying information as is reasonably necessary to the SSA and the Department of Health and Human Services, for the purpose of conducting a computer match to obtain information to validate the social security numbers maintained in VA records.

15. VA may disclose relevant information from this system to individuals, organizations, private or public agencies, etc., with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA in order for the contractor or subcontractor to perform the services of the contract or agreement.

**Note:** This routine use does not authorize disclosure of FTI received from the IRS or the SSA to contractors or subcontractors.

16. VA may, on its own initiative, disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) VA has determined that as a result of the suspected or confirmed compromise, there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by VA or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out VA efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by VA to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

17. VA may disclose information to officials of the Merit Systems Protection Board, or the Office of Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

18. VA may disclose information to the Federal Labor Relations Authority (including its General Counsel) information related to the establishment of jurisdiction, the investigation and resolution of allegations of unfair labor practices, or information in connection with the resolution of exceptions to arbitration awards when a question of material fact is raised; to disclose information in matters properly before the Federal Services Impasses Panel, and to investigate representation petitions and conduct or supervise representation elections.

19. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are currently maintained on magnetic tape, magnetic disk, optical disk, and paper at secure off-site facilities in Atlanta, Georgia, and Austin, Texas. In January 2013, VA implemented a new electronic data transmission process called Direct Connect, which is a secure VPN tunnel to transmit and receive Veterans' household income from IRS. It only affects the means in which the data is transmitted; it does not affect the storage of the data.

**RETRIEVABILITY:**

Records (or information contained in records) maintained on paper documents are indexed and accessed by the applicant's name, social security number or case number and filed in case order number. Automated records are indexed and retrieved by the Veteran's name, social security number, Internal Control Number, or case number. The spouse's name or social security number may be retrieved from the automated income verification record.

**ACCESS:**

1. In accordance with national and locally established data security procedures, access to the HEC Legacy system and the Enrollment Database is controlled by unique entry codes (access and verification codes). The user's verification code is set to be changed automatically every 90 days. User access to data is controlled by role-based access as determined necessary by supervisory and information security staff as well as by management of option menus available to the employee. Determination of such access is based upon the role or position of the employee and functionality necessary to perform the employee's assigned duties.

2. On an annual basis, employees are required to sign a computer access agreement acknowledging their understanding of confidentiality requirements. In addition, all employees receive annual privacy awareness and information security training. Access to electronic records is deactivated when no longer required for official duties. Recurring monitors are in place to ensure compliance with nationally and locally established security measures.

3. Access to the AITC is generally restricted to AITC staff, VA Headquarters employees, custodial personnel, Federal Protective Service, and authorized operational personnel through electronic locking devices.

4. Specific key staffs are authorized access to HEC computer room and all other persons gaining access to the computer rooms are escorted. Programmer access to the information systems is restricted only to staff whose official duties require that level of access.

**SAFEGUARDS:**

1. Electronic data transmissions between VA health care facilities, HEC, and AITC are safeguarded by using VA's secure wide area network. The transmission of electronic data between SSA and AITC is safeguarded through the use of a secured, encrypted connection. Back-up of magnetic media containing FTI is transported between AITC and the off-site location in a locked storage container by an off-site vendor. Vendor personnel do not have key access to the locked container. The locked storage container is stored in a safe in a secured room at the off-site storage location. Access to the secured room and the safe is limited to authorized VA Information Technology staff only.

2. The software programs at HEC, AITC, and VA health care facilities automatically flag records or events for transmission via electronic messages based upon functionality requirements. The recipients of the messages are controlled and/or assigned to the mail group based on their role or position. Server jobs at each facility run continuously to check for incoming and outgoing data to be transmitted which needs to be parsed to files on the receiving end. All messages containing data transmissions include header information that is used for validation purposes. Consistency checks in the software are used to validate the transmission, and electronic acknowledgment messages are returned to the sending application. The VA Office of Cyber Security has oversight responsibility for planning and implementing computer security.

3. Working spaces and record storage areas at the HEC are secured during all business hours, as well as during non-business hours. All entrance doors require an electronic pass card, issued by the HEC Personal Card Issuer, for entry when unlocked, and entry doors are locked outside normal business hours. The card has restricted access capability, which allows restriction of unauthorized personnel to secured areas. Visitors are required to present identification and sign-in at a specified location. Visitors are issued a pass card which allows access to non-sensitive areas and are escorted by staff through restricted areas. At the end of the visit, visitors are required to turn in their card. The building is equipped with an intrusion alarm system which is activated during non-business hours. This alarm system is monitored by a private security service vendor. The HEC office space occupied by employees with access to Veteran records is secured with an electronic locking system, which requires a card for entry and exit of that office space. Access to the AITC is generally restricted to AITC staff, VA Headquarters employees, custodial personnel, Federal Protective Service, and authorized operational personnel through electronic locking devices. All other persons gaining access to the computer rooms are escorted.

4. A number of other security measures are implemented to enhance security and safeguard of electronic records such as automatic timeout after a short period of inactivity and device locking after a pre-set number of invalid logon attempts, for example.

5. Electronic data, except FTI, is transmitted from HEC and AITC to VA health care facilities over VA secure wide area network.

6. Employees at the health care facility level do not have access to FTI, nor do they have the ability to edit or view income tests received from HEC as a result of the income match with IRS.

7. Only specific key staff and the ISO are authorized access to the computer room. Programmer access to AITC and HEC databases, which contain FTI, is restricted only to staff whose official duties require that level of access. Contractor staff are not authorized access to the production database.

8. On-line data, including FTI, reside on magnetic media in AITC computer room which are highly secured. Backup media are stored in a combination lock safe in a secured room within the same building and access to the safe is restricted to the IT staff. Backup media are stored by an off-site media storage vendor who picks up the media on a weekly basis from HEC and AITC and returns the media to the off-site storage via a locked storage container. Vendor personnel do not have key access to the locked container.

9. Any sensitive information that may be downloaded to a personal computer or printed to hard copy format is provided the same level of security as the electronic records. All paper documents and informal notations containing sensitive data are shredded prior to disposal. All magnetic media (primary computer system) and personal computer disks are degaussed prior to disposal or released off site for repair.

10. HEC and AITC fully comply with the Tax Information Security Guidelines for Federal, State and Local Agencies (Department of Treasury IRS Publication 1075) as it relates to access and protection of such data. These guidelines define the management of magnetic media, paper and electronic records, and physical and electronic security of the data.

11. All new HEC employees receive initial information security and privacy training and refresher training are provided to all employees on an annual basis. HEC's ISO performs an Annual Information Security (AIS) audit. This annual audit includes the primary computer information system, the telecommunication system, and local area networks. Additionally, the IRS performs periodic on-site inspections to ensure the appropriate level of security is maintained for FTI. HEC and AITC's ISO and AIS administrator additionally perform periodic reviews to ensure security of the system and databases.

12. Identification codes and codes used to access HEC automated communications systems and records systems, as well as security profiles and possible security violations, are maintained on magnetic media in a secure environment by the HEC ISO. For contingency purposes, database back-

ups on removable magnetic media are stored off-site by a licensed and bonded media storage vendor.

13. VA field facilities do not receive FTI from AITC or HEC.

14. Contractors and subcontractors are required to adhere to HEC's safeguard and security requirements.

**RETENTION AND DISPOSAL:**

Depending on the record medium, records are destroyed by either shredding or degaussing. Paper records are destroyed after they have been accurately scanned on optical disks. Optical disks or other electronic medium are deleted when all phases of the Veteran's appeal rights have ended (10 years after the income year for which the means test verification was conducted). Electronic data and magnetic media received at AITC from SSA and IRS are destroyed 30 days after the data have been validated as being a true copy of the original data. Summary reports and other output reports are destroyed when no longer needed for current operation. Records are disposed of in accordance with the records retention standards approved by the Archivist of the United States, NARA, and published in the Veterans Health Administration Records Control Schedule 10–1. Regardless of the record medium, no records will be retired to a Federal records center.Vet

**SYSTEM MANAGER(S) AND ADDRESS:**

Official responsible for policies and procedures: Chief Business Office (10NB2A), VA Central Office, 810 Vermont Avenue NW., Washington, DC 20420. Official maintaining the system: Director, Health Eligibility Center, 2957 Clairmont Road, Atlanta, Georgia 30329.

**NOTIFICATION PROCEDURE:**

Any individual who wishes to determine whether a record is being maintained in this system under his or her name or other personal identifier or wants to determine the contents of such record should submit a written request or apply in person to the Health Eligibility Center. All inquiries must reasonably identify the records requested. Inquiries should include the individual's full name, social security number, and return address.

**RECORD ACCESS PROCEDURES:**

Individuals seeking information regarding access to and contesting of income verification records may write to the Director, Health Eligibility Center, 2957 Clairmont Road, Suite 200, Atlanta, Georgia 30329.

**CONTESTING RECORD PROCEDURES:**

(See Record Access Procedures above.)

**RECORD SOURCE CATEGORIES:**

Information in this systems of records may be provided by the applicant, applicant's spouse or other family members; accredited representatives or friends; employers and other payers of earned income; financial institutions and other payers of unearned income; health insurance carriers; other Federal agencies; the ''Patient Medical Records—VA'' (24VA10P2) and the ''Enrollment and Eligibility Records—VA'' (147VA16) systems of records; and Veterans Benefits Administration (VBA) automated record systems (including the ''Veterans and Beneficiaries Identification and Records Location Subsystem—VA'' (38VA23) and the ''VA Compensation, Pension, Education, and Vocational Rehabilitation and Employment Records—VA'' (58VA21/22/28)).

[FR Doc. 2013–30228 Filed 12–18–13; 8:45 am]

BILLING CODE 8320–01–P

# FEDERAL REGISTER

Vol. 78 Thursday,

No. 244 December 19, 2013


Part II

## Department of Energy

Federal Energy Regulatory Commission

Lockhart Power Company, Inc.; Notice of Availability of Draft Environmental Assessment; Notice

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 13590–001]**

### Lockhart Power Company, Inc.; Notice of Availability of Draft Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 (NEPA) and the Federal Energy Regulatory Commission's (Commission or FERC) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed Lockhart Power Company, Inc.'s application for license for the Riverdale Hydroelectric Project (FERC Project No. 13590–001), located on the Enoree River, near the town of Enoree, in Spartanburg and Laurens Counties, South Carolina. The project does not occupy federal lands.

Staff prepared a draft environmental assessment (DEA), which analyzes the potential environmental effects of licensing the project, and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the DEA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov*, at (866)208–3676 (toll free), or, 202–502–8659 (TTY).

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Any comments should be filed within 45 days from the date of this notice.

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In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–13590–001.

For further information, contact Sarah Salazar by phone at 202–502–6863, or by email at *sarah.salazar@ferc.gov.*

Dated: December 12, 2013.

**Kimberly D. Bose,**

*Secretary.*

### Draft Environmental Assessment for Hydropower License

*Riverdale Hydroelectric Project, FERC Project No. 13590–001, South Carolina*

Federal Energy Regulatory Commission, Office of Energy Projects, Division of Hydropower Licensing, 888 First Street NE., Washington, DC 20426

December 2013

**Table of Contents**


LIST OF FIGURES ..... iii
LIST OF TABLES ..... iii
ACRONYMS AND ABBREVIATIONS ..... v
EXECUTIVE SUMMARY ..... vii
1.0 INTRODUCTION ..... 1
1.1 APPLICATION ..... 1
1.2 PURPOSE OF ACTION AND NEED FOR POWER ..... 1
1.2.1 Purpose of Action ..... 1
1.2.2 Need for Power ..... 3
1.3 STATUTORY AND REGULATORY REQUIREMENTS ..... 4
1.3.1 Federal Power Act ..... 5
1.3.2 Clean Water Act ..... 6
1.3.3 Endangered Species Act ..... 6
1.3.4 Coastal Zone Management Act ..... 6
1.3.5 National Historic Preservation Act ..... 7
1.4 PUBLIC REVIEW AND CONSULTATION ..... 8
1.4.1 Scoping ..... 8
1.4.2 Interventions ..... 8
1.4.3 Comments on the License Application ..... 9
2.0 PROPOSED ACTION AND ALTERNATIVES ..... 10
2.1 NO–ACTION ALTERNATIVE ..... 10
2.1.1 Existing Project Facilities ..... 10
2.1.2 Project Safety ..... 11
2.1.3 Existing Project Operation and Environmental Measures ..... 11
2.2 APPLICANT'S PROPOSAL ..... 11
2.2.1 Proposed Project Facilities ..... 11
2.2.2 Proposed Project Operations ..... 12
2.2.3 Proposed Environmental Measures ..... 13
2.3 STAFF ALTERNATIVE ..... 14
2.4 ALTERNATIVES CONSIDERED BUT ELIMINATED FROM FURTHER ANALYSIS ..... 16
2.4.1 Issuing a Non-power License ..... 16
2.4.2 Project Decommissioning ..... 17
3.0 ENVIRONMENTAL ANALYSIS ..... 18
3.1 GENERAL DESCRIPTION OF THE RIVER BASIN ..... 18
3.2 SCOPE OF CUMULATIVE EFFECTS ANALYSIS ..... 19
3.2.1 Geographic Scope ..... 19
3.2.2 Temporal Scope ..... 19
3.3 PROPOSED ACTION AND ACTION ALTERNATIVES ..... 20
3.3.1 Geologic and Soil Resources ..... 20

3.3.2 Aquatic Resources ..... 29
3.3.3 Terrestrial Resources ..... 67
3.3.4 Threatened and Endangered Species ..... 77
3.3.5 Recreation and Land Use ..... 79
3.3.6 Cultural Resources ..... 86
3.4 NO–ACTION ALTERNATIVE ..... 88
4.0 DEVELOPMENTAL ANALYSIS ..... 89
4.1 POWER AND DEVELOPMENTAL BENEFITS OF THE PROJECT ..... 89
4.2 COMPARISON OF ALTERNATIVES ..... 90
4.2.1 No-action Alternative ..... 91
4.2.2 Lockhart Power's Proposal ..... 91
4.2.3 Staff Alternative ..... 91
4.3 COST OF ENVIRONMENTAL MEASURES ..... 92
5.0 CONCLUSIONS AND RECOMMENDATIONS ..... 104
5.1 COMPARISON OF ALTERNATIVES ..... 104
5.2 COMPREHENSIVE DEVELOPMENT AND RECOMMENDED ALTERNATIVE ..... 109
5.3 UNAVOIDABLE ADVERSE EFFECTS ..... 124
5.4 FISH AND WILDLIFE AGENCY RECOMMENDATIONS ..... 124
5.5 CONSISTENCY WITH COMPREHENSIVE PLANS ..... 130
6.0 FINDING OF NO SIGNIFICANT IMPACT ..... 132
7.0 LITERATURE CITED ..... 133
8.0 LIST OF PREPARERS ..... 142

## LIST OF FIGURES

Figure 1. ..... Location of the Riverdale Project ..... 2
Figure 2. ..... Percent of time during each month that inflows to the Riverdale Project are greater than 170 cfs and less than or equal to 500 cfs (i.e. when peaking with drawdown operation can occur under Lockhart Power's proposed operations), less than or equal to 170 cfs (i.e. flow below turbine minimum turbine capacity plus 50 cfs minimum flow), and > 500 cfs (i.e. flows greater than maximum turbine capacity plus 50 cfs minimum flow). 51
Figure 3. ..... Illustration of the front of the 2.25-inch headrace trashrack ..... 61
Figure 4. ..... Illustration of the front of the 1-inch headrace trash rack ..... 62

## LIST OF TABLES

Table 1. ..... Major statutory and regulatory requirements for the Riverdale Project ..... 4
Table 2. ..... Select characteristics of mapped soil units at the Riverdale Project ..... 21
Table 3. ..... Synthesized monthly flow data (cfs) for the Riverdale Project from USGS gage No. 02160390 Enoree River at Woodruff, South Carolina. 30
Table 4. ..... South Carolina water quality standards for freshwaters ..... 31
Table 5. ..... Fish species and number collected in the vicinity of the Riverdale Project during baseline sampling on June 10–11 and July 6–7, 2010. 35
Table 6. ..... Spawning dates and habitat requirements for eight Conservation Species observed in the Riverdale bypassed reach. 39
Table 7. ..... Flows through the bypassed reach at FERC licensed projects in the Broad River Basin, South Carolina ..... 46
Table 8. ..... Minimum flow required for fish in streams identified by Tennant (1976) ..... 49
Table 9. ..... Calculation of intake cross-sectional area for the 2.25-inch and 1-inch trashracks ..... 63
Table 10. ..... Burst swim speeds of four species found in the Riverdale impoundment ..... 64
Table 11. ..... Minimum fish total lengths susceptible to impingement at 1-inch and 2.25-inch trashracks, based on trashrack bar spacing and fish width-at-length relationship (i.e. width = $\alpha \times$ total length $\beta$) alone and exclusive of burst swim speeds. 64
Table 12. ..... Parameters for the economic analysis of the proposed Riverdale Project ..... 90
Table 14. ..... Summary of annual cost, power benefits, and annual net benefits of the alternatives for the Riverdale Project ..... 90
Table 14. ..... Cost of environmental mitigation and enhancement measures considered in assessing the environmental effects of refurbishing, operating, and maintaining the Riverdale Project. 93
Table 15. ..... Comparison of Alternatives for the Riverdale Project ..... 104
Table 16. ..... Fish and wildlife agency recommendations for the Riverdale Project ..... 125

### Acronyms and Abbreviations

APE area of potential effects
applicant Lockhart Power Company, Inc.
BMPs Best Management Practices
°C degrees Celsius
certificate Water Quality Certificate
cfs cubic feet per second
Commission Federal Energy Regulatory Commission
Conservation Species South Carolina Priority Species
Council Advisory Council on Historic Preservation
Corps U.S. Army Corps of Engineers
CWA Clean Water Act
CZMA Coastal Zone Management Act
DO dissolved oxygen
DOI U.S. Department of the Interior
EA environmental assessment
EPA U.S. Environmental Protection Agency
°F degrees Fahrenheit
fps feet per second
FERC Federal Energy Regulatory Commission
FPA Federal Power Act
FWS U.S. Fish and Wildlife Service
LIP low inflow protocol
Lockhart Power Lockhart Power Company, Inc.
MADF mean annual daily flow
MW megawatt
MWh megawatt-hour
mg/L milligrams per liter

msl mean sea level
National Register National Register of Historic Places
NEPA National Environmental Policy Act
NERC North American Electric Reliability Council
NHPA National Historic Preservation Act
NMFS National Marine Fisheries Service
NPDES National Pollutant Discharge Elimination System
NRCS Natural Resource Conservation Service
NGVD National Geodetic Vertical Datum
PM&E measure protection, mitigation, and enhancement measure
Riverdale LLC Riverdale Development Venture, LLC
ROR run-of-river
ROW rights-of-way
SERC Southeastern Electric Reliability Council
SCORP Statewide Comprehensive Outdoor Recreation Plan
SHPO State Historic Preservation Officer
South Carolina DHEC South Carolina Department of Health and Environmental Control
South Carolina DNR South Carolina Department of Natural Resources
South Carolina DPRT South Carolina Department of Parks, Recreation, and Tourism
South Carolina EPPC South Carolina Exotic Pest Plant Council
South Carolina WRC South Carolina Water Resources Commission
THPO Tribal Historic Preservation Officer
USGS U.S. Geological Survey
Water District Woodruff-Roebuck Water District
Water Plan South Carolina Water Plan

## Executive Summary

### Proposed Action

On August 31, 2010, Lockhart Power Company, Inc. (Lockhart Power or applicant), filed a license application for the Riverdale Hydroelectric Project (Riverdale Project or project) with the Federal Energy Regulatory Commission (Commission or FERC). Lockhart Power proposes to repair existing facilities and return the project,[1] which has been inoperable since 2001, to operation. The proposed 1.24-megawatt (MW) project is located on the Enoree River near the city of Enoree, in Spartanburg and Laurens Counties, South Carolina. The project does not occupy any federal lands.

### Project Description

The Riverdale Project is located at river mile 52 of the 110-mile-long Enoree River in northwestern South Carolina. The proposed project would consist of the following: (1) An existing 425-foot-long, 12-foot-high concrete gravity dam with three evenly spaced, integral sand gates, and 2-foot-high flashboards; (2) an existing 6.6-acre impoundment with a gross storage of 22.0 acre-feet; (3) an existing 85-foot-long, 50-foot-wide concrete headrace canal with an intake structure equipped with trash racks with 2.25-inch bar spacing; (4) an existing 9-foot-diameter, 340-foot-long steel penstock equipped with a second set of trash racks with bar spacing of about 10 inches; (5) an existing wood frame powerhouse containing one 1.24-MW capacity generating unit; (6) an existing 510-foot-long tailrace; (7) an existing 700-foot-long transmission line from the powerhouse to an existing Duke Energy distribution line; (8) an existing approximately 1,376-foot-long, 20-foot-wide paved access road; and (9) appurtenant facilities. Flow diverted to the powerhouse creates a 1,400-foot-long bypassed reach downstream from the dam.

Since the project became in-operable 12 years ago, all flows have passed over the dam and into the 1,400-foot-long bypassed reach. The 2-foot-high flashboards were partially damaged during high flow events in 2012 and 2013.

### Proposed Facilities

Because Lockhart Power is not the current licensee or current owner of the project and has not had full access to the project, it plans to spend the first year following license issuance assessing the condition of project facilities and finalizing any engineering design needed to refurbish the project. To make the project operational, Lockhart Power expects it would, at a minimum need to: (1) Repair or replace the sand gates and gate operators; (2) repair or replace the 2-foot flashboards on the dam; (3) replace a 193-foot-long above ground section of the penstock; (4) modify the bar spacing on the penstock trashrack from 10 to 5 inches; (5) refurbish the turbine generator; (6) repair the plant controls and governor; (7) repair the powerhouse roof; and (8) dredge sediment and debris from the tailrace.

Lockhart Power would operate the project using a combination of run-of-river (ROR) and peaking modes. Lockhart Power would typically operate the project in a ROR mode, with project outflow approximately equaling project inflow, such that the impoundment surface elevation stays within 1 foot (+/−10 percent) of the top of the flashboards. When inflows are insufficient to operate the turbine at its maximum hydraulic capacity i.e. of 450 cubic feet per second (cfs) and provide a continuous minimum flow of 50 cfs to the bypassed reach (i.e. when inflow is less than 500 cfs), Lockhart Power would operate the project in a ''peaking'' mode. Peaking events would occur no more than once daily, until either the daily period of increased need for power ends or until the impoundment surface elevation is drawn down a maximum of 4 feet (+/−10 percent) below the top of the flashboards. Following each peaking event, Lockhart Power would suspend operation and store inflow, minus the minimum flow to the bypassed reach, to refill the impoundment (likely overnight) to its normal elevation of within 1 foot (+/−10 percent) of the top of the flashboards, allowing it to return to ROR mode until the next peaking event. Lockhart Power expects that peaking operation would occur less than half of the days in any given year.

### Proposed Environmental Measures

Lockhart Power proposes, once the project is operational, the following measures to protect or enhance environmental resources at the project:

- Implement a sediment management plan that consists of using the existing sand gates to draw down the impoundment below the normal operating range for periodic inspections and maintenance and, if possible, avoiding drawdowns from March 15 through June 1 to prevent significant accumulation of sediments in the project impoundment and untimely releases of sediment downstream.
- Monitor water quality as may be required by South Carolina Department of Health and Environmental Council (South Carolina DHEC).
- Maintain a minimum flow of 50 cfs in the bypassed reach and a total minimum continuous flow of 60 cfs, or inflow if less, in the Enoree River downstream from the confluence of the tailrace and the bypassed reach to protect aquatic habitat. The minimum flow in the bypassed reach would be provided through one or more of the three sand gates selected in consultation with South Carolina DNR, Interior, and NMFS, after repairs. Lockhart Power would develop a rating curve for the sand gates and verify it once every 6 years to ensure defined minimum flows are being provided. The remaining 10 cfs would be provided via leakage through the turbine.
- When average daily inflows are less than or equal to 80 cfs (+/−10 percent), release all inflow into the bypassed reach (i.e. low inflow protocol [LIP]) to protect aquatic resources downstream from Riverdale dam, including during the fish spawning season.
- Implement best management practices (BMPs) to protect vegetation

[1] The project was originally licensed to Inman Mills as FERC No. 4362 on September 29, 1982. *Inman Mills,* 20 FERC ¶ 62,586 (1982).

within the project boundary, such as limiting vegetation and ground-disturbing activities and maintaining a minimum 25-foot-wide forested riparian buffer on project shorelines, as long as this does not interfere with Lockhart Power's ability to perform project-related activities.

• Construct and maintain: (1) A canoe take-out located approximately 220 feet upstream of the dam; (2) a canoe put-in located approximately 1,075 feet downstream from the dam; (3) a 1,650-foot-long portage trail connecting the proposed canoe take-out and put-in; (4) a parking area located adjacent to the proposed portage trail; and (5) signage to improve public access at the project and to the Enoree River.

• Provide informal public access for fishing at the project impoundment, tailrace, and bypassed reach.

**Alternatives Considered**

This draft environmental assessment (draft EA) considers the following alternatives: (1) Lockhart Power's proposal; (2) Lockhart Power's proposal with staff modifications (staff alternative); and (3) the no-action alternative, meaning that Lockhart Power would not refurbish the hydroelectric facilities and resume project operations.

Under the staff alternative, the project would be operated and maintained as proposed by Lockhart Power with the modifications and additional measures described below. Our recommended modifications and additional environmental measures include, or are based on, recommendations made by federal and state resource agencies that have an interest in resources that may be affected by operation of the proposed project, as well as those identified by staff.

The staff alternative includes the following additional measures and modifications to Lockhart Power's proposal:

• Develop and implement a site-specific soil erosion and sediment control plan, which includes the BMPs described in the South Carolina DHEC's Stormwater BMP Handbook, to minimize erosion and sedimentation during soil-disturbing activities associated with project construction and repairs.

• Develop and implement a sediment management plan to (a) test impoundment sediments for heavy metals and other contaminants, prior to beginning in-water construction activities and initial operation to prevent the release of any toxic substances, and (b) annually monitor and manage sediment accumulation in the impoundment to prevent the potential release of large quantities of sediment during maintenance activities.

• Develop and implement a shoreline stabilization plan to identify and stabilize eroding shorelines to minimize potential shoreline erosion from impoundment and flow fluctuations during peaking operation.

• Develop and implement a water quality monitoring plan to monitor dissolved oxygen (DO), temperature, and turbidity and implement corrective actions, if necessary, to protect aquatic resources located downstream of the dam.

• Release a continuous minimum flow of 75 cfs into the bypassed reach to protect aquatic habitat.

• Develop and implement a plan to determine the feasibility of using the sand gates as a mechanism for providing minimum flows to the bypassed reach and to evaluate methods to distribute minimum flows into the bypassed reach to protect aquatic habitat.

• Develop and implement a low inflow protocol/drought contingency plan to define periods of extended drought and low inflow protocols to minimize adverse effects on generation, and fish, wildlife, and water quality in the bypassed reach and downstream from the tailrace.

• Develop and implement an operation compliance monitoring plan to document impoundment fluctuations and minimum flow releases.

• Develop and implement an invasive vegetation monitoring and control plan to prevent the spread of alligatorweed and other invasive non-native plants during project refurbishment, operation, and maintenance activities.

• Determine whether the existing project transmission line is consistent with Avian Power Line Interaction Committee (APLIC) guidelines and identify measures to minimize potential electrocution hazards to birds, if needed.

• Modify Lockhart Power's proposed signage measures to include: (1) Identification of the canoe take-out and put in; (2) directions from the parking area to river access points; and (3) information regarding garbage disposal in order to improve public information available at the project and protect environmental resources.

• Stop work and notify the South Carolina SHPO and the Catawba Indian Nation if any unknown archaeological resources are discovered as a result of project construction, operation, or project-related activities to avoid, lessen, or mitigate potential adverse effects on historic resources.

Under the no-action alternative, the project would continue to be inoperable and no new environmental protection, mitigation, or enhancement measures would be implemented.

**Public Involvement and Areas of Concern**

Before filing its license application, Lockhart Power conducted a pre-filing consultation process under the traditional licensing process. The intent of the Commission's prefiling process is to initiate public involvement early in the project planning process and to encourage citizens, governmental entities, tribes, and other interested parties to identify and resolve issues prior to an application being formally filed with the Commission. After the application was filed, we conducted scoping to determine what issues and alternatives should be addressed. A scoping document was distributed to interested parties on May 15, 2012. On July 13, 2012, we issued the Ready for Environmental analysis notice, requesting comments, recommendations, terms and conditions, and prescriptions.

The primary issues associated with licensing the project include erosion and sediment control, sediment management, minimum flows to protect aquatic species and shoal habitat in the 1,400-foot-long bypassed reach, a low inflow protocol during extended droughts, invasive vegetation management, and recreation improvements.

**Staff Alternative**

*Geology and Soils*

Refurbishing the hydropower facilities, dredging the tailrace, and constructing the recreation improvements would temporarily increase soil erosion. Implementing staff's recommended site-specific soil erosion and sediment control plan would minimize adverse effects on aquatic and terrestrial resources.

Project repairs and the initial operation of the project would likely result in a discharge of a large amount of sediment downstream that could contain heavy metals and other contaminants. Staff's recommended testing of sediment for contaminants and developing a contingency plan, if needed, for removal and proper disposal of any contaminated sediment prior to beginning in-water construction activities and operation would prevent the unexpected release of any toxic substances and potential adverse effects on aquatic resources.

Because the Enoree River is heavily sediment laden, regular management of sediment bed-load from the impoundment may be needed to maintain project operation. Developing and implementing staff's recommended sediment management plan, which would include Lockhart Power's proposal to avoid drawing down the impoundment below the normal operating range for periodic inspections and maintenance from March 15 through June 1, would minimize adverse effects of sediment releases and lower impoundment levels on fish spawning in and downstream from the impoundment. The plan would also ensure that sediment in the impoundment is regularly monitored and managed, preventing excessive sediment accumulation and ensuring that sediment management activities occur when they are least likely to cause adverse effects on downstream resources.

Because of areas of highly erodible soils along the project shoreline, peaking operation could cause bank sloughing and erosion. Developing and implementing a shoreline stabilization plan and maintaining a 25-foot forested buffer around the impoundment as recommended by staff would help prevent bank erosion and loss of riparian habitat.

*Aquatic Resources*

In addition to the short-term increases in turbidity during project refurbishment, the diversion of flow for project operations would reduce flows in the bypassed reach, which could reduce DO levels and raise water temperatures in the bypassed reach. Monitoring water quality prior to the start of construction, during construction, and for 1 year after beginning operation as recommended by staff, would ensure that erosion control measures and minimum instream flows are adequately protecting water quality and allow for the timely identification of any needed corrective measures.

Lockhart Power's proposed minimum continuous flow of 60 cfs (16 percent of mean annual daily flow [MADF]) downstream from the tailrace and 50 cfs (13 percent of MADF) in the bypassed reach would not maintain aquatic resources in the bypassed reach. As defined by Tennant (1976),[2] such flows provide ''fair or degrading'' conditions, and close to ''poor or minimum'' conditions during the dry and wet seasons, respectively. Compared to Lockhart's proposed flow, staff's recommended year-round minimum flow of 75 cfs (20 percent of MADF) would better protect aquatic resources because this flow represents ''good'' conditions and close to ''fair or degrading'' conditions, as defined by Tennant (1996), during the dry and wet seasons, respectively.

Using the sand gates to release the bypassed reach minimum flows as proposed by Lockhart Power may not be feasible because the sand gates are currently inoperable. Also, sand gates are generally not designed for such activities and may become blocked with debris, preventing the release of specified flows. Developing and implementing staff's recommended minimum instream flow release plan would assess the feasibility of using the sand gates to release the minimum flows, identify which gate(s) best distribute flows across the bypassed reach, and identify alternative means to release minimum flows should using the gates prove impracticable.

Developing a low inflow protocol/drought contingency plan, as recommended by staff, would allow Lockhart Power and the resource agencies to adjust operation and minimum instream flow requirements as specified by the plan during periods of extended drought that minimize adverse effects on generation, and on fish, wildlife, and water quality in the bypassed reach and downstream from the tailrace.

Staff's recommended operation compliance monitoring plan would provide the Commission a mechanism to monitor compliance with Lockhart Power's proposed limits on impoundment fluctuations, minimum instream flow releases, and low inflow operation protocols.

*Terrestrial Resources*

Limiting disturbances to soil and vegetation and maintaining a minimum 25-foot-wide forested riparian buffer along project shorelines, as proposed by Lockhart Power, would preserve existing vegetation and habitat for wildlife. Staff's recommended invasive plant management plan, would minimize the introduction or spread of non-native invasive vegetation within the project boundary, and would protect native plant communities and the fish and wildlife that depend on them. Implementing staff's recommended avian protection plan would facilitate a determination on whether the project transmission lines pose a risk of avian injury or mortality due to electrocution and identify mitigation measures, if needed.

*Recreation and Land Use*

Lockhart Power's proposed canoe portage trail, put-in and take-out, parking, and directional signage at the project would enhance recreation amenities on a reach of the Enoree River designated for recreation use and future water trail development. Staff's recommended signage requesting that visitors pack out their garbage would reduce the likelihood that recreation use at the project would negatively affect the surrounding environment. Continued project operation would not affect land use.

*Cultural Resources*

No historic properties were identified within the project's area of potential effects. The South Carolina SHPO concurred that the proposed project would have no adverse effect on historic properties. Stopping work and notifying the South Carolina SHPO and Catawba Indian Nation if any unknown archaeological resources are discovered during project construction, operation, or other project-related activities, would allow Lockhart Power to define the appropriate treatments necessary to avoid, lessen, or mitigate for potential adverse effects from the inadvertent discovery.

**Conclusions**

Based on our analysis, we recommend licensing the project as proposed by Lockhart Power, with some staff modifications and additional measures.

In section 4.2 of the EA, we compare the likely cost of alternative power for each of the three alternatives identified above. Under the no-action alternative, the project would not be rehabilitated as proposed; therefore, the project would not produce any electricity. Our analysis shows that during the first year of operating the project as proposed by the applicant, project power would cost $265,378, or $54.21/MWh more than the likely alternative cost of power. Under the staff alternative, project power would cost $297,487, or $68.07/MWh more than the likely alternative cost of power.

We chose the staff alternative as the preferred alternative because: (1) The project would provide a dependable source of electrical energy for the region (4,370 MWh annually); (2) the 1.24 MW of electric energy capacity comes from a renewable resource that does not contribute to atmospheric pollution, including greenhouse gases; and (3) the recommended environmental measures proposed by Lockhart Power, as

[2] The Tennant method establishes streamflow requirements on the basis of a percentage of the mean annual flow, and associates aquatic-habitat conditions with different percentages of mean annual flow.

modified by staff, would protect and enhance environmental resources affected by the project. The overall benefits of the staff alternative would be worth the cost of the proposed and recommended environmental measures.

We conclude that issuing a new license for the project with the staff-recommended measures would not be a major federal action significantly affecting the quality of the human environment.

**Environmental Assessment**

*Federal Energy Regulatory Commission, Office of Energy Projects, Division of Hydropower Licensing, Washington, DC*

Riverdale Hydroelectric Project, FERC Project No. 13590–001—South Carolina

## 1.0 Introduction

### 1.1 Application

On August 31, 2010, Lockhart Power Company, Inc. (Lockhart Power or applicant), filed a license application for the Riverdale Hydroelectric Project (Riverdale Project or project) with the Federal Energy Regulatory Commission (Commission or FERC).[3] The 1.24-megawatt (MW) project is located on the Enoree River near Enoree, in Spartanburg and Laurens Counties, South Carolina (figure 1). The project does not occupy any federal lands. The project is currently inoperable, but as proposed by Lockhart Power, it would generate an average of about 4,895 megawatt-hours (MWh) of energy annually.

### 1.2 Purpose of Action and Need for Power

#### 1.2.1 Purpose of Action

The purpose of the Riverdale Project is to provide a source of hydroelectric power. Therefore, under the provisions of the Federal Power Act (FPA), the Commission must decide whether to issue a license to Lockhart Power for the Riverdale Project and what conditions should be placed on any license issued. In deciding whether to issue a license for a hydroelectric project, the Commission must determine that the project will be best adapted to a comprehensive plan for improving or developing a waterway. In addition to the power and developmental purposes for which licenses are issued (such as flood control, irrigation, or water supply), the Commission must give equal consideration to the purposes of: (1) Energy conservation; (2) the protection of, mitigation of damage to, and enhancement of fish and wildlife resources; (3) the protection of recreational opportunities; and (4) the preservation of other aspects of environmental quality.

[3] On September 29, 1982, the Riverdale Project was licensed to Inman Mills under FERC Project No. 4362. The project has not operated since January of 2001. Inman Mills' license expired on August 31, 2012, and was subsequently issued an authorization for continued project operation until the Commission issues someone else a license for the project or otherwise orders disposition of the project. Inman Mills did not file a notice of intent to relicense the project. On November 29, 2007, the Commission issued a notice soliciting applications for subsequent license by August 31, 2010. Lockhart Power filed the only timely license application and is therefore the only license applicant for the Riverdale Project.

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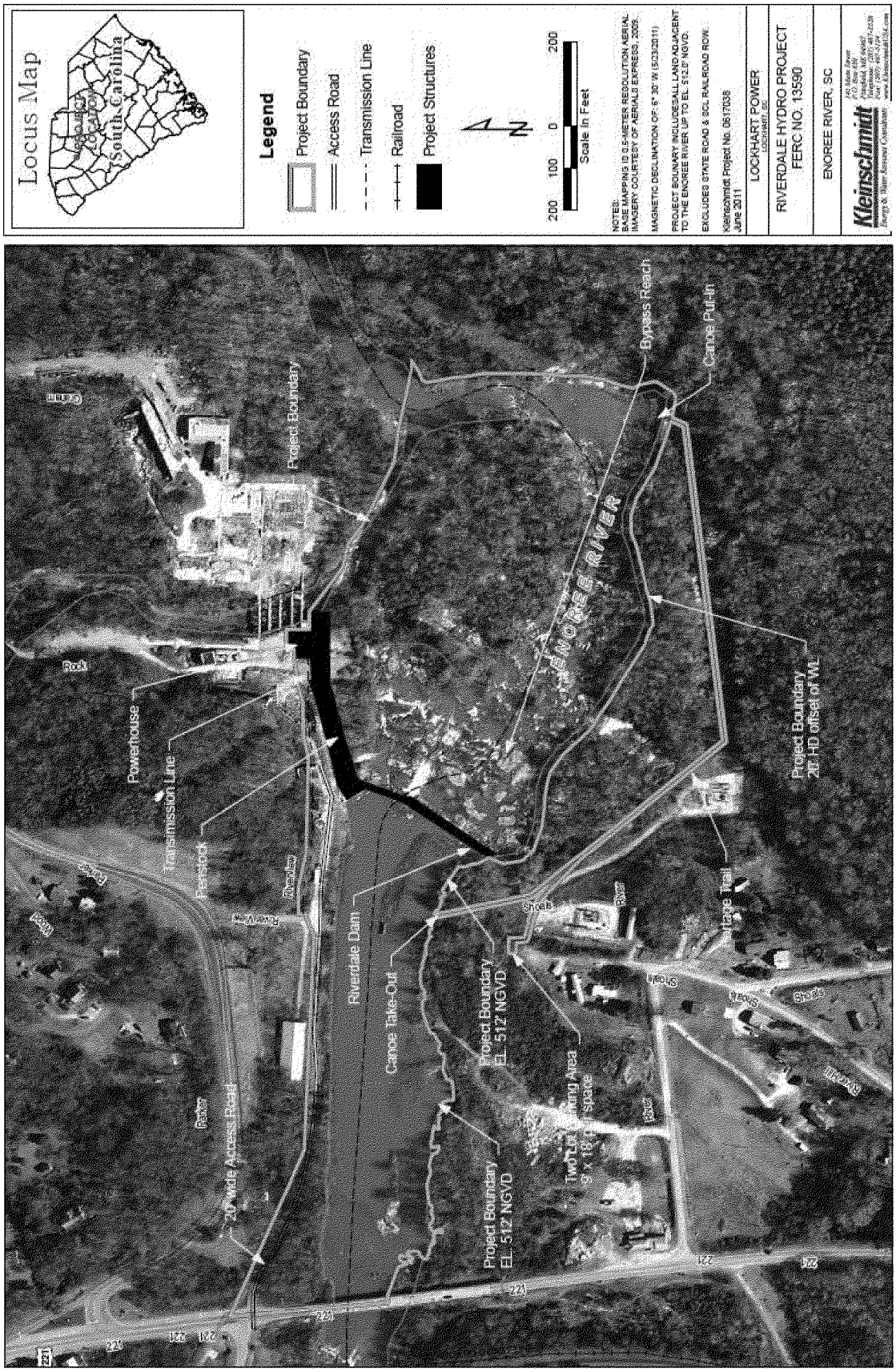


Figure 1. Location of the Riverdale Project. (Source: Lockhart Power Company, Inc., 2010).

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Issuing a license for the Riverdale Project would allow Lockhart Power to generate electricity for the term of a license, making electrical power from a

renewable resource available to the local utility Duke Energy, which would use it to serve its customers' needs.

This environmental assessment (EA) assesses the effects associated with refurbishment, operation, and maintenance of the project and alternatives to the proposed project. It also includes recommendations to the Commission on whether to issue a license, and if so, includes the recommended terms and conditions to become a part of any license issued.

In this EA, we assess the environmental and economic effects of refurbishing and operating the project: (1) As proposed by the applicant; and (2) as proposed with our recommended measures. We also consider the effects of the no-action alternative. Important issues that are addressed include erosion and sediment control, sediment management, minimum flows to protect aquatic species and shoals habitat in the 1,400-foot-long bypassed reach, a low inflow protocol during extended droughts, invasive vegetation management, and recreation improvements.

### 1.2.2 Need for Power

The Riverdale Project would provide hydroelectric generation to meet part of South Carolina's power requirements, resource diversity, and capacity needs. With staff's recommended measures, the project would have an installed capacity of 1.24 MW and would generate approximately 4,370 MWh per year.

The North American Electric Reliability Council (NERC) annually forecasts electrical supply and demand nationally and regionally for a 10-year period. The Riverdale Project is located in the VACAR sub-region [4] of the Southeastern Electric Reliability Council (SERC), which is one of eight regional reliability councils of NERC. According to NERC's 2012 forecast, annual energy requirement for the VACAR sub-region is projected to grow at a compound annual rate of 1.11 percent, from 2012 through 2022 (NERC, 2012).

The power from the Riverdale Project would help meet a need for power in the VACAR sub-region of the SERC in both the short- and long-term. The project provides low-cost power that may displace non-renewable, fossil-fired generation and contributes to a diversified generation mix. Displacing the operation of fossil-fueled facilities may avoid some power plant emissions and create an environmental benefit.

## 1.3 Statutory and Regulatory Requirements

A license for the Riverdale Project is subject to numerous requirements under the Federal Power Act (FPA) and other applicable statutes. We summarize the major regulatory requirements in table 1 and describe them below.

TABLE 1—MAJOR STATUTORY AND REGULATORY REQUIREMENTS FOR THE RIVERDALE PROJECT

| Requirement | Agency | Status |
|---|---|---|
| Section 18 of the FPA (fishway prescriptions). | U.S. Department of the Interior (Interior), National Marine Fisheries Service (NMFS). | Interior and NMFS reserved authority to prescribe fishways on September 10, and September 11, 2012, respectively. |
| Section 10(j) of the FPA | Interior, NMFS, and South Carolina Department of National Resources (South Carolina DNR). | Interior, South Carolina DNR, and NMFS provided section 10(j) recommendations on September 10, September 10, and September 11, 2012, respectively. |
| Clean Water Act—Water quality certification (certification). | South Carolina DNR | Application for water quality certification received on October 4, 2012; withdrawn and reapplied on September 20, 2013; due by September 20, 2014. |
| Endangered Species Act (ESA) Consultation. | Interior, U.S. Fish and Wildlife Service (FWS). | The project would not affect any listed species because none are known to occur in the project vicinity; therefore, further consultation under the ESA is not necessary. |
| Coastal Zone Management Act (CZMA). | South Carolina Department of Health and Environmental Control (South Carolina DHEC). | South Carolina DHEC indicated by letter filed September 30, 2010, that the project is not located within South Carolina's coastal zone, that the proposed project poses no reasonably foreseeable effects on the coastal zone, and that no consistency certification is needed. |
| National Historic Preservation Act (NHPA). | South Carolina State Historic Preservation Office (SHPO). | By letter filed August 31, 2010, the South Carolina SHPO concurred with Lockhart Power's determination that no historic properties would be affected by the project. |

### 1.3.1 Federal Power Act

#### 1.3.1.1 Section 18 Fishway Prescriptions

Section 18 of the FPA states that the Commission is to require construction, operation, and maintenance by a licensee of such fishways as may be prescribed by the Secretaries of Commerce or the U.S. Department of the Interior. Interior and Commerce through NMFS, by letters filed on September 10 and 11, 2012, respectively, request that a reservation of authority to prescribe fishways under section 18 of the FPA be included in any license issued for the project.

#### 1.3.1.2 Section 10(j) Recommendations

Under section 10(j) of the FPA, each hydroelectric license issued by the Commission must include conditions based on recommendations provided by federal and state fish and wildlife agencies for the protection, mitigation, or enhancement of fish and wildlife resources affected by the project. The Commission is required to include these conditions unless it determines that they are inconsistent with the purposes and requirements of the FPA or other applicable law. Before rejecting or modifying an agency recommendation, the Commission is required to attempt to resolve any such inconsistency with the agency, giving due weight to the recommendations, expertise, and statutory responsibilities of such agency.

Interior, South Carolina DNR, and NMFS timely filed on September 10, September 10, and September 11, 2012, respectively, recommendations under 10(j), as summarized in table 18 in section 5.4.1, *Recommendations of Fish and Wildlife Agencies.* In section 5.4,

[4] The VACAR sub-region includes the states of Virginia, North Carolina, and South Carolina.

we also discuss how we address the agency recommendations and comply with section 10(j).

### 1.3.2 Clean Water Act

Under section 401 of the Clean Water Act (CWA), a license applicant must obtain certification from the appropriate state pollution control agency verifying compliance with the CWA. On October 3, 2012, Lockhart Power applied to the South Carolina DHEC for certification of the Riverdale Project. South Carolina DHEC received this request on October 4, 2012. On September 20, 2013, Lockhart Power withdrew and re-filed for certification, and on the same day South Carolina DHEC received this request. South Carolina DHEC has not yet acted on the request. The certification is due by September 20, 2014.

### 1.3.3 Endangered Species Act

Section 7 of the Endangered Species Act requires federal agencies to ensure that their actions are not likely to jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of the critical habitat of such species. There are no federally listed endangered or threatened species or critical habitat known to occur in the Riverdale Project vicinity. Therefore, licensing the project would not affect listed species and no further consultation under section 7 is needed.

### 1.3.4 Coastal Zone Management Act

Under section 307(c)(3)(A) of the Coastal Zone Management Act (CZMA), 16 U.S.C. 1456(3)(A), the Commission cannot issue a license for a project within or affecting a state's coastal zone unless the state CZMA agency concurs with the license applicant's certification of consistency with the state's CZMA program, or the agency's concurrence is conclusively presumed by its failure to act within 180 days of its receipt of the applicant's certification.

The project is not located within the state-designated Coastal Management Zone, which extends to South Carolina's eight coastal counties (Jasper, Beaufort, Colleton, Berkeley, Dorchester, Charleston, Georgetown, and Horry), and the project would not affect South Carolina's coastal resources. Therefore, the project is not subject to South Carolina coastal zone program review and no consistency certification is needed for the action. By letter filed September 30, 2010,[5] the South Carolina DHEC concurred.

### 1.3.5 National Historic Preservation Act

Section 106 of the National Historic Preservation Act (NHPA) requires that every federal agency ''take into account'' how each of its undertakings could affect historic properties. Historic properties are districts, sites, buildings, structures, traditional cultural properties, and objects significant in American history, architecture, engineering, and culture that are eligible for inclusion in the National Register of Historic Places (National Register).

Pursuant to section 106, the applicant consulted with the South Carolina SHPO and affected Indian tribes to locate, determine National Register eligibility, and assess potential adverse effects to historic properties associated with the project. By letter filed August 31, 2010,[6] the South Carolina SHPO stated that it concurred with the applicant's assessment that no properties listed in or eligible for listing in the National Register would be affected by the by the federal licensing action. Staff reaffirmed the South Carolina SHPO's concurrence via teleconference on May 23, 2012.[7]

As a result of the findings made by Lockhart Power and the SHPO's concurrence that no historic properties would be affected by the project, the drafting of a programmatic agreement to resolve adverse effects on historic properties will not be necessary.

## 1.4 Public Review and Consultation

The Commission's regulations (18 CFR, § 4.38) require that applicants consult with appropriate resource agencies, tribes, and other entities before filing an application for a license. This consultation is the first step in complying with the Fish and Wildlife Coordination Act, the ESA, the NHPA, and other federal statutes. Pre-filing consultation must be complete and documented according to the Commission's regulations.

### 1.4.1 Scoping

Before preparing this EA, we conducted scoping to determine what issues and alternatives should be addressed. A Scoping Document 1 was distributed to interested agencies and other stakeholders on December 22, 2011. It was noticed in the **Federal Register** on December 22, 2011. A Scoping Document 2 was issued on May 15, 2012. The following entities provided written comments on Scoping Document 1:

| Commenting entities | Date filed |
|---|---|
| Caitlin Totherow, Catawba Indian Nation Tribal Preservation Officer (THPO) | January 18, 2012. |
| South Carolina SHPO | January 20, 2012. |
| Woodruff-Roebuck Water District (Water District) | February 9, 2012. |
| Greg Sveinsson, Riverdale Development Venture, LLC (Riverdale, LLC) | February 15, 2012. |
| American Rivers | February 16, 2012 |
| South Carolina DNR | February 21, 2012. |
| FWS | February 21, 2012. |
| NMFS | March 6, 2012. |

### 1.4.2 Interventions

On May 7, 2012, the Commission issued a notice that Lockhart Power's application to license the Riverdale Project had been accepted for filing. This notice set July 6, 2012, as the deadline for filing protests and motions to intervene. In response to the notice, the following entities filed notices of intervention or motions to intervene (none opposed issuance of a license):

[5] *See* letter dated September 13, 2010 from W. McGoldrick, Stormwater Permit Coordinator, South Carolina DHEC, Charleston, South Carolina, to S. Boring, Kleinschmidt Associates, Lexington, South Carolina.

[6] *See* letter dated December 7, 2009 from C. Wilson, Review and Compliance Coordinator, South Carolina State Historic Preservation Office, Columbia, South Carolina to J. Seay, Jr., Lockhart Power Company, Lockhart, South Carolina.

[7] *See* FERC. 2012a. Telephone Meeting Summary with the South Carolina State Historic Preservation Office for the Riverdale Hydroelectric Project No. 13590–001. Filed on May 24, 2012.

| Intervenors | Date filed |
|---|---|
| Woodruff-Roebuck Water District | June 12, 2012. |
| American Rivers | June 19, 2012. |
| Interior | June 25, 2012. |
| South Carolina DNR | June 29, 2012. |
| National Oceanic and Atmospheric Administration (on behalf of NMFS) | July 5, 2012. |

### 1.4.3 Comments on the License Application

The July 13, 2012 notice also stated that the application was ready for environmental analysis, and requested that comments, recommendations, terms and conditions, and prescriptions be filed. The following entities commented:

| Commenting agencies and other entities | Date filed |
|---|---|
| Interior | September 10, 2012. |
| South Carolina DNR | September 10, 2012. |
| NMFS | September 11, 2012. |
| American Rivers | September 12, 2012. |

The applicant, Lockhart Power, filed reply comments on October 24, 2012.

## 2.0 Proposed Action and Alternatives

### 2.1 No-Action Alternative

We use existing conditions as the baseline environmental condition for comparison with other alternatives. Under the no-action alternative, the project would not be refurbished and operated, the dam and other facilities would remain in place, and all flows would remain in the Enoree River by passing over the spillway or through leaks in the sand gates.

### 2.1.1 Existing Project Facilities

The Riverdale Project would consist of an existing 425-foot-long, 12-foot-high concrete gravity dam with three evenly spaced, integral sand gates,[8] and 2-foot-high flashboards that form a 6.6-acre impoundment with a gross storage of 22.0 acre-feet. On the north end of the dam is an existing 85-foot-long, 50-foot-wide concrete headrace canal with an intake structure equipped with trash racks with 2.25-inch bar spacing. The canal feeds an existing 9-foot-diameter, 340-foot-long steel penstock,[9] which is equipped with trash racks having bar spacing of about 10 inches. The penstock connects to an existing wood frame powerhouse building containing one 1.24–MW capacity generating unit. An existing 510-foot-long tailrace extends from the powerhouse to the Enoree River, and an existing 700-foot-long transmission line extends from the powerhouse to an existing Duke Energy distribution line. An existing paved access road, approximately 1,376 feet long and 20 feet wide extends from Highway 221 to the project powerhouse.

The project boundary includes about 25.9 acres. The project boundary encloses the project impoundment, the existing hydropower facilities, the bypassed reach (including the braided channels), tailrace, project access road, and the proposed canoe take-out, put-in, portage trail, and parking area. Riverdale, LLC currently owns approximately 2.5 acres of land within Lockhart Power's proposed project boundary which encompasses the project powerhouse, intake structure, penstock, and tailrace. The Water District owns the majority of the remaining lands within the project boundary and retains an option to acquire the dam. Two other private individuals own the remaining parcels which are located on the south side of the impoundment.

### 2.1.2 Project Safety

The project has been inoperable for more than 12 years under the existing license; nonetheless, during this time, Commission staff has conducted inspections focusing on the continued safety of the structures, identification of unauthorized modifications, efficiency and safety of operations, compliance with the terms of the license, and proper maintenance. As part of the licensing process, the Commission would evaluate the adequacy of the proposed project facilities. Special articles would be included in any license issued, as appropriate. Commission staff would continue to inspect the project both during and after construction to repair existing project facilities. Before the project is refurbished, engineers from the Commission's Atlanta Regional Office would review the designs, plans and specifications of the proposed repairs to equipment and structures. Inspections during project refurbishment would concentrate on adherence to Commission-approved plans and specifications, special license articles relating to construction, and accepted engineering practices and procedures. Operational inspections would focus on the continued safety of the structures, identification of unauthorized modifications, efficiency, and safety of operations, compliance with the terms of the license, and proper maintenance.

### 2.1.3 Existing Project Operation and Environmental Measures

Inman Mills ceased operating the project (under FERC No. 4362) in 2001, when the adjacent textile mill closed. The 2-foot-high flashboards washed out during storm events in 2012 and 2013 and there is currently no practical way to control flows from Riverdale dam. The current owner demolished the original concrete and brick powerhouse and replaced it with a wood frame building. All flows pass over the dam and into the 1,400-foot-long bypassed reach. No environmental measures are currently being implemented at the project.

### 2.2 Applicant's Proposal

### 2.2.1 Proposed Project Facilities

Lockhart Power proposes to use the existing hydropower facilities described above, and rehabilitate all equipment rendering the project inoperable. Because Lockhart Power is not the current licensee or current owner of the project and has not had full access to the project, it plans to spend the first year following license issuance

[8] Three low level sand gates are located within three concrete-framed piers along the spillway dam.

[9] Staff used GIS software to estimate the length of the penstock. Current Exhibit F drawings only defined the below ground portion of the penstock as 110 feet long.

assessing the condition of project facilities and finalizing any engineering design needed to refurbish the project. To make the project operational, Lockhart Power expects it would, at a minimum: (1) Repair or replace the sand gates and gate operators; (2) repair or replace the 2-foot flashboards on the dam; (3) replace a 193-foot above ground section of the penstock; (4) modify the bar spacing on the penstock trashrack from 10 to 5 inches; (5) refurbish the turbine generator; [10] (6) repair plant controls and governor; (7) repair the powerhouse roof; and (8) dredge the sediment and debris in the tailrace. There would be a total of 25.9 acres within the proposed project boundary, of which 11.3 acres are land and the remainder is occupied by waters of the impoundment, bypassed reach, and tailrace.

### 2.2.2 Proposed Project Operations

Lockhart Power would operate the project using a combination of run-of-river (ROR) and peaking modes. The project would operate semi-automatically with an operator on standby. Lockhart Power would remotely monitor impoundment levels and control the water flow through the project's turbine to maintain impoundment levels. The Riverdale impoundment would fluctuate between 1 and 4 feet of the top of the flashboards.

Lockhart Power would typically operate the project in a ROR mode, with project outflow approximately equaling inflow, such that the impoundment surface elevation stays within 1 foot (+/− 10 percent) of the top of the flashboards. When inflows are insufficient to operate the turbine at its maximum hydraulic capacity of 450 cubic feet per second (cfs) and provide a continuous minimum flow of 50 cfs to the bypassed reach (i.e. when inflow is less than 500 cfs), Lockhart Power would operate the project in a ''peaking'' mode. Peaking events would occur no more than once daily, until either the daily period of increased need for power ends or until the impoundment surface elevation is drawn down a maximum of 4 feet (+/− 10 percent) below the top of the flashboards. Following each peaking event, Lockhart Power would suspend operation and store inflow, minus the minimum flow to the bypassed reach, to refill the impoundment (likely overnight) to its normal elevation of within 1 foot (+/− 10 percent) of the top of the flashboards, allowing it to return to ROR mode until the next peaking event. Lockhart Power expects that peaking operation would occur less than half of the days in any given year (Lockhart Power, 2011a).

### 2.2.3 Proposed Environmental Measures

Lockhart Power proposes to construct and operate the project with the following environmental protection, mitigation, and enhancement (PM&E) measures:

- Implement a sediment management plan that consists of using the sand gates to draw down the impoundment below the normal operating range for periodic inspections and maintenance and, if possible, avoid drawdowns from March 15 through June 1 to prevent significant accumulation of sediments in the project impoundment and untimely releases of sediment downstream.
- Monitor water quality as may be required by the South Carolina DHEC.
- Maintain a minimum flow of 50 cfs in the bypassed reach and a total minimum continuous flow of 60 cfs, or inflow if less, in the Enoree River downstream from the confluence of the tailrace and the bypassed reach to protect aquatic habitat. The minimum flow in the bypassed reach would be provided through one or more of the three sand gates selected in consultation with South Carolina DNR, Interior, and NMFS, after repairs. Lockhart Power would develop a rating curve for the sand gates and verify it once every 6 years to ensure defined minimum flows are being provided.
- When average daily inflows are less than or equal to 80 cfs (+/− 10 percent), release all inflow into the bypassed reach (i.e. low inflow protocol [LIP]) to protect aquatic resources downstream from Riverdale dam, including during the fish spawning season.
- Implement best management practices (BMPs) to protect vegetation within the project boundary, such as limiting vegetation and ground-disturbing activities and maintaining a minimum 25-foot-wide forested riparian buffer on project shorelines, as long as this does not interfere with Lockhart Power's ability to perform project-related activities.
- Construct and maintain: (1) A canoe take-out located approximately 220 feet upstream of the dam; (2) a canoe put-in located approximately 1,075 feet downstream from the dam; (3) a 1,650-foot-long portage trail connecting the proposed canoe take-out and put-in; (4) a parking area located adjacent to the proposed portage trail; and (5) signage to improve public access at the project and to the Enoree River.
- Provide informal public access for fishing at the project impoundment, tailrace, and bypassed reach.
- Notify and consult with the South Carolina SHPO regarding any project-related construction or other ground-disturbing activities.[11]

### 2.3 Staff Alternative

The staff alternative includes the following additional measures and modifications to Lockhart Power's proposal:

- Develop and implement a site-specific soil erosion and sediment control plan, which includes the BMPs described in the South Carolina DHEC's Stormwater BMP Handbook, to minimize erosion and sedimentation during soil-disturbing activities associated with project construction and repairs.
- Develop and implement a sediment management plan that includes provisions to: (a) Test impoundment sediments for heavy metals and other contaminants prior to beginning in-water construction activities and initial operation; (b) prepare a contingency plan for proper disposal of any contaminated sediments should they be found in the impoundment; (c) monitor sediment accumulation in the impoundment annually to facilitate planning of sediment management activities; (d) develop criteria that would trigger sediment removal from the impoundment (i.e. by opening the sand gates, if appropriate, during high flow events, or via mechanical methods); (e) conduct sediment management activities during the months of November through January except during high rain events (e.g., tropical storms or hurricanes); (f) avoid maintenance activities that would draw down the impoundment below normal operating levels and potentially pass sediment into the bypassed reach from March 15 through June 1, if possible, to minimize adverse impacts to spawning fish; and (g) file annual reports with

[10] Lockhart Power anticipates that significant electrical, mechanical, and hydraulic system improvements and refurbishments will be necessary to restore the project to reliable long term operating condition. Certain improvements, such as turbine refurbishment, may improve the design efficiency of and thereby increase the rated capacity of the turbine-generator to a range of 1.2–1.45 MW.

[11] Although Lockhart Power proposes this measure in its license application, we consider Lockhart Power's consultation requirements under section 106 of the NHPA to be complete because of the SHPO's finding that no properties listed in or eligible for listing in the National Register would be affected by the project (letter from C. Wilson, Review and Compliance Coordinator, South Carolina SHPO, Columbia, South Carolina to J. Seay, Jr., Lockhart Power, Lockhart, South Carolina, December 7 2009). Therefore no further analysis of this measure is necessary.

sediment monitoring results, sediment management activities, and an evaluation of the effectiveness of the plan in minimizing sediment accumulation in the impoundment.

• Develop and implement a shoreline stabilization plan that includes provisions to: (a) Identify eroding or potential project-induced erosion sites on the impoundment shorelines and streambanks downstream from the dam and powerhouse prior to beginning operation; (b) stabilize areas of shoreline erosion using native vegetation, bio-engineering, slope flattening, toe armoring with anchored logs, and/or riprap that incorporates native vegetation plantings; (c) monitor shorelines after resuming operation and implement stabilization measures if project-induced erosion occurs; (d) conduct shoreline stabilization activities from September through February to protect aquatic species and wildlife; and (e) file annual reports describing monitoring results and any implemented shoreline stabilization measures.

• Develop and implement a water quality monitoring plan with provisions to: (a) Monitor dissolved oxygen (DO), temperature, and turbidity prior to the start of construction, during construction, and for 1 year after project operation begins to ensure the levels specified by the current state water quality standards are met and aquatic resources are protected; (b) define sampling methods, timing, and locations for monitoring these parameters in consultation with South Carolina DHEC, FWS, and NMFS; and (c) file a report that presents the monitoring data, describes any project-related effects and identifies corrective actions, if necessary.

• Release a continuous minimum flow of 75 cfs into the bypassed reach to protect aquatic habitat.

• Develop and implement a plan to release required minimum flows into the bypassed reach that includes: (a) A feasibility assessment for using the sand gates as a flow-release mechanism; (b) if found to be feasible, a flow study to determine how the sand gates would be used to distribute flow into the bypassed reach to protect aquatic habitat; (c) if the sand gates are not feasible, a description of how the minimum instream flows would be provided to the bypassed reach; (d) a report documenting the outcome of the feasibility assessment, flow study, and consultation with the agencies; and (e) an implementation schedule.

• Develop and implement a low inflow protocol/drought contingency plan to define periods of extended drought and the low inflow protocols to minimize adverse effects on generation, and on fish, wildlife, and water quality in the bypassed reach and downstream from the tailrace.

• Develop and implement an operation compliance monitoring plan that includes: (a) A rating curve to provide the seasonally defined flows; (b) protocols to monitor and document compliance with required flows; (c) protocols to monitor and document impoundment fluctuations; and (d) an implementation schedule.

• Develop and implement an invasive [12] vegetation monitoring and control plan that includes: (a) Survey methods to determine the extent of alligatorweed in the impoundment and riparian area prior to beginning refurbishment activities; (b) BMPs, as well as monitoring and control methods to prevent the spread of alligatorweed in the impoundment to areas downstream from the dam during project refurbishment; (c) monitoring protocols to detect the introduction or spread of other invasive plants within the project boundary during operation and maintenance; (d) criteria that would determine when control measures would be required; and (e) a schedule for filing monitoring reports and any recommended control measures with the Commission.

• Determine whether the existing project transmission line is consistent with Avian Power Line Interaction Committee (APLIC) guidelines. Identify, in consultation with FWS, measures to minimize potential electrocution hazards to birds and file a report with the Commission describing the results of the evaluation and any measures recommended by FWS.

• Modify the applicant's proposal for signage at recreation sites to include: (1) Identification of the canoe take-out and put in; (2) directions from the parking area to river access points; and (3) information regarding garbage disposal in order to improve public information available at the project and protect environmental resources.

• Stop work and notify the South Carolina SHPO and the Catawba Indian Nation if any unknown archaeological resources are discovered as a result of project construction, operation, or project-related activities to avoid, lessen, or mitigate potential adverse effects on historic resources.

[12] For the purposes of this document, an ''invasive species'' is defined, consistent with Executive Order 13112, as a species that is: (1) Non-native (or alien[/exotic]) to the ecosystem under consideration; and (2) whose introduction causes or is likely to cause economic or environmental harm or harm to human health (USDA, 2012).

### 2.4 Alternatives Considered but Eliminated From Further Analysis

#### 2.4.1 Issuing a Non-Power License

A non-power license is a temporary license that the Commission will terminate when it determines that another governmental agency will assume regulatory authority and supervision over the lands and facilities covered by the non-power license. At this point, no agency has suggested a willingness or ability to do so. No party has sought a non-power license and we have no basis for concluding that the project should no longer be used to produce power. Thus, we do not consider issuing a non-power license a realistic alternative to relicensing in this circumstance.

#### 2.4.2 Project Decommissioning

Project decommissioning could be accomplished with or without dam removal. Both Interior and American Rivers recommended that the Commission analyze project decommissioning with dam removal as an alternative in this EA. Because Lockhart Power neither owns nor operates the project under the existing license, the Commission cannot require Lockhart Power to remove the dam. Decommissioning the project would involve denial of Lockhart Power's license application and then the surrender or termination of Inman Mills' existing license with appropriate conditions under separate action by the Commission.

Decommissioning with dam removal would remove the only barrier to fish movement in the Enoree River from its confluence with the Broad River to its headwaters, allow for natural sediment movement through the project area, eliminate the need to portage canoes around the project, remove lake recreation, and eliminate a potential source of renewable energy. However, as we explain herein, the project's power would serve to meet regional energy needs. Further, a license can be conditioned to address adverse environmental effects of project operation such that project benefits can be retained with minimal effects on the environment. Considering there is a willing developer of the project, we see no reason not to develop the project power. Therefore, we do not consider project decommissioning with or without dam removal as a reasonable alternative to Lockhart Power's proposal.

## 3.0 Environmental Analysis

In this section, we present: (1) A general description of the project

vicinity; (2) an explanation of the scope of our cumulative effects analysis; and (3) our analysis of the proposed action and other recommended environmental measures. Sections are organized by resource area. Under each resource area, historic and current conditions are first described. The existing condition is the baseline against which the environmental effects of the proposed action and alternatives are compared, including an assessment of the effects of proposed mitigation, protection, and enhancement measures, and any potential cumulative effects of the proposed action and alternatives.[13] We present the estimated cost of the proposed and recommended measures in section 4.0, *Developmental Analysis.* Our conclusions and recommended measures are discussed in section 5.2, *Comprehensive Development and Recommended Alternative.*

### 3.1 General Description of the River Basin

Situated within the Piedmont Physiographic Region and encompassing approximately 731 square miles within the lower portion of the Broad River Basin, the Enoree River Basin spans portions of Greenville, Spartanburg, Union, and Newberry Counties in northwestern South Carolina. The Enoree River originates near the city of Travelers Rest and then flows 110 miles to its confluence with the Broad River. The Broad River flows into the Congaree, which merges with the Wateree to form the Santee River. The Santee River flows into the Atlantic Ocean.

The Enoree River is the primary source of water for the project. Tributaries to the Enoree River include Beaverdam Creek [14] as well as Warrior and Duncan creeks. Approximately 29 miles upstream of the project, are the remains of the Pelham dam [15] and Pelham Mills, closed in the 1930's. There are no other dams on the Enoree River upstream of, or downstream from, the Riverdale dam. The nearest dam is Parr Shoals dam (FERC Project No. 1984), located on the Broad River 65 miles downstream from the confluence of the Enoree and Broad rivers.

The Enoree River has a variety of aquatic habitats, including seven shoal reaches and frequent long stretches of riffles and runs separated with short sections of glides and pools. The topography of the basin is generally moderate, varying from steep to rolling hills. Land uses in the basin and surrounding the Riverdale Project are primarily forest or agriculture with small developed areas near the headwaters of the Enoree River and along main roads in the project area.

Climate in the Enoree River Basin is subtropical, marked by high summer humidity and moderate winters that rarely drop below freezing. The average annual temperature is 60 °F to 70 °F. Rainfall is high year-round, with an annual average of 40 to 60 inches, typically greatest during the summer.

### 3.2 Scope of Cumulative Effects Analysis

According to the Council on Environmental Quality, a cumulative effect under NEPA is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such other actions 40 CFR 1508.7 (2013). Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time, including hydropower and other land and water development activities.

Based on our review of the license application, agency and public comments from scoping, and other filings related to the project, we have identified fisheries as a resource that could be cumulatively affected by the proposed project in combination with other actions such as sand mining operations in the Enoree River Basin.

#### 3.2.1 Geographic Scope

The geographic scope of the analysis defines the physical limits or boundaries of the proposed action's effects on the resources. Because the proposed action would affect the resources differently, the geographic scope for each resource may vary. For fisheries, we identified the geographic scope to extend from the remains of the Pelham dam downstream to the mouth of the Broad River.

#### 3.2.2 Temporal Scope

The temporal scope of our cumulative effects analysis in the EA includes a discussion of past, present, and future actions and their effects on these resources. Based on the potential term of license, we will look 30 to 50 years into the future, concentrating on the effect on the resources from reasonably foreseeable future actions. The historical discussion is limited, by necessity, to the amount of available information. We identify the present resource conditions based on the license application, agency comments, and comprehensive plans.

### 3.3 Proposed Action and Action Alternatives

In this section, we discuss the effect of the project alternatives on environmental resources. For each resource, we first describe the affected environment, which is the existing condition and baseline against which we measure effects. We then discuss and analyze the site-specific environmental issues.

Only the resources that would be affected, or about which comments have been received, are addressed in detail in this EA. We have not identified any substantive issues related to aesthetic resources or socioeconomics associated with the proposed action, and, therefore, these issues are not assessed in this EA.

#### 3.3.1 Geologic and Soil Resources

##### 3.3.1.1 Affected Environment

The Enoree River is located within the greater Broad River Drainage Basin and flows through the geologic region known as the Piedmont. The Piedmont geologic region extends from the Blue Ridge region to the fall line, at Columbia, South Carolina, and consists of stream and river valleys and rolling hills with elevations ranging from 375 to over 1,000 feet mean sea level (msl).[16] Bedrock in this region is dominated by granite which is found mostly below the surface, except at shoals within streams. The Enoree River passes through various geologic formations including the Six Mile Thrust Sheet, the Laurens Thrust Stack, and the Charlotte Terrane before entering the Broad River, approximately 52 miles downstream from the project. Surficial geological material within the project area and within the vicinity of the project consists of fluvial deposited sediments, as well as weathered felsic igneous and metamorphic rocks of the Piedmont uplands.

Dominant soils within the project area and general vicinity of the project include the following series: Cartecay, Congaree, and Enoree (entisols); [17] and

[13] Unless otherwise indicated, our information is taken from the license application for this project (Lockhart Power, 2010a) and Lockhart Power's responses to the Commission staff's additional information requests (Lockhart Power, 2011a; 2011b; 2012).

[14] Beaverdam Creek enters the Enoree River approximately 0.5 mile upstream of the project.

[15] There are no records of a hydroelectric license at the Pelham dam location (Federal Power Commission, 1970).

[16] Elevations in this document are based on the National Geodetic Vertical Datum 1929 (NGVD 29).

[17] Entisols are mineral soils that typically occur in areas where the rate of erosion or deposition of soil parent materials exceeds the rate of soil horizon development (NRCS, 2012).

Cecil, Madison, and Pacolet (ultisols)[18] (NRCS, 2013a). In particular, the northern shoreline of the Riverdale impoundment is composed of Cartecay-Toccoa complex, Pacolet sandy clay loam with 10 to 15 percent slopes, and Pacolet sandy loam with 25 to 40 percent slopes. The southern shoreline of the impoundment consists largely of Enoree soils. Downstream from the dam, bordering the bypassed reach, tailrace, and Enoree River are Madison & Pacolet soils with 15 to 40 percent slopes and wet, mixed alluvial land.[19] Table 2 describes key features of these soils.

TABLE 2—SELECT CHARACTERISTICS OF MAPPED SOIL UNITS AT THE RIVERDALE PROJECT

[Source: Lockhart Power, 2010A]

| Soil type | Slope | Landform | Drainage class | Flooding | Capacity to transmit water[1] | Erodibility[2] |
|---|---|---|---|---|---|---|
| **Northern Shoreline** | | | | | | |
| Cartecay-Toccoa complex. | 0–2 | Floodplain | Somewhat poorly drained. | Occasional | High | 0.24 |
| Pacolet sandy clay loam. | 15–25 | Interfluves[3] | Well drained | None | Mod. high to high | 0.20 |
| Pacolet sandy loam | 25–40 | Interfluves[3] | Well drained | None | Mod. high to high | 0.20 |
| **Southern Shoreline** | | | | | | |
| Enoree | 0–2 | Depressions/floodplain. | Poorly drained | Frequent | Mod. high to high | 0.32 |
| **Downstream from Riverdale Dam** | | | | | | |
| Madison & Pacolet | 0–2 | Floodplain | Moderately well drained. | Frequent | High | 0.32 |
| mixed alluvial land | 15–40 | Interfluves[3] | Well drained | None | Mod. high to high | 0.20 |

[1] Measured as Ksat, or saturated hydraulic capacity, as an indicator of seepage potential in the upper 60 inches.
[2] Measured as the K factor, or the erodibility of soil and other surface substrates, taking into account soil texture, content (e.g., clay, silt, organic matter, minerals, rocks), and structure (NRCS, 2013b). Values range from 0.02 to 0.69. The higher the value, the more susceptible the soil is to sheet and rill erosion by water. Moderate range is about 0.20–0.40.
[3] Upland landform located between two adjacent valleys containing streams.

The characteristics of dominant soil types along with active local mining operations likely contribute to the load of suspended solids in the Enoree River. According to the Natural Resource Conservation Service (NRCS), the majority of lands in the Enoree watershed, including those of the project, represent a resource concern due to erosion and are classified as 'highly erodible lands.' As shown in table 2, the soils bordering the project impoundment have a K factor that indicates moderate erodibility. In addition, there are several mine sites upstream of the Riverdale Project, including granite, vermiculite, and sand mines (South Carolina DHEC, 2013a; 2013b).

During licensing studies conducted the summer of 2010,[20] Lockhart Power collected qualitative data on substrate content and bank stability at the Riverdale Project.[21] The substrates were dominated by silt and sand in the impoundment and at the confluence of the Enoree River and Two-Mile Creek. Boulders and bedrock occur immediately downstream from the dam. Clay, gravel, pebble, cobble, detritus, and mud were also found in the substrates within the project boundary. The study results indicated areas of stable shorelines and some areas with evidence of erosion and undercutting. The current extent of erosion is not known at this time, but the majority of the project shoreline is forested with portions armored by bedrock.

Heavy metals and other contaminants from an industrial spill are known to occur in the Upper Enoree River watershed. In 1985, a galvanizing facility spilled 75,700 liters of hydrochloric acid, zinc, lead, barium, chromium, and other contaminants from a ruptured waste containment pond. The contaminants infiltrated the soil and seeped into the groundwater at the headwaters of the Enoree River near Travelers Rest, South Carolina. Also in 1985, the U.S. Environmental Protection Agency (EPA) removed contaminated materials from the waste containment ponds, from soil around the facility, as well as drums and other containers of stored hazardous materials, some of which appeared to have leaked (South Carolina DHEC, 2005). Studies conducted in 1999 and 2000 documented the residual adverse effects of these contaminants on salamanders, fish, dragonfly and damselfly larvae, and other aquatic species in the Enoree River (Worthen, *et al.,* 2001; Worthen, 2002). While South Carolina DHEC determined that the surface water, sediment, soils, and groundwater adjacent to the facility pose no public health hazard,[22] a South Carolina DHEC's survey in October 2004 indicated that zinc concentrations in surface water and sediments were above ambient conditions and could negatively impact aquatic species at the headwaters of the Enoree River (South Carolina DHEC, 2005). The type and quantity of contaminants that may have

[18] Ulitsols are highly weathered soils rich in clays and minerals commonly found in mesic forests in the Lower Broad River Basin (Andersen *et al.,* 2001).

[19] Alluvial land is an area such as a portion of a stream channel or floodplain where stream-born sediment has been deposited (Chernicoff and Ramesh, 1995).

[20] The survey report for Carolina heelsplitter, a freshwater mussel species, provided qualitative information on substrate content and compactness, sand and gravel bars, woody debris, beaver activity, bank stability, riparian buffer width and vegetation types, land use, turbidity, and water level.

[21] Survey locations included the impoundment and the Enoree River in the riffle habitat immediately upstream of the impoundment, Two-Mile Creek, the tailrace, the bypassed reach, and the Enoree River downstream from the project near a road (i.e. SC 49) crossing.

[22] According to South Carolina DHEC, the levels of chemicals measured at the spill site do not pose a risk to people who may ingest or come in contact with water and sediment in the area; however, the threshold for adverse effects to aquatic organisms is much lower.

been transported in the Enoree River and deposited within the sediments of the project impoundment since the 1985 industrial spill is unknown at this time.

The Enoree watershed is transport limited, meaning that material, primarily eroding soils, collects at a faster rate than river flows can transport. In small impoundments such as the one at the project, sediments tend to collect seasonally or during low flow periods. This is exemplified by the large amount of fine sediments (e.g., sand, silt, and clay), tree trunks, branches, and other debris that have accumulated within the project impoundment, including in front of the intake structure and the dam spillway (FERC, 2012b; 2013). Some of the sediments and debris in these areas are covered by mats of alligatorweed and other vegetation (Lockhart Power, 2012). Turbidity and thick vegetation growing along the canal between the intake structure and the penstock limited visual inspection during recent project inspections (FERC, 2012b; 2013). The precise volume of sediment deposits in the impoundment and the canal are unknown at this time.

#### 3.3.1.2 Environmental Effects

*Construction-Related Effects*

At this time, Lockhart Power cannot define exactly what will be required to make the project operable. However, anticipated activities associated with replacing the approximately 193-foot-long section of the penstock, dredging the tailrace, repairing the powerhouse, and constructing the canoe put-in, take-out, portage trail, and parking area would result in soil-disturbing activities that could cause erosion and sedimentation in the impoundment and Enoree River. Soil erosion and subsequent sedimentation of aquatic habitats can adversely affect fish and wildlife habitat and degrade water quality.

To address the issue of erosion and sedimentation at the project, Lockhart Power would limit ground-disturbing activities whenever possible on lands acquired for project purposes. South Carolina DNR recommends Lockhart Power consult with state and federal agencies to implement construction and maintenance [23] BMPs described in the South Carolina DHEC's Stormwater BMP Handbook (South Carolina DHEC, 2005).

*Our Analysis*

Lockhart Power anticipates that construction and repairs of the hydroelectric facilities and installation of the proposed recreation facilities would be confined to about 2 acres. Ground-disturbing activities would occur predominantly within the footprint of the former textile mill, parking lots, and roadways, minimizing effects to undisturbed areas. Implementing standard industry BMPs for controlling erosion would ensure adverse effects are minor and temporary. Such BMPs could include the use of silt fences, sediment traps, stabilized construction entrances, and alternative techniques that may be approved after consultation with the South Carolina DHEC (South Carolina DHEC, 2013a; 2013b; 2005).

*Operation and Maintenance-Related Effects*

Heavy sediment loads in the Enoree River and years of in-operation have resulted in significant sediment deposits and the establishment of vegetation in the project impoundment. The exact amount of sediment deposit is unknown. Repairs to the sand gates prior to project operation would likely require lowering the impoundment which could release large quantities of sediments downstream. Any heavy metals and other contaminants that may have been deposited and covered by the sediment over the years could be suspended and released downstream.

Resuming project operation and maintenance activities could affect several geomorphological processes and/or conditions such as stream bank and shoreline erosion, bed scour, and sediment accumulation within the impoundment, and sediment transport to downstream river reaches. Because of the heavy sediment loads and lower velocities in the impoundment, sediments would continue to accumulate in the impoundment during project operation. Periodic maintenance activities, such as inspections or repairs to the sand gates that would require lowering the project impoundment below the normal operating levels, could result in untimely flushing of sediments and the accidental releases of large quantities of sediment. During peaking operation, impoundment fluctuations of up to 4 feet could cause bank erosion and sedimentation in the impoundment.

To prevent significant accumulation of sediments in the project impoundment and untimely releases of sediment downstream, Lockhart Power proposes to implement a sediment management plan, which consists of the following: Lockhart Power would use the sand gates to draw down the impoundment below the normal operating range (i.e. for periodic inspections and maintenance purposes) and avoid drawdowns from March 15 through June 1. These measures are intended to minimize sediment releases that could affect fish spawning in the project impoundment and downstream areas.

South Carolina DNR recommends that Lockhart Power develop and implement a sediment management plan with provisions to: (a) Monitor stream-borne sediment accumulations in the impoundment; (b) regularly flush sediments downstream or remove them from the impoundment; (c) prepare annual reports describing monitoring and management activities and evaluating the overall effectiveness of the plan; (d) conduct sediment management activities from November through January, if possible; and (e) consult with the South Carolina DHEC to address the potential presence of contaminated sediments in the impoundment.

Interior also recommends Lockhart Power develop and implement its sediment management plan with guidelines for periodic inspections and maintenance drawdowns, as well as the following additional provisions: (a) Test impoundment sediment for heavy metals and other contaminants; (b) develop a schedule and criteria that would trigger sediment removal from the impoundment, by opening the sand gates, if appropriate, during high flow events, or via mechanical methods; (c) develop a method to monitor future sediment accumulation in the impoundment; and (d) conduct maintenance drawdowns in late fall and winter to avoid impacts to spawning fish upstream and downstream of the dam.

To protect project shorelines from water level fluctuations associated with peaking operation, Interior recommends Lockhart Power develop and implement a shoreline stabilization plan. As part of the plan, Lockhart Power would be required to identify and address any existing areas of active erosion along the impoundment, as well as areas downstream from the dam with the potential for erosion due to project operation. Interior recommends that Lockhart Power use native vegetation and techniques such as bio-engineering, slope flattening, toe armoring with anchored logs, and/or riprap that

[23] Both Lockhart Power's proposal and South Carolina DHEC's recommendation appear to apply to all future ground-disturbing maintenance activities. While we are not opposed to such protective measures, we cannot analyze the effects of undefined, broad measures. Therefore, this EA only considers the effects of refurbishing the project and general operation and maintenance of the project. Any future modifications that result in ground-disturbing activities may require prior Commission approval.

incorporates native vegetation plantings to stabilize shorelines subject to potential erosion.

*Our Analysis*

*Sediment Management*

Refurbishing the dam, sand gates, and intake structures, and beginning initial operation would likely result in the re-suspension and subsequent transport of a large quantity of sediments downstream from the project. High loads of suspended solids [sediment] increase turbidity in riverine habitats leading to reduced light penetration, decreased primary productivity, which then can lead to adverse effects to the rest of the food chain. Sedimentation can modify the substrate surfaces and morphology of a stream channel, reducing habitat availability and smothering and killing aquatic flora and fauna (Wood and Armitage, 1997). If heavy metals and other contaminants are present in the impoundment, they could also be suspended and transported in the water column, harming fish and wildlife.

Conducting an initial test for heavy metals and other contaminants in the impoundment sediments prior to beginning project operations, as recommended by Interior, would determine if such contaminants are in the project impoundment. The test results would also help Lockhart Power, the resource agencies, South Carolina DHEC, and the Commission to identify suitable methods for removing and disposing of any contaminated sediments, preventing the inadvertent re-suspension and release of contaminants. The information would also help to design appropriate methods for short- and long-term sediment management at the project.

Avoiding impoundment draw downs between March 15 and June 1 to initially repair the sand gates and to conduct any maintenance once it is operational, would avoid adverse effects on spawning fish and reproductive success. Limiting any such maintenance actions to the late fall and winter, as recommended by Interior, would also protect a broad range of aquatic species, which undergo less critical life-cycle events during this time of year and are often dormant or less active. In addition, during the fall and winter there would likely be sufficient flows to keep any suspended sediment moving downstream instead of settling in the shoal habitat of the bypassed reach.

Regular management of impoundment sediment loads would help prevent sediment buildup and the accidental release of large quantities of sediment during scheduled and unscheduled maintenance activities that could have adverse effects on downstream resources. Such an event occurred in October of 2011 at the Neal Shoals Hydroelectric Project (FERC Project No. 2315) which is located on the Broad River about 16 miles upstream from the confluence with the Enoree River. About 112,841 cubic yards of sediment was released [24] during a reservoir drawdown associated with the replacement of four sand gates, installation of new trash racks on the sand gates, temporary installation and removal of a bulkhead in the sand gate opening, and the replacement of the controls for the sand gates and trash racks.[25] The Commission was informed that the sediment release resulted in a fish kill and affected water quality in the Broad River.[26] Analysis of the effects the sediment release on aquatic resources downstream from the Neal Shoals Project is ongoing.[27]

Developing a sediment management plan would facilitate detection and timely management of sedimentation at the project, which would protect aquatic and riparian resources at and near the project. The plan would be most effective if it includes regular monitoring of sediment loads, defines criteria for when sediment loads are reaching levels requiring flushing or removal, and establishes a schedule for flushing sediments or mechanically removing the sediments during periods when such releases would be least harmful to aquatic resources. Annual sediment management reports, as recommended by South Carolina DNR, would ensure continued stakeholder involvement in sediment management activities at the project and that sedimentation is managed effectively from year to year. Such report(s) would be most informative if they include sediment monitoring results, sediment management activities that were undertaken, and an evaluation of the effectiveness of the sediment management plan in minimizing adverse effects on downstream resources.

*Fluctuating Water Levels*

Resuming project operations, as Lockhart Power proposes, would result in impoundment fluctuations of up to 4 feet that could compromise the stability of soils along the project shorelines. The total length of the impoundment shoreline is about 2,394 feet.[28] Since the shoreline contains areas of highly erodible soils, such fluctuations could cause physical weathering through saturation, subsequent drying, exposure to rainfall, runoff, and freeze/thaw conditions. These mechanisms can cause slumping of soils and fracturing of rocks on the shorelines. Bank slumping and erosion is likely to be greatest during the initial years of operation. Identifying and stabilizing areas of active erosion, as well as areas that exhibit the potential for erosion prior to commencing project operation would prevent and/or minimize potential shoreline erosion problems. Annually monitoring the banks for erosion and implementing corrective measures as needed would minimize future adverse effects of bank erosion on fish and wildlife habitat. Using native vegetation and techniques such as bio-engineering, slope flattening, toe armoring with anchored logs, and/or riprap that incorporates native vegetation plantings would effectively stabilize eroding shorelines and provide habitat for wildlife and aquatic species that use the riparian zone, littoral zone of the impoundment, and bank areas of stream reaches in the project area. Monitoring banks and shorelines after Lockhart Power resumes project operation as well as implementing stabilization techniques if erosion is observed, would address any areas of future shoreline erosion. Installing shoreline or bank stabilizers during the fall and winter (i.e. September through February), except under emergency situations, would help minimize potential disturbances to aquatic species and wildlife. As with the sediment management plan discussed above, annual reports documenting the results of monitoring and any shoreline stabilization activities would ensure continued stakeholder involvement in activities to minimize erosion and protect littoral, bank, and riparian areas within the project area over the term of any license issued for the project.

[24] *See* letter from Michael C. Summer, General Manager, Fossil/Hydo Technical Services, South Carolina Electric and Gas Company (SCE&G), Cayce, South Carolina, filed on January 25, 2012.

[25] *See* letter from Michael C. Summer, General Manager, Fossil/Hydo Technical Services, SCE&G, Cayce, South Carolina, to Charles D. Wagner, Regional Engineer, FERC, Atlanta Regional Office, Duluth, Georgia, filed on March 7, 2011.

[26] *See* letter from Thomas J. LoVullo, Chief, Aquatic Resources Branch, FERC, Division of Hydropower Administration and Compliance to Michael C. Summer, General Manager, Fossil/Hydo Technical Services, SCE&G, Cayce, South Carolina, issued on November 14, 2011.

[27] *See* letter from Michael C. Summer, General Manager, Fossil/Hydo Technical Services, SCE&G, Cayce, South Carolina, filed on August 8, 2013.

[28] Staff used GIS software to estimate the length of the impoundment shoreline. The individual lengths of the northern and southern impoundment shorelines are 1,234 feet and 1,160 feet, respectively.

### 3.3.2 Aquatic Resources

#### 3.3.2.1 Affected Environment

*Water Quantity*

The project impoundment has a surface area of 6.6 acres at the normal pool elevation of 512 feet above msl and a gross storage capacity of 22 acre-feet. The impoundment extends 0.25 mile upstream of the dam to a bedrock ledge about 225 feet downstream from the Highway 221 Bridge. The impoundment is about 250 to 300 feet wide, shallow, and includes mid-channel sandbars and large woody debris. All flows currently pass over the dam and flow into the project's 1,400-foot-long bypassed reach.

The impoundment drainage area is 280.5 square miles. The estimated mean annual daily flow (MADF) at the project is 374 cfs.[29] The maximum peak flow for the period of record was approximately 52,200 cfs on August 27, 1995, as a result of Tropical Storm Jerry (table 3). As expected, the lowest flow periods occur during the summer and early fall (June–November).

TABLE 3—SYNTHESIZED MONTHLY FLOW DATA (CFS) FOR THE RIVERDALE PROJECT FROM USGS GAGE NO. 02160390 ENOREE RIVER AT WOODRUFF, SOUTH CAROLINA

[Source: Lockhart Power, 2010a; USGS, 2013, as modified by staff]

| Month | Minimum | 90 Percent exceedance | 75 Percent exceedance | Mean | Maximum | 25 Percent exceedance | 10 Percent exceedance |
|---|---|---|---|---|---|---|---|
| January | 153 | 180 | 252 | 475 | 6938 | 492 | 828 |
| February | 156 | 193 | 267 | 503 | 5853 | 521 | 803 |
| March | 191 | 247 | 298 | 590 | 8204 | 586 | 895 |
| April | 164 | 218 | 258 | 442 | 4656 | 498 | 709 |
| May | 127 | 160 | 188 | 343 | 463 | 359 | 557 |
| June | 62 | 107 | 140 | 300 | 2915 | 341 | 544 |
| July | 53 | 92 | 122 | 269 | 6893 | 263 | 489 |
| August | 38 | 68 | 90 | 307 | 22600 | 283 | 467 |
| September | 44 | 71 | 98 | 271 | 7255 | 276 | 414 |
| October | 59 | 87 | 115 | 256 | 5311 | 272 | 406 |
| November | 73 | 98 | 131 | 296 | 4497 | 301 | 512 |
| December | 101 | 149 | 188 | 439 | 5198 | 475 | 748 |

**Note:** Period of Record is January 1, 1994 through December 31, 2012. The Woodruff gage is located about 6.7 miles upstream of the project and has a drainage area of about 249 square miles. Flows were pro-rated to the project using the formula 280.5/249.

*Water Use*

Public water supply is the primary surface water use of the Enoree River. The Enoree River serves as the water supply for Lauren and Spartanburg counties. The town of Whitmire and city of Clinton withdraw water from the Enoree River downstream from the project. There are no current water withdrawals occurring at the project. However, the Woodruff-Roebuck Water District, South Carolina anticipates future withdrawals of 5 million gallons per day or 7.74 cfs from the Riverdale impoundment to support probable increases in area water demands.[30]

*Water Quality*

South Carolina DHEC designated the Enoree River waters at the project as freshwater, suitable for primary and secondary contact recreation, and as a source for drinking water supply after conventional treatment in accordance with the requirements of the South Carolina DHEC. State water quality standards that would be applicable for project discharge are described in table 4.

TABLE 4—SOUTH CAROLINA WATER QUALITY STANDARDS FOR FRESHWATERS

[Source: South Carolina Regulation 61–68—Water classifications and standards]

| Quality standards for freshwaters | |
|---|---|
| Items | Standards |
| a. Garbage, cinders, ashes, oils, sludge, or other refuse | None allowed. |
| b. Dissolved oxygen | Daily average not less than 5.0 mg/l with a low of 4.0 mg/1. |
| c. *E. coli* | Not to exceed a geometric mean of 126/100 ml based on at least four samples collected from a given sampling site over a 30 day period, nor shall a single sample maximum exceed 349/100 ml. |
| d. Temperature | Temperature of all freshwaters which are free flowing shall not be increased more than 5°F (2.8°C) above natural temperature conditions and shall not exceed a maximum of 90°F (32.2°C) as a result of the discharge of heated liquids unless a different site-specific temperature standard has been established, a mixing zone has been established, or a Section 316(a) determination under the Federal Clean Water Act has been completed. |
| e. Turbidity (except for lakes) | Not to exceed 50 NTUs provided existing uses are maintained. |

[29] This MADF is based on data collected during the following period of record: January 1, 1994 through December 31, 2012, as pro-rated from U.S. Geological Survey (USGS) gage No. 02160390, located on the Enoree River near Woodruff, SC.

[30] *See* letter from Curtis M. Dillard, PE, General Manager, Woodruff-Roebuck Water District, Woodruff, South Carolina, filed on February 9, 2012.

In general, water quality of the Enoree River upstream of, and downstream from, the project fully supports aquatic life, but recreational uses are only partially supported because of high fecal coliform levels (South Carolina DHEC, 2007). South Carolina DHEC's 2007 Water Quality Assessment identified 23 locations that are impaired in the Enoree River for fecal coliform bacteria. Sources of these water quality impairments include pastureland, cropland, and active point sources discharging fecal coliform bacteria (2007). South Carolina DHEC (2007, 2012) notes that aquatic life uses in Beaverdam Creek, a tributary immediately upstream of the Riverdale Project, are not supported based on macroinvertebrate community data due to excess copper. However, South Carolina DHEC (2007) documents some stream reaches in the Enoree River watershed with significant decreasing trends in turbidity, total phosphorus, total nitrogen, five-day biological oxygen demand, and fecal coliform, as well as increasing trends in DO concentrations which suggest that the water quality conditions are improving in portions of the Enoree River.

Lockhart Power intended to collect temperature, DO, pH, conductivity, and turbidity data throughout the 2010 and 2011 sampling season. However, limited access to the project area permitted Lockhart Power to collect water quality data in the morning and evening of June 18 and 30, and August 2, 2010 in the following areas: One location upstream of the impoundment, two locations within the impoundment at a depth of 1.5- and 3-feet, one location each in the bypass reach, tailrace, and at the confluence of the Broad and Enoree Rivers. Lockhart Power also used USGS data collected at the Whitmire gage.[31] Impoundment samples taken during the evening on June 18, 2010, at both depths, fell below the minimum instantaneous standard for DO (4.0 mg/L). All other samples collected by Lockhart Power met South Carolina's state standards for DO, temperature, conductivity, and pH.

*Fishery Resources*

The 6.6-acre impoundment is mostly riverine in nature with substrates of silt, clay, sand, and/or detritus. Upstream of the dam, just below the HWY 221 Bridge, a small shelf composed of boulder and bedrock provides shoal habitat. Littoral habitat in the impoundment includes shallow banks composed of sand, mud and submerged aquatic vegetation. The riparian forest at the edge of the impoundment provides overhanging vegetation with occasional snags and roots.

The tailrace is approximately 5 to 6 feet wide and 8 inches to 1 foot deep. The most prevalent substrate is sand, which covers bedrock, boulders and cobble. Root mats, aquatic vegetation, and a few logs are also present (Carnagey Biological Services, 2010).

The Enoree River bypassed reach extends for approximately 1,400 feet downstream from the toe of the dam to the confluence with the project's powerhouse tailrace. The bypassed reach is largely composed of habitat consistent with shoals in Piedmont streams of the Southeastern U.S. (Mulholland and Lenat, 1992). Shoals only comprise 2 percent of all habitats in the Enoree River (Lockhart Power, 2011b). The project bypassed reach, which contains 10 percent of the available shoals habitat in the Enoree River, includes a natural ledge, a braided portion, and a main channel.

The natural ledge or fall stretches across the entire width of the river, approximately 15 to 20 feet below the dam. Downstream from the natural ledge, the main channel runs on the south side of the river, and flows over small and large boulders with aquatic vegetation dispersed throughout. The main channel provides a series of riffle, run and pool habitat types. The substrate in the main channel consists mostly of bedrock and sand, interspersed with some boulders, cobble and gravel. Logs, root mats, and aquatic vegetation are also present (Carnagey Biological Services, 2010).

The north side of the bypassed reach is more complex and splits into three braided channels. The braided channels are approximately 6.5 to 19.5 feet wide and from 4 inches to greater than 2 feet deep, with a canopy cover of 45 percent. Substrate in this area is composed of boulders, cobble, gravel, sand, and some bedrock. Snags, root mats, leaf packs, and some aquatic vegetation provide other habitat (Carnagey Biological Services, 2010).

To characterize the fish resources within the Riverdale Project area, Lockhart Power conducted a baseline fisheries survey on June 10–11 and July 6–7, 2010 (Lockhart Power, 2010a). Sampling was conducted at six stations: One station was in the impoundment, three stations were in the bypassed reach, and one station each was in the tailrace and the confluence of the tailrace with the Enoree River. During the baseline fisheries survey, 29 freshwater fish species were collected in the vicinity of the Riverdale Project (table 5). The highest number of species (20) occurred in the bypassed reach upstream of the braiding. Fewer species were collected in the main channel along the southern shoreline of the bypassed reach (13), the braided reach along the northern shoreline (11), and the Riverdale impoundment (12). The lowest number of species (6) was collected at the confluence of the Enoree River and the powerhouse tailrace, which is a relatively homogenous habitat composed mostly of woody debris and undercut banks.

[31] The USGS Whitmire gage (USGS 02160700 Enoree River at Whitmire, SC) collects water quality parameters and was sampled as a point of reference.

Table 5. Fish species and number collected in the vicinity of the Riverdale Project during baseline sampling on June 10-11 and July 6-7, 2010. Species highlighted in gray are listed as Conservation Species (South Carolina DNR, 2005).

| Family/Common name | Conservation Species Priority Listing | Sampling location | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | | Impoundment | Tailrace | Bypass upstream of braiding | Braided bypass reach along north shoreline | Bypass reach main channel along south shoreline | Confluence | Species totals |
| **Centrarchidae** | | | | | | | | |
| Redbreast Sunfish | none | 7 | 6 | 19 | 9 | 21 | | **62** |
| Redeye Bass/Unknown | Highest | 2 | | 1 | 3 | | 2 | **8** |
| Redear Sunfish | none | 1 | 1 | | | | | **2** |
| Bluegill | none | 1 | | 3 | | | | **4** |
| Largemouth Bass | none | | | | | | 1 | **1** |
| **Cyprinidae** | | | | | | | | |
| Swallowtail Shiner | none | | 2 | 1 | | | 6 | **9** |
| Sandbar Shiner | none | 3 | 6 | 11 | 4 | 13 | 3 | **40** |
| Bluehead Chub | none | 2 | 1 | 12 | 13 | 4 | | **32** |
| Creek Chub | none | | 15 | 18 | | 8 | | **41** |
| Santee Chub | High | | 6 | | 1 | 2 | 1 | **10** |
| Eastern Silvery Minnow | none | | 9 | 24 | | | | **33** |
| Creek Chubsucker | none | | | 2 | | | | **2** |
| Whitefin Shiner | none | 3 | | 49 | 15 | 49 | 5 | **121** |
| Thicklip Chub | Moderate | | | 2 | | | | **2** |
| Greenfin Shiner | Moderate | 2 | | 2 | | | | **4** |

| Family/Common name | Conservation Species Priority Listing | Sampling location | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | | Impoundment | Tailrace | Bypass upstream of braiding | Braided bypass reach along north shoreline | Bypass reach main channel along south shoreline | Confluence | Species totals |
| Highback Chub | none | 44 | | | | | | **44** |
| **Ictaluridae** | | | | | | | | |
| Yellow Bullhead | none | 2 | 2 | 14 | 10 | 4 | 2 | **34** |
| Brown Bullhead | none | | | 4 | | 2 | | **6** |
| Margined Madtom | none | | | 1 | 2 | | 1 | **4** |
| Flat Bullhead | Moderate | 11 | | | | | | **11** |
| Snail Bullhead | Moderate | | | 2 | | 5 | | **7** |
| **Percidae** | | | | | | | | |
| Tesselated Darter | none | | 2 | 1 | 5 | 1 | 3 | **12** |
| Swamp Darter | none | | 2 | | | | | **2** |
| Piedmont Darter | High | | | 1 | 4 | 1 | | **6** |
| **Catostomidae** | | | | | | | | |
| Brassy Jumprock | none | | | 6 | 2 | 1 | | **9** |
| Notchlip Redhorse | Moderate | | | 2 | | 1 | | **3** |
| **Lepisosteidae** | | | | | | | | |
| Longnose Gar | none | | | | | | 1 | **1** |
| **Poeciliidae** | | | | | | | | |
| Gambusia | none | 1 | | | | | | **1** |
| **Total** | | 79 | 52 | 175 | 68 | 112 | 25 | 511 |

*Macroinvertebrates*

Carnagey Biological Services (2010) conducted benthic macroinvertebrate surveys in the Riverdale Project vicinity on June 30, 2010. Collections of aquatic macroinvertebrates were made at six sampling stations. Stations were located above the Riverdale Project impoundment (i.e. reference location, station 1), in the tailrace (station 2), upstream of the braided area in the bypassed reach (station 3), in the main channel of the bypassed reach (station 4), in the braided flow channel of the bypassed reach (station 5), and at the confluence of the tailrace and the Enoree River (station 6). A total of 1,807 organisms, comprising 81 distinct taxa,

were collected. Station 4 had the most taxa and specimens collected, while station 6 had the fewest taxa and station 3 had the fewest specimens collected. The number of EPT taxa (i.e. insect orders Ephemeroptera, Plecoptera, and Trichoptera) was highest (17 taxa) at the reference station, lowest at stations 3 (11 taxa) and 6 (12 taxa), while stations 2, 4, and 5 had 15 to 16 EPT taxa.

Two indices were used to evaluate the quality of the environment for benthic macroinvertebrates. The North Carolina biotic index (NCBI) utilizes a pollution tolerance value developed over a wide range of conditions and pollution types to assess the amount of impact. The South Carolina DHEC bioclassification is determined by averaging scores for the NCBI and EPT index at each station. Based on NCBI, the environment at station 2 was ''excellent'' and all other stations were ''good.'' Based on the South Carolina DHEC bioclassification, the environment at station 2 was ''good'' and all others stations were ''good-fair.''

*Freshwater Mussels*

Alderman Environmental Services conducted freshwater mussel and snail surveys July 6–8, 2010 (Lockhart Power, 2010a). Visual and tactile sampling occurred in five reaches. Reach 1 was upriver of the dam, reach 2 was in the tailrace, reach 3 was at the confluence of the tailrace and the Enoree River, reach 4 was in the vicinity of SC 49 crossing (~ 4.75 miles downstream from project), and reach 5 was in the bypassed reach. Although there was no evidence of any mussels, six snail species were observed, including the panhandle pebblesnail, which was found in reaches 4 and 5.

*Special Status Aquatic Species*

*Fish*

None of the species identified during the survey are state or federally listed as threatened or endangered. However, eight fish species collected in the survey are listed as Conservation Species: redeye bass, Santee chub, thicklip chub, greenfin shiner, flat bullhead, snail bullhead, Piedmont darter, and notchlip redhorse (table 5).

Redeye bass is a Conservation Species of Highest Priority due to its restricted range, as well as competitive displacement and hybridization when found together with the introduced, non-native spotted bass (SCDNR, 2005). The species typically inhabits small to medium sized headwater streams within the Appalachian foothills of Gulf and Atlantic Slope drainages (Boschung and Mayden, 1999). It spawns in the spring (April–June; table 6) in headwater streams in gravel nests built in eddy waters at the heads of pools (Wallus and Simon, 2008). Outside of the spawning season, adult and juvenile redeye bass appear to prefer areas close to shorelines with heavy canopy cover (Knight, 2011). Redeye bass were observed in the impoundment, bypassed reach, and at the confluence of the tailrace and the Enoree River (table 5).

The Santee chub is a Conservation Species of High Priority due to its limited distribution (South Carolina DNR, 2005). Within its distribution, the Santee chub is found in small- to medium-sized streams over gravel, sand, and rubble; however, it is most abundant in sand-bottomed runs of larger streams. The life-history of the Santee chub is not well understood (including spawning season), but is probably similar to the thicklip chub (table 6; Rohde *et al.,* 2009). Santee chub were found in the bypassed reach, tailrace, and confluence during 2010 fish surveys (table 5).

The piedmont darter is a Conservation Species of High Priority, largely because one-third of its global distribution is in South Carolina and many of its preferred habitats are at risk (South Carolina DNR, 2005). Piedmont darter occupy cool to warm moderate-sized streams and rivers, but are usually found in riffles with gravel and rock substrate (Rohde *et al.,* 2009). Little else is known about the life-history of this species, but it likely spawns in mid- to late-spring (table 6; Jenkins and Burkhead, 1993). Piedmont darter was found in all sections of the bypassed reach during 2010 fish surveys (table 5).

The thicklip chub is a Conservation Species of Moderate Priority because it occurs only in the Carolinas and Georgia and only within a few drainages. About one-half of the global distribution of the species is in South Carolina (South Carolina DNR, 2005). It is primarily found in warmer, clear to turbid streams and rivers of the Piedmont. Adults occupy runs and riffles over sand and gravel, as well as sites characterized by rubble, boulder and bedrock (Jenkins and Burkhead, 1993). Thicklip chub spawning biology is not well understood, but likely occurs from mid-May to late August (table 6; Jenkins and Burkhead, 1993). Thicklip chub was found in the bypassed reach, upstream of channel braiding during 2010 fish surveys (table 5).

TABLE 6—SPAWNING DATES AND HABITAT REQUIREMENTS FOR EIGHT CONSERVATION SPECIES OBSERVED IN THE RIVERDALE BYPASSED REACH

[South Carolina DNR, 2005]

| Species | Common name | | Spawning dates | | Habitat Use |
|---|---|---|---|---|---|
| | Range | Literature source | Range | Literature source | Category |
| *Micropterus coosae.* | Redeye Bass .. | April–June ..... | Mettee *et al.* (1996) Wallus and Simon (2008). | fluvial [1] specialist. | Freeman and Marcinek (2006) Rohde *et al.* (2009) |
| *Cyprinella zanema.* | Santee Chub .. | information not available | none ..... | fluvial specialist. | Rohde *et al.* (2009) |
| *Cyprinella labrosa.* | Thicklip Chub | possibly mid-May—late August. | Jenkins and Burkhead (1993) | fluvial specialist. | Freeman and Marcinek (2006) Rohde *et al.* (2009) |
| *Cyprinella chloristia.* | Greenfin Shiner. | information not available | none ..... | fluvial specialist. | Freeman and Marcinek (2006) Rohde *et al.* (2009) |
| *Ameiurus platycephalus.* | Flat Bullhead .. | June-July (impoundment population). | Olmsted and Cloutman (1979) | generalist[2] ..... | Rohde *et al.* (2009) |
| *Ameiurus brunneus.* | Snail Bullhead | May—early June ..... | Jenkins and Burkhead (1993) | fluvial specialist. | Freeman and Marcinek (2006) Rohde *et al.* (2009) |
| *Percina crassa* | Piedmont Darter. | mid- to late-spring ..... | Jenkins and Burkhead (1993) | fluvial specialist. | Rohde *et al.* (2009) |

TABLE 6—SPAWNING DATES AND HABITAT REQUIREMENTS FOR EIGHT CONSERVATION SPECIES OBSERVED IN THE RIVERDALE BYPASSED REACH—Continued

[South Carolina DNR, 2005]

| Species | Common name | | Spawning dates | | Habitat Use |
|---|---|---|---|---|---|
| | Range | Literature source | Range | Literature source | Category |
| Moxostoma collapsum. | Notchlip Redhorse. | March—early June ..... | Jenkins and Burkhead (1993) Grabowski and Isely (2007) Coughlan *et al.* (2007). | fluvial specialist. | Freeman and Marcinek (2006) Rohde *et al.* (2009) |

[1] Fluvial specialists are species that require flowing water for most or all of their life cycle (Galat *et al.,* 2005).
[2] Habitat generalists are species that are capable of successfully utilizing a variety of habitats to complete their life-cycle.

The greenfin shiner is a Conservation Species of Moderate Priority because they only occur in the Carolinas and Georgia, and only within a few drainages. About two-thirds of the global distribution is in South Carolina (South Carolina DNR, 2005). The species is found over sandy and rocky pools and in the runs of larger creeks and small to medium-sized rivers (Rohde *et al.,* 2009). The spawning biology of greenfin shiner is not well understood; however, it likely exhibits behavior similar to other species in its genera, which deposit eggs in crevices of submerged logs and rocks (Rohde *et al.,* 2009). The greenfin shiner was found in the impoundment and bypassed reach during 2010 fish surveys (table 5).

The notchlip redhorse is a Conservation Species of Moderate Priority due to habitat degradation such as deforestation and siltation (South Carolina DNR, 2005). The species occurs in large creeks to large rivers on the inner Coastal Plain and Piedmont of South Carolina (Rohde *et al.,* 2009). Its temporal spawning range may occur from March to early June (table 6), and it is thought to gather near shoals and flats to spawn over coarse gravel (Jenkins and Burkhead, 1993; Jennings *et al.,* 1996). The notchlip redhorse was found in the braided and main channel of the bypassed reach during 2010 fish surveys (table 5).

The flat bullhead is a Conservation Species of Moderate Priority due to sedimentation, hydrologic modification, impoundments, nonpoint source pollution, and development, as well as competition with and predation by non-native catfish species like the flathead and blue catfish (South Carolina DNR, 2005). The species occupies a variety of habitats, including impoundments (Olmstead and Cloutman, 1979). Spawning biology is not well understood in stream or riverine environments, though spawning in Lake Norman, North Carolina occurs during June and July (table 6; Olmstead and Cloutman, 1979). The flat bullhead was found in the impoundment during 2010 fish surveys (table 5).

The snail bullhead is a Conservation Species of Moderate Priority for the same reasons as flat bullhead. The species is frequently found in warm and medium-sized rivers, often in rocky runs and riffles, and appears to prefer shoals compared to pools (Kennon, 2007; Rohde *et al.,* 2009). Little is known about snail bullhead biology, but it likely spawns from May to early June (table 6). The snail bullhead was found in the main channel and upstream of braided sections of the bypassed reach during 2010 fish surveys (table 5).

All Conservation Priority Fish Species, with the possible exception of the flat bullhead, are fluvial specialists.[32] In contrast, habitat generalists,[33] such as flat bullhead, can be found in both lentic and lotic systems (Galat *et al.,* 2005).

*Benthic macroinvertebrates*

The panhandle pebblesnail is a Conservation Species of Highest Priority. Siltation of streams and rivers from agricultural runoff and erosion of unstable stream banks are the main factors affecting the distribution of the species (South Carolina DNR, 2005). The species is generally found in rivers and streams throughout the Piedmont—typically in rocky riffles with good flow and often with the hornleaf riverweed. Solid substrate seems to be a key habitat requirement. Its biology is not well understood; however, like all snails in the mud snail family it likely requires solid substrate to attach eggs (Dillon *et al.,* 2006). The panhandle pebblesnail was found in the bypassed reach and about 4.75 miles downstream from the project during freshwater mussel and snail surveys (Lockhart Power, 2010a).

[32] Fluvial specialists are species that require flowing water for most or all of their life cycle (Galat *et al.,* 2005).

[33] Habitat generalists are species that are capable of successfully utilizing a variety of habitats to complete their life-cycle.

**3.3.2.2 Environmental Effects**

*Effects of Project Refurbishment and Operation on Water Quality*

As discussed in section 3.3.1, *Geologic and Soil Resources,* if erosion control measures do not adequately mitigate soil erosion and sedimentation, there may be temporary increases in turbidity above the current state standard of 50 NTU in the Enoree River. Similarly, drawing down the impoundment to repair the sand gates and initial operations may result in the discharge of a large amount of sediment from the project impoundment. Peaking operation may also affect DO and temperature within the impoundment, particularly during low flows. Releasing poorly oxygenated, warm water from the impoundment could affect fish, mussels, and other aquatic species in the bypassed reach.

Lockhart Power is willing to monitor water quality in the project vicinity, as required by South Carolina DHEC, but did not specifically propose any water quality monitoring.

Interior recommends that Lockhart Power: (1) Conduct water quality monitoring in the impoundment at all proposed operational drawdowns for a minimum of 1 year; and (2) submit water quality monitoring results to South Carolina DHEC, South Carolina DNR, NMFS, Interior, and the Commission.

*Our Analysis*

Our understanding of water quality in the project vicinity under existing conditions is limited because it is based on three water quality samples collected by Lockhart Power, as described above. Low DO concentrations for the June 18, 2010 sample may have been due to high levels of decomposed organic matter in the impoundment, water temperature, or water quality of the impoundment's inflows.

Because of the limited storage capacity of the project impoundment, ROR operation would likely predominate. Water quality conditions

within the impoundment are not expected to differ greatly from existing conditions during ROR operation because all inflow would continually pass through the project as it currently does. However, during peaking operation, which would occur during lower flow periods, DO levels could decrease and water temperatures could increase as water retention times increase. The extent to which these water quality parameters would be affected is unknown, and would depend on inflow rates and ambient conditions.

Because all flows currently spill over the dam into the bypassed reach, some degree of aeration occurs. Given the presence of several species of fish and macroinvertebrates, sufficient aeration is likely occurring. Once operation begins, flows in the bypassed reach would be limited to minimum flows provided through the low-level sand gates, except when inflow exceeds the project's hydraulic capacity. Although the flows would be less than that which occurs currently, flows would be constant and aeration over the shoals is likely to be sufficient to protect aquatic biota. Thermal stratification of the impoundment, which could affect DO levels in the bypassed minimum flow to the bypassed reach, is unlikely because of its shallow depth (Dodds *et al.,* 2010).

Turbidity monitoring prior to the start of construction as well as during project rehabilitation would ensure that the erosion control and sediment management plan is meeting its objectives and that discharges are consistent with the current state water quality standards (table 4) and other permitting requirements throughout the project rehabilitation phase.

Monitoring water quality in the impoundment and in the bypassed reach prior to construction, during construction, and during the first year of project operation under the various operational levels, as recommended by Interior, would determine if operations are adversely affecting water quality parameters and if potential corrective actions are warranted. Depending on the results, monitoring may need to be extended beyond the first year.

*Effects of Project Refurbishment and Operation on Fishery Resources*

*Instream Flow Releases*

The proposed Riverdale Project would divert existing river flows away from the bypassed reach and toward the turbines for hydropower generation. Flow diversions would ultimately reduce the volume of flow in the bypassed reach, resulting in dewatering of habitat and modifying aquatic habitat parameters in the 1,400 feet of complex shoals habitat in the bypassed reach. Peaking operations would result in flow fluctuations within the impoundment, and in the Enoree River below the tailrace confluence. Such fluctuations could strand and isolate fish in back channels and on gravel bars, causing increased risk of predation and natural mortality, or dewater fish nests in the impoundment and downstream from the tailrace, leaving eggs vulnerable to predation and desiccation.

Lockhart Power proposes to provide a continuous minimum flow of 50 cfs through the bypassed reach and a downstream continuous minimum flow of 60 cfs, or inflow, whichever is less. Lockhart Power plans to release at least 10 cfs into the tailrace when the project is not generating via leakage, or through gate operations if necessary. In the event of a plant outage, Lockhart Power would release flows into the bypassed reach via the dam's sand gates or over the spillway.

South Carolina DNR recommends Lockhart Power release flows in the bypassed reach that are consistent with the Water Plan. Based on an estimated MADF of 393 cfs for a period of record from 1994–2009, the minimum flows should meet or exceed the following: July-November, 20 percent of MADF (79 cfs); January-April, 40 percent of MADF (157 cfs); and May, June, and December, 30 percent of MADF (118 cfs). Interior,[34] NMFS, and American Rivers support the recommendations provided by South Carolina DNR.

Although NMFS supports South Carolina DNR's proposed minimum flows, it also recommends Lockhart Power conduct an instream flow study after a license is issued, and when the project's sand gates are operational. NMFS states that this is because Lockhart Power could not provide an instream flow study to support flows needed to protect aquatic resources in the bypassed reach. NMFS recommends that Lockhart Power develop the study plan within 6 months of license issuance.

*Our Analysis*

The current licensee has not operated the project since 2001, and no river flow has been diverted for hydropower purposes since that time. Rather, all river flow has and continues to run over the dam/spillway and into the shoals of the 1,400-foot-long bypassed river channel. These conditions represent the no-action alternative.

Piedmont streams like the Enoree River naturally exhibit large seasonal variations in stream flow with varying amounts of habitat. High rates of evapotranspiration during the growing season deplete soil moisture content and reduce groundwater input to streams, resulting in average stream flows that are generally much lower during the summer compared with winter and early spring. During winter and early spring, evapotranspiration is very low and groundwater discharge is usually considerably higher, resulting in higher baseflows (Mulholland and Lenat, 1992).

Many fish species have evolved life history strategies in the context of natural flow regimes. Consequently, fishes are generally adapted to the monthly, seasonal, annual, and interannual variations in flow, and are capable of surviving flows from drought to flood conditions (Bunn and Arthington, 2002; Thompson and Larsen, 2004). Some fishes also benefit from particular magnitudes of flow during specific periods of the year. For example, higher flow during spring can provide access to spawning grounds for migratory species, or access to the floodplain, where nursery value and foraging opportunities are optimal for some fish species (Bunn and Arthington, 2002). Thus, certain seasonal components of an annual flow regime can be important for some fishes.

A diversity of species currently exist in the bypassed reach, which is composed of complex shoals habitat. Shoals represent only 2 percent of all habitat in the Enoree River, and the bypassed reach contains 10 percent of shoals habitat in the Enoree River (Lockhart Power, 2011b). Wharton (1978) describes a Piedmont shoal as ''shallow, oxygenated water,'' and shoals as ''swift, rocky areas'' that are abundant with life. Despite their rarity, they are structurally complex habitats that support a higher number of species than more homogenous habitats in Piedmont rivers (Kennon, 2007).

The bypassed reach had the highest number of species collected, compared to all other habitats sampled during the 2010 fish surveys (table 5). A total of 21 species was observed in the bypassed reach, and seven of those species are listed by South Carolina as Conservation Species (table 5). Each of these species is a fluvial specialist, requiring flowing water for most or all of their life cycle (Galat *et al.,* 2005).

Redeye bass is one of the more unique species present in the bypassed reach, and is listed as Conservation Species of Highest Priority. This species is restricted to watersheds in northwest

[34] *See* email correspondence dated May 31, 2013 from Thomas McCoy, Deputy Field Supervisor, FWS, Charleston, South Carolina, to Sarah Salazar, FERC, Washington, DC, filed on June 6, 2013.

South Carolina, and is currently in decline in the state due to hybridization with the introduced Alabama spotted bass (South Carolina DNR, 2008). Continued hybridization could eventually restrict redeye bass populations to isolated tributaries (Barwick *et al.,* 2006).

The panhandle pebblesnail is another unique and rare species present in the bypassed reach, and also is listed as a Conservation Species of Highest Priority. In 1994, this species was under candidate review for listing under the Endangered Species Act; however, it was determined that persuasive data on biological vulnerability and threat were not available to support listing at the time (DOI, 1994). This species is only documented at seven locations in South Carolina (Dillon *et al.,* 2006). Siltation of streams and rivers from agricultural runoff and erosion of unstable streambanks are the main factors affecting the distribution of the species (South Carolina DNR, 2005).

Because Lockhart Power could not conduct a controlled-flow study of the instream flows needed to support aquatic resources in the bypassed reach or downstream from the tailrace, it proposed to provide a minimum continuous flow of 60 cfs downstream from the tailrace and 50 cfs through the bypassed reach when operating. Lockhart Power asserts that such flows would meet 7Q10 [35] requirements (56 cfs) in the Enoree River established by South Carolina DHEC.[36]

The proposed 50 cfs is 13 percent of the MADF, or 393 cfs. Lockhart Power states that this flow is within the range of minimum bypass flows for five other Commission-licensed projects located within South Carolina's Broad River Basin (table 7), each of which were built at a shoal site, have similar fish species as found at the Riverdale Project, and were based on flow studies. Lockhart Power asserts that if a field study could have been conducted at the Riverdale Project it would have yielded similar results, supporting a similar percent of MADF for minimum flows in the project bypassed reach. Consequently, Lockhart Power states that its proposed flow would adequately protect aquatic habitat in the bypassed reach and the Enoree River. However, for each of the projects cited by Lockhart Power (i.e. table 7), site-specific instream flow studies were conducted to support the minimum flows . No instream flow studies have been conducted in the Riverdale bypassed reach or downstream from the tailrace to support Lockhart Power's proposed minimum flows.

TABLE 7—FLOWS THROUGH THE BYPASSED REACH AT FERC LICENSED PROJECTS IN THE BROAD RIVER BASIN, SOUTH CAROLINA

[Source: Lockhart Power]

| Project Name | MADF (cfs) | Range of flow through by-passed reach (cfs) | Percent range of MADF |
|---|---|---|---|
| Gaston Shoals | 2,170 | 150–350 | 7 to 16. |
| Lockhart | 3,600 | 200–385 | 5 to 11. |
| Catawba | 4,878 | 550–950 | 11 to 19. |
| Columbia | 6,923 | 500–900 | 7 to 13. |
| Pacolet | 505 | 22–49 | 4 to 9. |
| Riverdale Proposed | 393 | 50 | 13. |

Without a site-specific flow study, desktop standard-setting methods, such as 7Q10, the Water Plan, and Tennant (1976) can be used to provide minimum flow recommendations.

The 7Q10 flow is a hydrologically-based design flow that represents the lowest 7-day average flow that occurs, on average, once every 10 years. The 7Q10 flow does not necessarily take into account biological needs of aquatic resources. Nonetheless, Lockhart Power's proposed minimum flow of 50 cfs is not equivalent to the 7Q10 flow (56 cfs) in the bypassed reach; however, it is equivalent to the 7Q10 flow below the tailrace when combined with leakage through the turbine.

Where site-specific flow studies are not available, South Carolina DNR uses the state Water Plan [37] to recommend flows that will protect fishery resources in all waters of the state when natural streamflow regimes cannot be maintained. The Water Plan minimum flow requirements are based on instream flow studies conducted at six regulated reaches in the South Carolina Piedmont. These minimum flow requirements were designed to provide a useable width for migratory fish [38] passing through shoals during high flows, provide ''generally adequate'' flows to protect fisheries during low flows, provide ''adequate'' flows during periods when flows are increasing or decreasing, and provide flows that conform to seasonal variation in flow. These objectives resulted in three distinct minimum flow periods that capture high (January–April; 40 percent of MADF), low (July–November; 20 percent of MADF), and increasing (December; 30 percent of MADF) or decreasing (May, June; 30 percent of MADF) flow periods (Bulak and Jobsis, 1989).

Based on the stipulations of the Water Plan and the flow record at the time, which established a MADF of 393 cfs for the bypassed reach, South Carolina DNR, Interior, and NMFS concluded that the minimum flows should meet or exceed the following: 79 cfs from July–November (20 percent of MADF); 157 cfs from January–April (40 percent of MADF); and 118 cfs in May, June, and December (30 percent of MADF). Using the most current flow data available, staff calculated the MADF to be 374 cfs, which results in the following slightly lower flows: July–November, 75 cfs (20 percent of MADF); January–April, 150 cfs (40 percent of MADF); and May, June, and December, 112 cfs (30 percent of MADF). In contrast, Lockhart Power's proposed flows of 60 cfs (16 percent of MADF) downstream from the tailrace

[35] The 7Q10 is the lowest 7-day average flow that occurs (on average) once every 10 years.

[36] The 50-cfs minimum flow in the bypassed reach represents an increase from the 30-cfs minimum flow requirement of the existing license.

[37] The Water Plan states that the current policy for determining instream flow requirements for fishery resources can be found in *South Carolina Instream Flow Studies: A Status Report* (Bulak and Jobsis, 1989).

[38] Striped bass were considered a migratory species of prime importance in the instream flow studies, and habitat suitability (i.e. stream width and depth requirements) was based on passage of this species.

and 50 cfs (13 percent of MADF) in the bypassed reach would fall below all of the Water Plan's minimum flows and would not be adequate to protect the existing fishery in the bypassed reach. In addition, unlike the Water Plan's seasonally variable minimum flows, Lockhart Power's proposed year-round flows would not maintain or mimic the natural flow regime, which according to the Water Plan, can be important because fish have evolved to spawn in synchrony with the seasonal hydrologic cycle.

One of the criteria used to establish minimum flow requirements of the Water Plan is to provide sufficient depth for passage of striped bass. Bulak and Jobsis (1989) concluded that in Piedmont streams, where striped bass are generally of prime importance, a minimum depth of 1.5 feet and passage width of 10 feet is necessary for unimpeded passage for the spawning migration. During high flow periods, study results from the six Piedmont reaches indicated that establishing a 1.5-foot-deep by 10-foot-wide passage route required flows at shoals to range from 39–70 percent of MADF (Bulak and Jobsis, 1989). Therefore, the 40 percent of MADF flow recommended by South Carolina DNR, Interior, and NMFS for the period between January and April represents the lower end of flows deemed necessary for maintaining a zone-of-passage for striped bass.

Striped bass are not present in the bypassed reach and a spawning migration does not occur up to the Riverdale Project due to the lack of passage at Parr dam, located 65 miles downstream from the Riverdale Project. Therefore, the passage requirements outlined in the Water Plan are not relevant for the Riverdale bypassed reach. While a 1.5-foot-deep by 10-foot-wide passage was determined to be suitable for striped bass, which at maturity can range in length from 18 inches to greater than 40 inches, the species with the largest adult size range that presently inhabits the Riverdale bypassed reach is redeye bass, which in South Carolina, can range from 6–17 inches in length (Rohde *et al.,* 2009). Based on size, redeye bass do not require the same depths as striped bass for movement within the bypassed reach, nor is there evidence that other species require depths of 1.5 feet. Therefore, flows of 40 percent MADF from January to April are not necessary for maintenance of suitable habitat for the current fish community in the bypassed reach.

Based on the study conducted by Bulak and Jobsis (1989), flows ranging from 15 to 32 percent of MADF are acceptable from January to April if a channel 1.0-foot-deep by 10-feet-wide is adequate for the species present. Given the absence of striped bass and other anadromous species at the Riverdale Project, a minimum flow of 20 percent of MADF (75-cfs) between January and April should provide suitable passage conditions in the bypassed reach for the existing aquatic community. Bulak and Jobsis (1989) also concluded that a minimum flow of 20 percent MADF is generally adequate during the low flow period. Although a year-round minimum flow of 75 cfs would not mimic the seasonal variation in hydrology sought by the Water Plan, there is currently no evidence that the fishes or invertebrates in the bypassed reach, or downstream from the tailrace require such annual variation in flow to complete their life-cycle.

In addition to using the parameters of the Water Plan, we analyzed flows in the bypassed reach using the Tennant method. The Tennant method is based on the assumption that a proportion of MADF would maintain suitable depths and water velocities for fish. Although Tennant's method is derived from rivers in Montana, Wyoming, and Nebraska, analyses in the southeast exhibit general agreement with his recommendations (Wood and Whelan, 1962). Bulak and Jobsis (1989) also used Tennant as one of the factors to establish South Carolina's policy on minimum flows. Tennant concluded that 10 percent of MADF is the minimum instantaneous flow needed to sustain short-term survival and is considered the lower limits for aquatic life. Tennant also concluded that at 20 percent of MADF, the widths, depths, and velocities of most streams would be ''good'' during the dry season and close to ''fair or degrading'' during the wet season.

Table 8 shows the percentages of mean annual flows and corresponding narrative descriptions of the habitat created by these flows in the Enoree River using the Tennant method. According to this method, and using the most current flow data available (i.e. 1994–2012; MADF = 374 cfs), a flow of 60 cfs (15 percent of MADF) downstream of the tailrace and 50 cfs (13 percent of MADF) in the bypassed reach would provide fair or degrading conditions, and close to poor or minimum conditions during the dry and wet seasons, respectively. In contrast, the South Carolina DNR's recommended minimum flows of 20 percent of MADF during the dry season and 40 percent of MADF during the wet season, would provide good conditions year round at the project. A year-round minimum flow of 75 cfs (20 percent of MADF), would result in good, and close to fair or degrading conditions during the dry season and wet season, respectively.

TABLE 8—MINIMUM FLOW REQUIRED FOR FISH IN STREAMS IDENTIFIED BY TENNANT

[1976]

| Description of flow | % of MADF | |
|---|---|---|
| | Dry season | Wet season |
| Outstanding | 40 | 60 |
| Excellent | 30 | 50 |
| Good | 20 | 40 |
| Fair or degrading | 10 | 30 |
| Poor or minimum | 10 | 10 |
| Severe degradation | 0–10 | 0–10 |

NMFS recommended that an instream flow study be conducted after the license is issued, and when the sand gates have been renovated to allow management of flows into the bypassed reach. However, as discussed above, we already have sufficient information to evaluate bypassed reach minimum flow alternatives. For this reason, an instream flow study is not needed for this project.

*Fluctuating Water Levels*

Lockhart Power's peaking operation would result in periods of daily discharge fluctuations downstream from the tailrace. Lockhart Power's proposed

peaking operations would also involve a 4-foot impoundment drawdown during peaking events.

Beyond the minimum flow alternatives described above, no one recommended changing proposed project operations.

*Our Analysis*

Lockhart Power states that peaking operation would occur when inflows to the project are greater than 170 cfs (i.e. 50 cfs minimum bypass flow and about 120 cfs minimum hydraulic capacity of the turbine). Lockhart Power also indicates that flow would be spilled over the dam when inflow is greater than 500 cfs (i.e. 50 cfs minimum bypass flow and about 450 cfs maximum hydraulic capacity of the turbine) (Lockhart Power, 2011b). Based on this proposed operation, peaking could occur when inflow to the project is greater than 170 cfs and less than or equal to 500 cfs. Accordingly, peaking could occur as little as 38.6 percent of the time in August, to as much as 75.2 percent of the time in April (figure 2). Peaking would occur greater than 50 percent of the time during January, February, March, April, May, June, and December (figure 2).

Downstream from the tailrace, the highest fluctuations would occur from December through June, when monthly mean flows range from 300–590 cfs (see table 3). During this period, daily flows downstream from the tailrace could range from 60 cfs when the project is not operating and the pond is refilling, to pulses of 500 cfs during operation.

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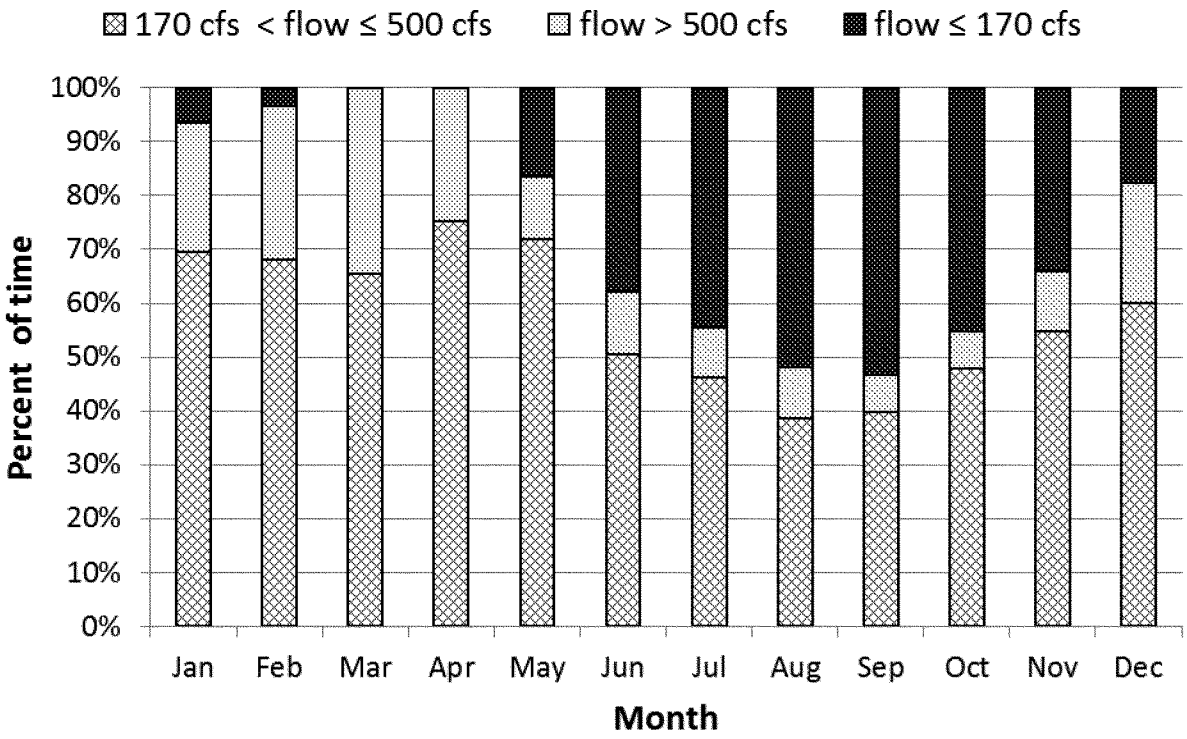


Figure 2. Percent of time during each month that inflows to the Riverdale Project are greater than 170 cfs and less than or equal to 500 cfs (i.e. when peaking with drawdown operation can occur under Lockhart Power's proposed operations), less than or equal to 170 cfs (i.e. flow below turbine minimum turbine capacity plus 50 cfs minimum flow), and > 500 cfs (i.e. flows greater than maximum turbine capacity plus 50 cfs minimum flow). (Source: Staff).

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*Downstream Effects*

Flow fluctuations associated with peaking may have negative consequences for fish occurring downstream from the tailrace. When flows are high, large areas of habitat can be used by fish for foraging, cover, or reproduction. However, when water levels recede, the connection between side channels and the main channel can be lost (Bradford, 1997). As a result, fish stranding can occur on gravel bars, back channels, or pot-holes that become isolated from the main flow (Cushman, 1985). These isolated off-channel habitats often expose fish to greater predation risk, lower DO, and higher water temperature, which can lead to stranding mortality (Nagrodski *et al.,* 2012). Early-life stages (i.e. larvae, juveniles), which have a reduced swimming capacity compared to older fish, are particularly vulnerable to stranding and associated mortality, because they are unable to reach the main channel as flows decrease (Dabrowski *et al.,* 1986). Furthermore, many riverine fishes, spawn on stony

substrate in off-channel locations that are susceptible to dewatering, which can leave eggs vulnerable to predation and desiccation (Nagrodski *et al.,* 2012).

Alterations in discharge during the spawning season can particularly affect reproduction of species with short spawning seasons (Craven *et al.,* 2010). Freeman *et al.* (2001) demonstrated that fish assemblages below projects with peaking operations in Piedmont rivers are dominated numerically by species that display prolonged spawning seasons (i.e. extending into July or later; Freeman *et al.,* 2001). In contrast, species that spawn exclusively during the spring are less abundant below peaking projects compared to unregulated sites, due to unstable and sometimes unavailable spawning habitat (Freeman *et al.,* 2001). Redeye bass, snail bullhead, Piedmont darter and notchlip redhorse are fluvial specialists that spawn exclusively during the spring. These species are currently present in the bypassed reach, but their populations could decline due to flow variability associated with peaking operation.

As discussed above, under Lockhart Power's proposed operation, daily flows downstream from the tailrace could range from 60 cfs when the project is not operating and the impoundment is refilling, to pulses of 500 cfs during operation. The magnitude of this flow fluctuation would be 440 cfs. Higher minimum instream flows recommended by South Carolina DNR would reduce the magnitude of the flow fluctuation proportionally and would result in less exposed shoreline downstream from the tailrace when the project is not generating.

*Impoundment Effects*

Fluctuating water levels may produce unfavorable spawning conditions and recruitment for resident fish species that occupy the Riverdale impoundment. Effects may be particularly pronounced for centrarchids, which build nests and spawn at shallow depths in the littoral zone during spring and summer. When water levels decrease during drawdowns, nests become exposed and egg desiccation can occur (Maraldo and MacCrimmon, 1981). Lower water levels can also result in reduced shoreline cover and increased predation on juvenile fish (Willis, 1986).

Inflows are greater than 170 cfs and less than 500 cfs, between 50.6 and 75.2 percent of the time during April through June, when most centrarchids build nests and spawn (figure 2). Thus, peaking operation, with up to a 4-foot drawdown, could occur daily about 50 to 75 percent of the time during April through June when centrarchids are building nests and spawning (figure 2).

Proposed peaking operation, with up to a 4-foot drawdown, would change the littoral zone fish habitat in the project impoundment, compared to the natural flow conditions that have been present at the project for the last 12 years. Frequent drawdowns from April through June have the potential to dewater fish nests, disturb spawning, and reduce reproductive success of the four centrarchid species occupying the impoundment (see table 5). Peaking operation at the project could affect each of these species. However, three centrarchids are multiple spawners (e.g., bluegill, red breast sunfish, and redear sunfish) and could spawn again if project operation disrupts initial spawning activities.

With regard to redeye bass, the impoundment likely does not possess significant amounts of spawning or juvenile habitat. The impoundment's littoral zone includes shallow banks composed of sand, mud, and submerged aquatic vegetation (Carnegey Biological Services, 2010). Redeye bass, however, spawn in gravel nests built in eddy waters at the heads of pools (Wallus and Simon, 2008) and juveniles appear to prefer areas close to shorelines with heavy canopy cover (Knight, 2011). These types of habitats are not present in the project impoundment, but are present in the bypassed reach, where Lockhart Power captured the most redeye bass during 2010 baseline fisheries survey (table 5).

*Low Inflow/Drought Conditions*

The project is located in the Southeast U.S., which is susceptible to severe drought events that can reduce water supplies for several years at a time. Recently, severe droughts occurred from 1998–2002, 2005–2007, and 2012. During these events, incoming flow can fall below minimum continuous flows, stressing aquatic resources and creating conflicts among competing uses, including generation, water supply, and recreation.

To address drought conditions, Lockhart Power developed what it terms a low inflow protocol (LIP), which states that ''when average daily project inflow is less than approximately 80 cfs (+/− 10 percent), the following would be in effect: Continuous project outflow shall approximately (+/− 10 percent) equal project inflow.'' [39] South Carolina DNR recommends Lockhart Power develop and implement a LIP for the project, consistent with the Water Plan. They also recommend that Lockhart Power implement the LIP during periods of extended drought and design it to provide instream flows to protect fish and wildlife and other water uses associated with the Enoree River in the Project vicinity.[40] Interior concurs with South Carolina DNR's recommended LIP.

*Our Analysis*

The overall objective of a LIP is to provide sufficient instream flows to protect fish, wildlife and other water uses in the project vicinity during droughts. Lockhart Power and stakeholders have agreed that the project needs a LIP to adequately protect fishery resources. The recent high frequency of severe drought events in the Southeast U.S. reinforces this need.

Severe drought events can affect fishes in a number of ways. Low streamflows during a drought reduce stream width and depth, limiting habitat availability and the ability of fish to move freely among habitats (Lohr and Fausch, 1997). Droughts also affect water temperature and DO concentrations, which can negatively affect reproduction and juvenile recruitment (Schlosser *et al.,* 2001). This can reduce stream fish populations and change fish assemblage structure by favoring hypoxia-tolerant species and reducing intolerant species (Smale and Rabeni, 1995). Moreover, drought can simply kill fish directly (Lohr and Fausch, 1997).

Ideally, a LIP would be designed to provide flexibility to adjust minimum flows during drought periods so that the effects of low flows are balanced among competing uses, while still protecting fish and wildlife. As written, Lockhart Power's proposed LIP does not provide a mechanism to adjust minimum flows during drought periods; rather it proposes to ensure project outflow is equal to inflow when average daily inflow is less than 80 cfs. This would ensure no interruption of flow (i.e. storage of water) through the project to downstream resources when flows are 80 cfs or less. However, Lockhart Power's LIP is not clear as to how that flow would be passed through the project. In other words, would all flow be provided through the sand gates into the bypassed reach, or as a combination

[39] Based on pro-rated inflow data from the USGS gage near Woodruff, SC (#02160390).

[40] The Water Plan does not prescribe specific flows, recommends that a Water-shortage Contingency Plan (i.e., drought contingency plan) be developed and coordinated with appropriate federal and state agencies, local governments, and other stakeholders. The Water Plan also recommends that the Water-shortage Contingency Plan include water-shortage severity levels and water releases associated with each severity level.

of bypassed reach minimum flows and generation? The project's minimum operating hydraulic capacity of 120 cfs suggests that all inflow would be released into the bypassed reach when average daily inflow to the project is 80 cfs or lower.

Eighty cfs represents 20 to 21 percent of MADF, depending on whether the flow record includes 1994–2009 (MADF = 393 cfs) or the most complete record from 1994–2012 (MADF = 374 cfs), respectively. Bulak and Jobsis (1989) determined that during the low flow period (July–November) in South Carolina Piedmont streams, 20 percent of MADF was ''generally adequate'' for aquatic resources. If drought conditions were to extend into the high flow period (January–April), 20 percent of MADF was within the range (15–32 percent of MADF) of flow that provides a 1-foot-deep by 10-feet-wide stream of water. Thus, 80 cfs would provide good habitat in the bypassed reach and downstream from the tailrace. Any inflows that are lower would represent natural flow conditions that Lockhart Power could not control, and would result in the best aquatic habitat conditions possible given drought conditions. However it would also limit the project's ability to generate until drought conditions subside.

Lockhart Power also does not explain the basis for selecting an average daily inflow of 80 cfs to represent low flow/drought conditions, only noting that this was being discussed with resource agencies during its application development. Developing and implementing an LIP, as recommended by South Carolina DNR and Interior, would allow Lockhart Power and the resource agencies to cooperatively define water-shortage severity levels (i.e. drought conditions) and potentially adjust minimum flows, depending on the severity of the drought so that the effects of low flows are balanced among competing uses.

The LIPs recommended by South Carolina DNR inherently allow flows to drop below the minimum flow releases determined to be suitable for fish and benthic invertebrates in the bypassed reach. Although further reductions of minimum flow requirements are likely to have additional effects on aquatic habitat and fish populations, fishes have developed physiological and behavioral adaptations for coping with drought conditions. For example, some fishes move to pools that contain water (Gelwick, 1990) or larger downstream reaches (Magoulick and Kobza, 2003), and darters may survive in the hyporheic zone [41] (Tramer, 1977). Also, fishes tend to move back into an affected area as soon as a drought disturbance has subsided (Larimore *et al.,* 1959; Peterson and Bayley, 1993), and fish assemblages can return to pre-disturbance levels within one year (Larimore *et al.,* 1959; and Meffe and Sheldon 1990). Thus, a reduction in minimum flow requirements during drought periods may affect fishery resources in the bypassed reach and downstream from the tailrace temporarily; however, stream fish communities are resilient and can recover quickly from these temporary disturbances.

*Releasing and Distributing Minimum Instream Flows Across the Bypassed Channel*

As discussed above, Lockhart Power proposes to use one or more of the existing sand gates in the dam to provide its proposed minimum flows to the bypassed reach. Currently, the sand gates on the middle and right side of the dam are closed and inoperable, while the gate on the left side remains open.[42] Lockhart Power proposes to repair the sand gates, and work with the resource agencies to determine which gate(s) to use to provide the bypassed reach minimum flow. Lockhart Power also would develop a rating curve following the repairs and verify the rating curve once every 6 years.

South Carolina DNR and Interior recommend Lockhart Power evaluate the feasibility and effectiveness of using the sand gates to provide flows on a permanent, continuous basis to the bypassed reach. South Carolina DNR also recommends that Lockhart Power evaluate flow distribution through the sand gates, and the gates be operated to optimize downstream aquatic habitat in the bypassed reach. In addition, American Rivers recommends the new license require: (1) A study of flow delivery alternatives to determine how to release flows from the dam to fully wet the shoals of the bypassed reach; and (2) the best method for delivering flows to the bypassed reach under all flow conditions. NMFS recommends conducting an instream flow study once the gates are operational.

*Our Analysis*

Under existing conditions, flows in the Enoree River are capable of covering the entire breadth of bypassed reach, creating complex shoal habitat that supports a diverse assemblage of 21 fish species. There is a natural ledge or fall immediately downstream from the dam that stretches across the entire width of the river for about 15 to 20 feet. Downstream from the natural ledge, the main channel runs on the south side of the river, and flows over small and large boulders with aquatic vegetation dispersed throughout (Carnagey Biological Services, 2010). The north side of bypassed reach is more complex and splits into three braided sections, each approximately 6.5 to 19.5-foot-wide and 4 inches to greater than 2-foot-deep, with 45 percent canopy cover (Carnagey Biological Services, 2010).

The distinct physical features between the north and south side of the bypassed reach enables a unique assemblage of fish to occupy each habitat. Lockhart Power's 2010 fish survey of the bypassed reach, demonstrated that fish species observed on the south side were often absent, or less common on the north side, and vice versa (table 5). For example, redeye bass and Piedmont darter, Highest Priority and High Priority Conservation Species, respectively, were collected most frequently on the north side, and absent on the south side (table 5). Whereas, the snail bullhead, a Moderate Priority Conservation Species, was collected most frequently on the south side, but absent on the north side (table 5).

Because Lockhart Power did not have control of the dam, it was unable to determine if the sand gates could be made operable, or how best to use them to release minimum flows on a continuous and permanent basis. If the gates cannot be made operational, or used in a manner to provide the required flows, alternative mechanisms would need to be identified. These alternatives would need to be functional prior to operating the project to ensure that the aquatic resources in the bypassed reach are protected.

Assuming that the bypassed flows can be provided through the sand gates, distributing the flows across the shoals to optimize benthic invertebrate and fish habitat may require delivering flows from one or more sand gates. While fully wetting the shoals would likely provide benthic invertebrate and fish habitat, it may not provide the best habitat for targeted channels supporting rare species. To determine which combination of gates to use would require a post-licensing flow study as

[41] The hyporheic zone is a portion of the groundwater interface in streams where a mixture of surface water and groundwater can be found. Hyporheic zone waters can be found both beneath the active channel and within the riparian zone of most streams and rivers.

[42] The sand gate on the right side does not have any gate mechanism installed, and is permanently sealed. The operating mechanism for the middle sand gate is tilted relative to its foundation and appears to be damaged (FERC, 2013).

recommended by NMFS and American Rivers that examines depth, velocity, and wetted width across the shoals using various combinations of the sand gates to deliver the required flows. Targeted species and habitat conditions would need to be selected in consultation with the South Carolina DNR, FWS, NMFS, and American Rivers to define habitat suitability criteria.

*Benthic Invertebrate and Fish Surveys*

The shoals within the bypassed reach represents a unique habitat that is relatively rare and currently supports seven fish species and a snail (panhandle pebblesnail) recognized in the South Carolina Wildlife Action Plan as in need of conservation because of their restricted ranges and specialized habitat needs (table 5). Sediment discharges and minimum instream flows could lead to physical, chemical, and biological changes in the bypassed reach affecting the distribution and occurrence of these species in the bypassed reach.

Interior recommends that Lockhart Power conduct fish surveys before and after construction at the project, and again 1 year later, to provide information on the presence of the eight Conservation Species. Interior also recommends that Lockhart Power conduct invertebrate surveys before and after construction at the project, and again 1 year later, to provide information on the panhandle pebblesnail within the bypassed reach. Interior requests that Lockhart Power design the surveys in consultation with South Carolina DNR, South Carolina DHEC, NMFS, and FWS, and that sampling efforts be concentrated in the multiple habitat types in the bypassed reach. Interior states that additional surveys may be necessary depending on the results.

*Our Analysis*

Interior does not explain why surveys for the conservation species are needed before and after construction and again one year later, or the level of effort it anticipates would be required for such surveys.

Pre- and post-construction surveys of fish and benthic invertebrates in the bypassed reach would identify current locations of these species in the bypassed reach and their locations following initial operations. However, sufficient information already exists to document their occurrence in the bypassed reach and to evaluate how best to distribute flows to optimize aquatic habitat. Therefore, there is no need for this information.

*Monitoring Compliance With Impoundment Levels and Minimum Flows*

Lockhart Power proposes to limit impoundment fluctuations to 4 feet and to establish a rating curve of minimum flow releases through the sand gates and very the rating curves every six years.

No agency recommended measures to monitor compliance with these operations.

*Our Analysis*

Developing and implementing an operation compliance monitoring plan would provide additional detail about project operations. Such a plan would provide the Commission a means to monitor compliance with the minimum flow releases and the limits on impoundment fluctuations. To be effective, the plan would need to: (1) Define the criteria by which compliance with impoundment fluctuations and minimum flows would be measured; (2) specify the type and location of all equipment used to monitor impoundment levels and minimum flows; and (3) identify the data collection intervals and reporting procedures.

*Fish Impingement and Entrainment*

Water intake structures at hydropower projects can injure or kill fish that are either impinged on intake screens/trash racks, or entrained through turbines. Larger aquatic organisms (typically fish and larger invertebrates) can be trapped against the intake screens or trash racks by the water flowing into a penstock. This process is known as impingement, and can cause physical stresses and/or suffocation that lead to death of some organisms (EPRI, 2003).

If fish are able to pass through screens or trash racks (i.e. entrained), fish injury or mortality can result from collisions with turbine blades, or exposure to pressure changes, sheer forces in turbulent flows, and water velocity accelerations created by turbines (Knapp *et al.,* 1982). The number of fish entrained and at risk of turbine mortality at a hydroelectric project is dependent upon site-specific factors, including physical characteristics of the project, as well as the size, age, and seasonal movement patterns of fish present within the impoundment (EPRI, 1992). Fish that are entrained and killed are removed from the river population and no longer available for recruitment to the fishery.

The project includes two sets of trash racks: One with 2.25-inch bar rack spacing that is located at the intake to the project headrace and a second located at the downstream end of the headrace (at the entrance to the turbine penstock) that has bar rack spacing of approximately 10 inches. Lockhart Power proposes to decrease the spacing on the trashrack at the penstock intake from 10 inches to 5 inches.[43] Lockhart Power is not proposing any changes to the 2.25-inch bar spacing on the trashracks at the headrace intake (hereafter, headrace trashracks).

Interior is concerned with the existing 2.25-inch bar rack spacing on the headrace trashracks, and with approach velocities during proposed project operation, especially during peaking when the head pond is lowered by 4 feet. Interior requests that a 1-inch bar rack spacing be installed at the headrace trashrack to minimize fish entrainment and mortality at the project.

*Our Analysis*

Fisheries surveys conducted by Lockhart Power indicate that the project impoundment contains 11 species of fish, including redeye bass and flat bullhead, which are Conservation Species of Highest and Moderate Priority, respectively (table 5). Overall, two redeye bass and 11 flat bullhead were captured within the impoundment, which represented 2.5 and 13.9 percent of the total number of fish captured, respectively. Highback chub was the most common fish captured in the impoundment, representing 55.7 percent of the total number of fish captured.

*Fish Impingement*

Fish can become impinged on the bars of a trash rack if they are unable to overcome the approach velocity[44] and are unable to pass between the trashrack bars due to their larger body size. Fish that are wider than the trashrack bar spacing and have burst swim speeds[45] lower than approach velocities would be susceptible to impingement. Thus, determining the risk of impingement for fish in the project impoundment requires an understanding of approach velocities at the headrace trashracks, as well as the widths and burst swim speeds of fish in the impoundment.

Lockhart Power was not able to provide approach velocities at the headrace trashrack because it does not currently own or have access to the

[43] This trash rack is isolated from the project impoundment and, thus, its modification would result in little to no effect on aquatic fauna.

[44] Approach velocity is the calculated water flow velocity component perpendicular to the trashrack face.

[45] Burst swimming speed is the maximum swimming speed that can only be sustained for a few seconds. It is usually used to escape danger (Murray, 1974).

project. However, we estimated approach velocities for the existing 2.25-inch and Interior's recommended 1-inch clear bar spacing, as described below.

To estimate approach velocities at the project we used existing information on the dimensions of the headrace trashracks,[46] as well as certain assumptions regarding the composition of the trashracks.[47] Each unit with the 2.25-inch bar spacing was 67.75 inches (or 5.65 feet) wide (i.e. two 31.875-inch panels,[48] plus one 4-inch timber in between). Each unit with 1-inch bar spacing was 68 inches (or about 5.67 feet) wide (i.e. two 32 inch panels,[49] plus one 4 inch timber in between. The larger panel width for the trashracks with 1-inch bar spacing was necessary to accommodate 1-inch bar spacing and still maintain similar sized units. All trashrack units were 13.4 feet high. With all five units combined, the total number of open spaces between bars in the 2.25-inch and 1-inch trashracks is 120 and 230, respectively (figures 3 and 4).

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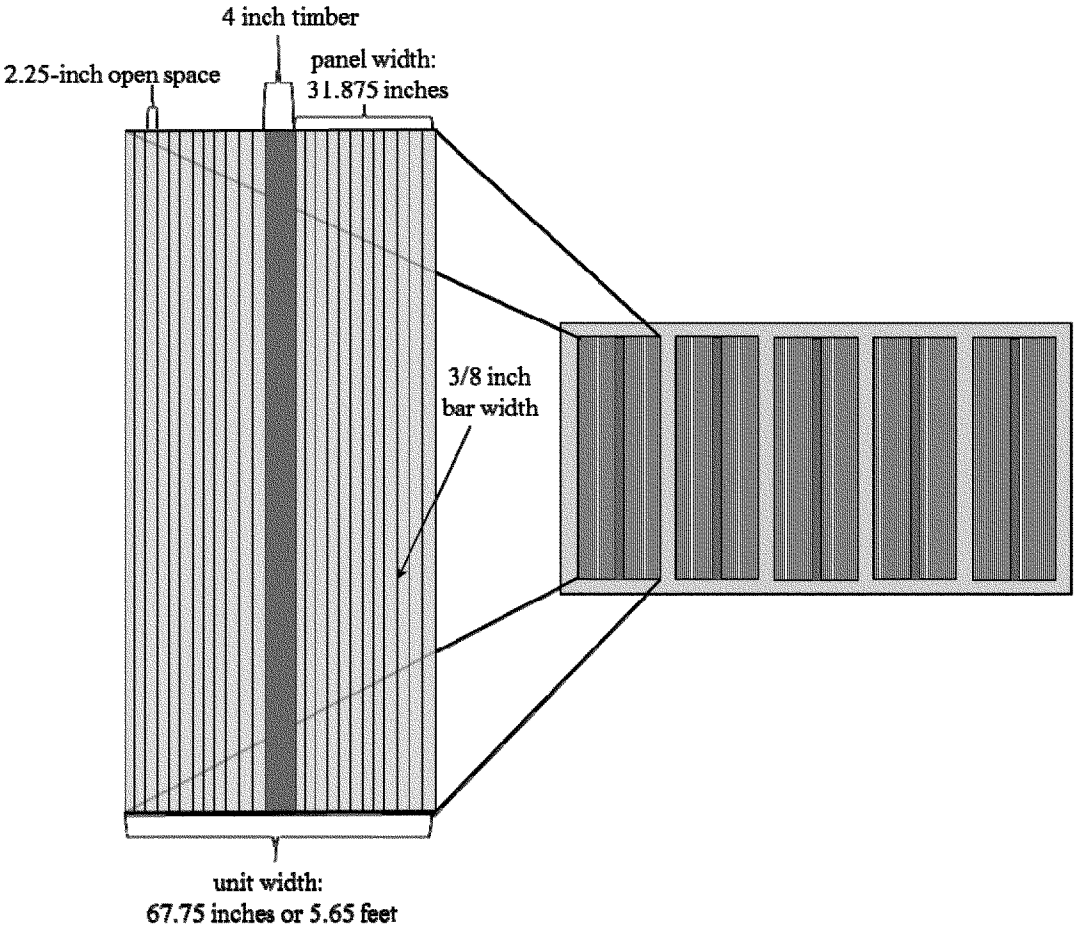


Figure 3. Illustration of the front of the 2.25-inch headrace trashrack, which is composed of five individual trashrack units. A zoomed image of one trashrack unit is shown to the left of the trashrack. The illustration is not to scale (Source: Staff).

[46] Drawings in Exhibit F of the license application show that the headrace trashracks are composed of five steel units, with 4-inch timbers in the middle of each unit and 3/8-inch vertical bars (figures 3 and 4). The total width of each unit was estimated to be about 5.5 feet wide and 13.4 feet high.

[47] We assumed the 4-inch timbers represented closed space in each unit, and that each unit was composed of two panels. We also assumed each bar was 3/8-inch wide.

[48] The 31.875-inch-wide panels are composed of 13 vertical bars totaling 4.875 inches (3/8-inch bar width × 13 = 4.875), and 12 open spaces (2.25 inches each) totaling 27 inches (figure 3).

[49] The 32-inch-wide panels are composed of 24 vertical bars totaling 9 inches (3/8 inch bar width × 24 = 9), and 23 open spaces (1 inch each) totaling 23 inches (figure 4).

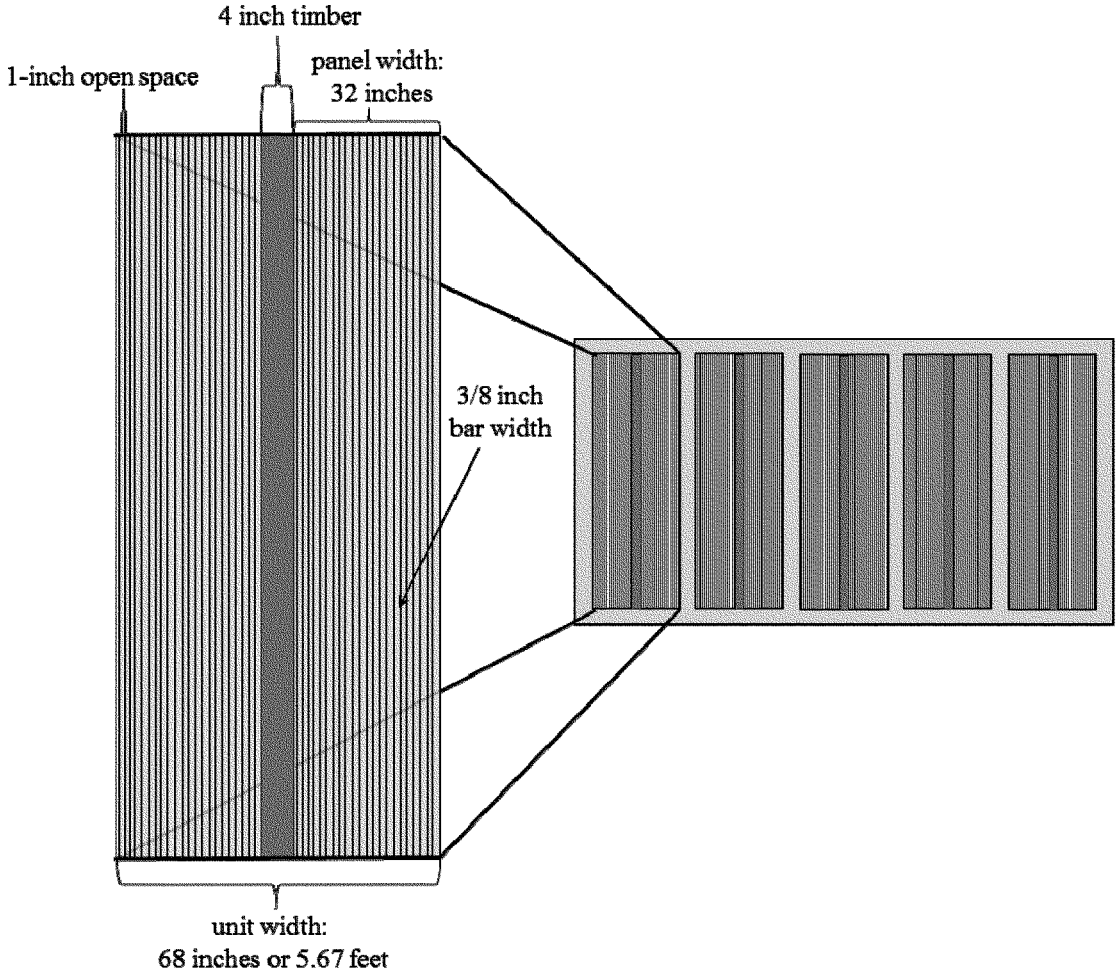


Figure 4. Illustration of the front of the 1-inch headrace trash rack, which is composed of five individual trashrack units. A zoomed image of one trashrack unit is shown to the left of the trashrack. The illustration is not to scale (Source: Staff).

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To estimate approach velocity ($V_0$, feet per second [fps]), we used the following equation (EPRI, 2000):

$$V_0 = \frac{\textit{intake flow}}{\textit{intake cross-sectional area}}$$

where intake flow is in cfs and cross-sectional area is in square-feet. We used intake flows of 120 cfs and 450 cfs, which represent the minimum and maximum turbine hydraulic capacities, respectively. Total intake cross-sectional area is shown in table 9, and was estimated using the information shown in figures 3 and 4.

TABLE 9—CALCULATION OF INTAKE CROSS-SECTIONAL AREA FOR THE 2.25-INCH AND 1-INCH TRASHRACKS

[Source: Staff]

| Spacing between bars (inches) | Spacing between bars (W; feet) | Height of space between bars (H; feet) | Open area between two bars (a; feet$^2$) | Number of open spaces between bars (n) | Total intake cross-sectional area (A; feet$^2$) |
|---|---|---|---|---|---|
| 2.25 | 0.1875 | 13.4 | W × H = 2.51 | 120 | a × n = 301.2 |
| 1 | 0.08333333 | 13.4 | W × H = 1.12 | 230 | a × n = 257.6 |

Approach velocities did not differ substantially between the 2.25-inch and 1-inch trashracks, though they are slightly lower with the 2.25-inch trashrack. At the minimum hydraulic capacity, estimated approach velocities are 0.40 and 0.47 fps with 2.25-inch and 1-inch trashracks, respectively. At the maximum hydraulic capacity, estimated approach velocities are 1.49 and 1.75 fps with the 2.25-inch and 1-inch trashracks, respectively.

To evaluate the potential for impingement at the existing trashrack with 2.25-inch and with 1-inch bar spacings, we focused our analysis on redeye bass, flat bullhead, redbreast sunfish and highback chub—which represented a combination of both Conservation Species and the most common species occurring in the impoundment. The burst swimming speeds of these species and the minimum total lengths that are susceptible to impingement (based on estimated fish width alone and exclusive of burst swim speeds) are shown in tables 10 and 11, respectively.

Table 10. Burst swim speeds of four species found in the Riverdale impoundment.

| Species | Surrogate Species[1] | Total length (inches) | Burst swim speed (fps, feet per second) |
|---|---|---|---|
| Redeye bass | Largemouth bass[2] | 2-4 | 3.2 |
| | | 5.9-10.6 | 4.3 |
| Flat bullhead | Channel catfish[3] | 6.3-8.3 | 1.3 |
| Redbreast sunfish | Bluegill[2] | 2 | 1.8 |
| | | 4-6 | 2.4 |
| | | 6 | 4.3 |
| Highback chub | not applicable[4] | 2 | 1.67 |
| | | 3 | 2.5 |

[1] Burst swim speeds were not available for the species included in our analysis. Surrogate species used were fish in the same family and with similar body morphometry to the species included in our analysis.
[2] Source: Appalachian Power Company (2009)
[3] Source: Venn Beecham et al. (2007)
[4] Highback chub burst swim speeds are assumed to be equivalent to 10 lengths per second. Beamish (1978) considered 10 lengths per second to be a conservative measure of burst swim speed for fish.

TABLE 11—MINIMUM FISH TOTAL LENGTHS SUSCEPTIBLE TO IMPINGEMENT AT 1-INCH AND 2.25-INCH TRASHRACKS, BASED ON TRASHRACK BAR SPACING AND FISH WIDTH-AT-ENGTH RELATIONSHIP (I.E. WIDTH = $\alpha \times$ TOTAL LENGTH $\beta$) ALONE AND EXCLUSIVE OF BURST SWIM SPEEDS

| Species | Surrogate species used in calculation[1] | Alpha ($\alpha$)[2] | Beta ($\beta$)[3] | Maximum total length (inches) | Minimum fish total length (inches) susceptible to impingement: | |
|---|---|---|---|---|---|---|
| | | | | | 1-inch trash rack spacing | 2.25-inch trash rack spacing |
| Redeye bass | Smallmouth bass | 0.10095 | 1.0394 | 17 | 9.1 | none.[4] |
| Flat bullhead | Brown bullhead | 0.19905 | 0.9919 | 11 | 5.1 | none.[4] |
| Redbreast sunfish | Bluegill | 0.1317 | 0.997 | 9 | 7.6 | none.[4] |
| Highback chub | Fathead minnow | 0.00077 | 2.1795 | 3 | [4] none | none.[4] |

[1] Length-width equations were not available for species included in our analysis. Surrogate species were fish in the same family and with similar body morphometry to the species included in our analysis.
[2 3] The alpha and beta parameters for equations are from Lawler, Matucky, and Skelly Engineers (1991).
[4] The calculated minimum total length susceptible to impingement is greater than the maximum total length of the species; therefore, no length of this species is susceptible to impingement at this trackrack spacing.

Fish are at risk of impingement if their burst swim speed (see table 9) is less than the approach velocity at the trashrack, and if their size prevents them from passing through the bar spacing on the trashrack (see table 10). The results of our analysis show that none of the species analyzed would be susceptible to impingement with a trashrack having 2.25-inch bar spacing (see figures in appendix A), because of their swimming abilities. However, larger flat bullhead (i.e. greater than 5.1 inches) would be susceptible to impingement with a trashrack having 1-inch bar spacing when intake flows approach the maximum turbine capacity of 450 cfs.

The risk of impingement would be greater for adult flat bullhead if Lockhart Power replaces the existing 2.25-inch bar spacing with Interior's recommended 1-inch bar spacing. The reduced porosity of the 1-inch bar spacing design would also lead to greater accumulation of debris compared to the 2.25-inch bar spacing design, which could lead to a greater risk of impingement than would occur with a design having 2.25-inch bar spacing. Routine maintenance of either trashrack would be required to ensure approach velocities do not increase. Greater maintenance would be required for the 1-inch bar spacing versus the 2.25-inch bar spacing.

*Fish Entrainment and Turbine Mortality*

Entrainment can occur if fish can pass between trashrack bars, and do not behaviorally avoid entrainment. Consequently, smaller (i.e. fish smaller than those susceptible to impingement [table 10]) redeye bass, flat bullhead, redbreast sunfish, and highback chub could each be entrained through both trashrack designs. Larger and older fish of each species would be protected by both trashrack designs; but, the 1-inch bar spacing would be more protective than the 2.25-inch bar spacing.

Even if fish are small enough to fit through trashrack bar spacing, generally they will behaviorally avoid entrainment if their burst swim speeds exceed approach velocities at trashracks. Based on our analysis, only highback chub and flat bullhead lack the burst swim speeds needed to overcome approach velocities and avoid entrainment through trashrack designs that have 1-inch and 2.25-inch bar spacing, respectively (see figures in appendix A). Small (i.e. 2-inch) highback chub are susceptible to entrainment with a trashrack that has 1-inch bar spacing when intake flows approach the maximum turbine capacity of 450 cfs. However, all sizes of flat bullhead are susceptible to entrainment with the existing trashrack that has 2.25-inch bar spacing when intake flows approach the maximum turbine capacity. As these results indicate, and as other studies have shown, the majority of fish entrained consists of small fish (EPRI, 1997). The survival of smaller individuals of both species is likely to be relatively high because they are less prone to mechanical injury from turbine passage than larger fish. Smaller fish are also less prone to injury resulting from shear stresses and rapid pressure changes associated with turbine passage. Combined, these results indicate that each trashrack design has the potential to entrain one species; however, turbine mortality is expected to be similarly low for both designs.

Lockhart Power's desktop fish entrainment and turbine mortality analysis considered information from published literature [50] to estimate fish entrainment rates and turbine mortality rates, and to characterize the anticipated composition of fish entrained and killed at the project. Results of the analysis indicate that on average, about 48,271 fish could potentially pass through the turbines on an annual basis, and of those, 5,412 fish could potentially be killed by the turbine. Sunfish had the highest estimated entrainment and turbine mortality, which represented 38 percent (18,346) and nearly 36 percent (1,941) of all fish entrained and killed, respectively.

Lockhart Power's analysis did not include Conservation Species due to the absence of data on redeye bass and flat bullhead. However, the analysis did include species in the redeye bass genus (i.e. *Micropterus;* black bass) and the flat bullhead family (i.e. *Ictaluridae;* catfish). Annual entrainment estimates for black bass represented only 1.6 percent (804) and 3.4 percent (182) of the total fish entrained and killed, respectively. Estimates for catfish were higher, and represented 22.1 percent (10,645) and 11.0 percent (593) of the total fish entrained and killed, respectively.

Although Lockhart Power's analysis did not provide details on the size or age-class of redeye bass or flat bullhead entrained, based on other studies, it is likely that most entrained fish would consist of smaller fish—primarily young-of-the-year (EPRI, 1997). These younger individuals in the population generally have high rates of mortality, even in the absence of hydropower operations. Fish populations have generally evolved to withstand losses of these smaller and younger individuals with little or no impact to long-term population sustainability. Thus, any turbine mortality of redeye bass and flat bullhead is likely to have minimal effect on their respective populations.

### 3.3.3 Terrestrial Resources

#### 3.3.3.1 Affected Environment Vegetation

The Riverdale Project is situated at the northern edge of what is considered the Piedmont ecoregion. This region is characterized by gently rolling hills and stream-cut valleys with elevations that range from 375 feet to 1,000 feet msl. Historically, plant communities in the region consisted of oak and hickory-dominated forests, with associated species varying by slope and soil moisture. The landscape in the Piedmont ecoregion has a long history of forest clearing, intensive agriculture, and other economic uses that date back to the earliest European settlements. Today, the Piedmont landscape is predominantly a mosaic of agricultural land and managed pine and mixed pine-hardwood woodlands, with hardwood-dominated forests limited primarily to narrow floodplains and scattered upland sites.

The project area and immediate project vicinity include a mix of managed areas and natural communities. The rural community of Enoree surrounds the project, with its lawns, hedgerows and limited commercial development representing the primary managed areas. Extensive agricultural lands, including managed hay fields, pastures, row croplands and pine plantations, occur in the uplands surrounding the community of Enoree and the project. The majority of farmland in the Enoree River Basin is dedicated to pasture and hay fields. This cover type commonly includes early successional species such as daisy fleabane, horse nettle, sunflower, pokeweed, and spiny amaranth.

Forested uplands in the project vicinity are characterized primarily by managed pine plantation and mixed hardwood-pine stands. Mature stands tend to consist of a diverse assemblage of hardwoods, primarily oaks and hickories, as co-dominants in combination with pines. Common pine species of the piedmont include shortleaf and loblolly, with the former better adapted to dry, fine textured upland soils and loblolly achieving maximum growth on deep soils with good moisture and drainage. The understory in pure pine stands is often open, but in mixed or older stands, it is dominated by the hardwoods characteristic of the site.

The areas immediately adjacent to the project impoundment and along the Enoree River downstream from the dam are characterized by heavily vegetated, primarily forested shorelines. Forested shorelines of the impoundment and downstream from the dam are typical of hardwood-dominated streamside forests that characterize the Piedmont. The typical canopy species in these forests is a mixture of bottomland and mesophytic trees including river birch, sycamore, sweetgum, tulip tree, American elm, hackberry, green ash, and red maple. Sites farther upslope on

[50] The database is based on specific entrainment studies conducted at FERC licensed projects that are similar to the Riverdale Project in geographic location, hydraulic capacity, operation, fish species, and water quality (Lockhart Power, 2010c).

protected bluffs and ravines are more characteristic of the cove forests typical of the region. The canopy and understory on such sites is typically composed of hardwoods including beech, tulip tree, black gum, sourwood, white oak, northern red oak, black oak, sweetgum, red maple, southern sugar maple, basswood, ironwood, flowering dogwood, American holly, witch-hazel, and hop-hornbeam. Because this habitat has a closed canopy, the likely substory consists of the more shade tolerant species including young beech and maples. Poison ivy, Virginia creeper, and wood sage are typical of the remaining shrubby stratum. Along the riverbank, shade intolerant species such as sumac, tree-of-heaven, daisy fleabane, and blackberry are likely common.

*Wetlands*

Wetlands are common in the Piedmont ecoregion as a whole, although they are much less abundant than in the low lying Coastal Plain region. Wetlands coverage in the Piedmont is overwhelmingly dominated by palustrine forests, otherwise known as floodplain or bottomland hardwoods, which are estimated to account for approximately 80 percent (i.e. 1 million acres) of wetlands in the region. Bottomland/floodplain forests generally occur as narrow corridors along the region's rivers and streams due to the prevailing moderate topography. Bottomland/floodplain forests are also the dominant wetlands type in the immediate vicinity of the Riverdale Project. They are characterized by moist alluvial soils and are dominated by hardwood species such as sweetgum, loblolly pine, water oak, willow oak, laurel oak, cherrybark oak, and American holly.

National Wetlands Inventory (NWI) data for the project area indicate a lack of wetlands in the area immediately surrounding the impoundment and adjacent to the Enoree River immediately downstream from the dam. However, a number of bottomland/floodplain (palustrine forested) wetlands are located along the river's floodplain upstream of the dam. These are located well upstream of the influence of the project impoundment, adjacent to a free flowing reach of the river, and thus would not be affected by the project.

Riparian areas surrounding the project impoundment and the river downstream from the dam are relatively narrow due to the moderately sloped banks. The well vegetated banks are characterized by abundant willows and alders in areas directly abutting and overhanging the water, with upslope areas containing a mix of bottomland and mesophytic trees typical of the Piedmont including river birch, sycamore, sweetgum, tulip tree, American elm, hackberry, green ash, and red maple.

*Non-Native Invasive Vegetation*

In the Piedmont ecoregion, invasive plant populations are often present within the forested communities. Data from the Forest Inventory Analysis, collected by the U.S. Forest Service, indicates that almost three quarters of sampled plots within the Piedmont ecoregion contain at least one exotic (non-native) plant. The South Carolina Exotic Pest Plant Council (South Carolina EPPC) identifies the following terrestrial exotic invasive plants as severe threats to the composition, structure, or function of natural areas in the state of South Carolina: tree-of-heaven, chinaberry, princess tree/royal paulownia, Chinese tallow, scotch broom, thorny-olive, autumn-olive, shrub lespedeza, Japanese privet, Chinese privet, kudzu, English ivy, Japanese climbing fern, Japanese honeysuckle, Cherokee rose, Chinese wisteria, bigleaf periwinkle, tall fescue, cogongrass, Japanese stilt grass, bahia grass, common reed/phragmites, Chinese bush clover, marsh dewflower, and tropical soda apple.

As noted above, tree-of-heaven is among the species that are likely common in the riparian area in the vicinity of the project. Tree-of-heaven is a non-native invasive deciduous tree native to central China that has spread throughout the United States in natural, agricultural, and developed areas. Tree-of-heaven is a severe ecological threat because it is fast-growing, reproduces prolifically from both seeds [51] and vegetatively from suckers and sprouts from cut stumps, and releases chemicals into the soil that inhibit growth of other plants. In addition, the root system of this species can cause structural damage to concrete structures such as sewers and foundations (Swearingen and Pannill, 2009).

Kudzu is a terrestrial non-native invasive species known to occur within Spartanburg County at troublesome levels. The county has concerns regarding the effect of over 1,000 acres of kudzu infestation on beautification efforts in the urban areas of Spartanburg. Kudzu is a climbing, semi-woody, perennial vine native to Asia that was introduced to the United States for erosion control and is now found throughout most of the Southeast. Although kudzu grows best in disturbed areas such as forest edges, abandoned fields, and along roads and trails, this species thrives in a wide range of conditions. Kudzu is a severe ecological threat because it grows rapidly—at a rate of approximately one foot daily—and it can envelope and eventually kill other plants by shading them out, breaking limbs, and even uprooting trees under the weight of its blanket of tangled vines (Bergmann and Swearingen, 2005).

Aquatic non-native plant species also occur throughout South Carolina. South Carolina DNR's Aquatic Nuisance Species Program maintains a list of aquatic plant species currently listed as illegal to possess, import, or distribute in South Carolina. Examples of invasive exotic aquatic plants on this list include alligatorweed, common reed/phragmites, Eurasian watermilfoil, hydrilla, and water hyacinth (South Carolina DNR, 2010). Where these plants occur, they can obstruct navigable waterways, restrict water flow, degrade water quality, interfere with recreation, and alter fish populations. South Carolina DNR has identified water bodies throughout the state, including two within Spartanburg or Laurens counties, as 'problem areas,' or areas where aquatic plants interfere with water uses. These areas and associated aquatic plants include hydrilla, slender naiad, and water primrose at Lake Greenwood; and water primrose and hydrilla at Lake Edwin Johnson (South Carolina DNR, 2012), both of which are located within about 30 miles from the project area.

The extensive beds of aquatic vegetation observed in the project impoundment are a mixture of a native smartweed species and alligatorweed, an invasive non-native species. Alligatorweed, an emergent perennial plant, is native to South America (USDA, 2013) and it is listed as a noxious weed in South Carolina. This species can grow in upland sites, but it prefers saturated soils along shorelines of lakes, ponds, streams, ditches, and wetlands. It spreads vegetatively from fragments and by seeds that can be dispersed by water, wildlife, and people. Alligatorweed forms dense mats that grow into open water habitats, shading out native plant species and reducing DO in the water under the mat which, in turn, decreases the quality of the habitat for fish and wildlife. Mats of alligatorweed can also inhibit navigation and recreational use (Madsen).

*Wildlife*

Wildlife habitats within the Lockhart Power's proposed 25.9-acre project area

[51] While only the female trees produce seeds, a single tree can produce 325,000 seeds annually.

are typical of the Piedmont region of South Carolina. Of the 25.9 acres, there are 11.3 acres of terrestrial habitat. The shoreline area is predominately undeveloped riparian and upland forests. Mixed hardwood forest is the dominant terrestrial habitat type along the edge of the project boundary. This habitat type is characterized by a high degree of structure, including both vertical complexity (height class diversity of vegetation) and microhabitat features such as snags, dead-and-down wood, and forest floors consisting of leaves and woody debris. The mixed hardwood forest cover type typically contains a high density of small mammals. This may be attributable to the fact that these areas produce substantial amounts of mast (seeds and nuts) that provide valuable forage habitat for a variety of wildlife species. Other wildlife species potentially using these areas include white-tailed deer, raccoon, fox, wild turkey, grouse, blue jay, ovenbird, red-bellied woodpecker, hairy woodpecker, eastern king snake, black racer, black rat snake, copperhead, and timber rattlesnake.

The aquatic and semi-aquatic habitats of the 6.6-acre project headpond and upstream and downstream river reaches also provide wildlife habitat in the project area. Wildlife species that potentially use open water and semi-aquatic areas of the impoundments and the lower tailrace and bypassed reach include beaver, muskrat, otter, mink, belted kingfisher, wood duck, great blue heron, green heron, great egret, redbellied water snake, bullfrog, leopard frog, yellowbelly slider turtle, and common snapping turtle. Species typical of river margins include raccoon, woodcock, red-winged blackbird, various thrushes, green treefrog and American toad.

*Special Status Terrestrial Species*

There is one terrestrial species documented as occurring in Laurens County that is a candidate for federal listing under the ESA. Georgia aster (*Symphyotrichum georgianum*) is a perennial herbaceous plant that forms clonal clumps and can spread through modified stems called rhizomes (NatureServe, 2013a). Adequate sunlight appears to be one of the most important factors in the success of this species. Historically this species was found in post oak savanna and prairie communities in the Southeast. This habitat type has dwindled since wildfires have been suppressed and large native grazers are no longer present to maintain it. While there are small isolated populations surviving in areas of Alabama, Georgia, North Carolina, and South Carolina that are maintained in an open, early successional stage such as roadway, railroad, and transmission line rights-of-way (ROW), the species is still threatened by residential development, highway expansion/improvement projects, encroachment of non-native invasive plants, deer browsing, herbicide use, and by woody succession due to wildfire suppression that historically maintained its open grassland habitat (FWS, 2012).[52]

**3.3.3.2 Environmental Effects**

Currently the project is inoperable and all available flows pass through the impoundment, over the Riverdale dam, and into the shoals and braided channels within the bypassed reach. The plants and wildlife in the riparian corridor along the impoundment and downstream from the dam have adapted to the natural variation in stream flows.

*Effects of Project Refurbishment and Vegetation Maintenance*

Refurbishing the project facilities, developing the canoe portage facilities, and maintaining these areas would require clearing or trimming of some vegetation. Heavy equipment and activities associated with the replacement of the 193-foot-long above ground section of the penstock and repairs to the powerhouse, dam, and other project facilities would disturb wildlife near the construction areas. Disturbance to plants and wildlife would also occur during periodic vegetation maintenance, including mowing and/or trimming, around the perimeter of the existing powerhouse and along the transmission line ROW which follows the access road, as well as the area within the proposed portage trail, canoe take-out and put-in, and parking area for recreation.

In order to preserve the vegetative communities within the project boundary, Lockhart Power proposes to consult with state and federal resource agencies on the implementation of BMPs during project refurbishment and maintenance activities. Lockhart Power would minimize effects to terrestrial resources by limiting ground-disturbing activities and disturbance of riparian vegetation whenever possible on lands acquired for project purposes.

South Carolina DNR supports the applicant's proposal to consult with state and federal agencies on the implementation of BMPs during all construction and maintenance activities to preserve the vegetative communities within the project boundary. FWS recommends that the applicant avoid and minimize any adverse impacts to fish, wildlife, shoreline vegetation, and other natural resources while conducting construction and maintenance activities.

*Our Analysis*

The majority of disturbances to vegetation and wildlife related to Lockhart Power's project refurbishment activities and installation of the proposed recreation area would be temporary, minor, and confined to approximately 2 acres of previously disturbed habitats within the footprint of the former textile mill and associated parking lots and roadways. The noise and movement of equipment and materials associated with replacing the 193-foot-long portion of the penstock could disturb wildlife, especially small species with confined home ranges or limited mobility. However, this portion of the penstock is above ground so the disturbances would be temporary and would not change the character of the surrounding habitat. Most wildlife would likely leave the immediate project area and return when construction and repairs are complete.

Periodic mowing along the existing paved access road and trimming of tree limbs and underbrush along the proposed canoe portage trail are necessary to maintain access to the proposed project facilities. Given that the existing project transmission line is adjacent to the access road, periodic mowing would be limited and would not affect any unique terrestrial habitat or change the character of the vegetation within the ROW corridor. The proposed canoe portage is within an existing (non-project) transmission line ROW. Consequently, trimming trees and underbrush to maintain recreation access would cause little incremental disturbance to plants or wildlife.

Implementing BMPs during project refurbishment, recreation area installation, and periodic vegetation maintenance activities would minimize potential disturbances to vegetation and wildlife. BMPs to preserve terrestrial habitats could include, but not be limited to, minimizing disturbances to existing vegetation, maintaining a riparian buffer on project shorelines, and cleaning construction and maintenance equipment before and after use to prevent the transport of seeds and fragments of invasive non-native vegetation to new (uninfested) areas.

*Effects of Invasive Non-Native Plants*

Alligatorweed is a prolific non-native plant and a South Carolina noxious weed that has become established in the

[52] 77 FR 69,994, 70,047 (Nov. 21, 2012).

project impoundment. Alligatorweed competes with native riparian and aquatic species, reducing the quality of fish and wildlife habitat where it becomes established. Large mats of alligatorweed can impede boating and access to the shore. These mats could become fragmented and spread during in-water construction activities, such as during the canoe take-out and mechanical removal of sediment from the impoundment. Fluctuations in the impoundment levels and periodic sediment management activities may also create conditions facilitating its spread.

Lockhart Power does not propose any specific measures to control existing mats of alligatorweed and does not anticipate that project refurbishment would affect the distribution of this species within the project boundary (Lockhart Power, 2011b).

Lockhart Power also states that alligatorweed was not observed growing on the southern shore of the impoundment at the proposed canoe take-out (Lockhart Power, 2012). Similarly, Lockhart Power does not propose any specific measures to control alligatorweed in the impoundment during operation, mainly because it does not anticipate that this species would interfere with project operations. Rather, Lockhart Power states that proposed project operation could aid in controlling this species through periodic dewatering (i.e. drawdowns) and potential exposure to freezing temperatures during the winter months.

No one recommended measures to control alligatorweed.

*Our Analysis*

Extensive mats of alligatorweed have become established in the project impoundment. Although alligatorweed was not present in areas that would be disturbed during project refurbishment or at the canoe put-in and take-outs in 2010 when Lockhart Power examined the impoundment, it may have spread into these areas. Construction activities could facilitate their spread in the impoundment and downstream from the project. A survey of the impoundment prior to beginning construction repairs and developing the canoe portages would determine if specific BMPs should be taken to prevent its spread. Any such BMPs could be developed in consultation with FWS and South Carolina DNR based on the survey results.

Once operational, flow fluctuations from peaking operations may help control the spread of alligatorweed as Lockhart Power suggests. However, daily impoundment fluctuations of 1 to 4 feet can also stress existing riparian communities, causing some of the existing riparian vegetation to die and exposing shorelines to erosion and colonization of non-native invasive plants. Periodic monitoring of invasive species in the impoundment would facilitate early detection of new invasive plant introductions, as well as the spread of invasive species, including the existing mats of alligatorweed. Monitoring would also allow Lockhart Power, the resource agencies, and the Commission to determine when, and if, correction measures may be needed to protect native plant communities and the wildlife that depend on them.

To be effective, the monitoring program should define the monitoring schedule, include a means to document changes in invasive species composition and distribution between monitoring events, and include criteria that would determine when corrective actions may be required.

*Avian Electrocution Hazards*

Birds in the project area may have become accustomed to using the transmission lines and poles for perching or nesting. Transmission lines can represent an electrocution hazard to roosting and perching birds if the spacing between the conductors and ground wires is narrower than the bird's wingspan, or when they use poles for nesting.

Lockhart Power proposes to use the existing transmission line which extends from the powerhouse along the project access road to an existing Duke Energy distribution line to deliver power to the grid. However, the current condition of the project transmission line is unknown. Lockhart Power also did not provide any description of the design of the transmission lines to determine if the line could represent an electrocution hazard.

Lockhart Power did not propose and no one recommended any measures to address these potential hazards.

*Our Analysis*

APLIC, a consortium of utilities, and FWS developed guidelines for design of electrical lines to minimize potential for electrocutions (APLIC, 2006). The APLIC guidelines define applicable separation distances for energized conductors and groundwires. The guidelines also describe measures to deter perching and/or nesting depending on transmission line pole designs.

As part of project refurbishment, Lockhart Power would need to determine the condition of the existing line as well as any repairs that may be necessary to transmit power. While conducting this initial inspection of the transmission line, Lockhart Power could concurrently evaluate whether the transmission line was built in accordance with the APLIC guidelines and look for evidence of bird nesting on the poles. Depending on the design, corrective measures may be needed to minimize electrocution hazards, which could include monitoring or the installation of insulation, line marking devices, and structures to discourage perching and/or nesting (i.e. for poles where other protection measures cannot be used). However the extent or need for such measures cannot be determined until the evaluation is complete.

*Effects of Flow Fluctuations on Plants and Wildlife*

Lockhart Power's proposal to resume hydroelectric operations with 1 to 4-foot fluctuations in the impoundment would affect some of the terrestrial, riparian, and littoral habitats. Impoundment fluctuations can affect the distribution, species composition, and productivity of riparian and littoral habitat. In general, hydroelectric impoundments with extreme long or short-term fluctuation in water surface elevations exhibit reduced plant species diversity, reduced plant productivity, and a proliferation of exotic species (Stanford *et al.,* 1996), and provide less value for wildlife, especially for breeding waterfowl and hibernating reptiles and amphibians (Nilsson and Berggren, 2000).

To address the potential effects of project operation and maintenance on terrestrial resources, Lockhart Power proposes to maintain a 25-foot-wide forested riparian buffer around the project impoundment, as well as the tailrace and bypassed reach downstream from the dam, as long as this does not interfere with Lockhart Power's ability to perform project-related activities. In order to preserve natural conditions, Lockhart Power would also minimize ground-disturbing activities and disturbance of riparian vegetation whenever possible on acquired lands. Lockhart Power would consult with the South Carolina DNR in the event that it needed to make exceptions to these environmental protection measures.

South Carolina DNR and Interior support Lockhart Power's proposal to establish and maintain a 25-foot riparian buffer on all shorelines within the project boundary and to avoid and/or minimize disturbances and adverse impacts to soils, vegetation, wildlife, and other natural resources. Interior also recommended measures to address

existing and potential project-induced erosion on project shorelines, as discussed in section 3.3.1, *Geologic and Soil Resources.*

*Our Analysis*

Lockhart Power states that its proposed project operation would only affect those areas within the natural banks of the Enoree River, and, thus, would have no effect on terrestrial resources (Lockhart Power, 2011b). However the 2-foot-tall flashboards were washed out during a storm event in late 2009. The flashboards were subsequently replaced, but were damaged again in 2012 and 2013 by floodwaters, floating logs, and tree stumps (FERC, 2013). Therefore the existing full pool condition is two feet lower than Lockhart Power's proposed full pool condition and vegetation has had over 3 years to colonize the exposed shoreline. The results of Lockhart Power's Headpond Fluctuation Study conducted in 2010, indicate that the width of the littoral zone and the associated riparian vegetation along the impoundment has increased since the flashboards were washed out. Once Lockhart Power reinstalls/repairs the flashboards and resumes project operation, a portion of the riparian zone would be inundated again potentially submerging existing vegetation. Riparian plant communities are made up of species adapted to varying degrees of water level fluctuations. Water level fluctuations associated with project operation could lead to changes in species composition and distribution in the riparian zone.

Lockhart Power's proposal to minimize ground-disturbing activities and disturbance of riparian vegetation whenever possible on acquired lands would ensure that effects to terrestrial resources during project operations and maintenance would be minor and temporary. Maintaining a 25-foot-wide forested buffer around the impoundment, the tailrace, and bypassed reach downstream from the dam would minimize the effects of flow fluctuations during project operation by minimizing soil erosion, filtering pollutants and slowing runoff from impermeable surfaces in the project area. The buffer would also preserve a movement corridor for wildlife. Lockhart Power's proposal to consult with South Carolina DNR regarding any exceptions on its proposed terrestrial resource protection measures would provide a mechanism to address future unforeseen actions that could adversely affect riparian vegetation and the wildlife it supports. Limiting disturbances to soils and vegetation, maintaining a 25-foot riparian buffer, and using the shoreline stabilization methods described in section 3.3.1, *Geologic and Soil Resources,* would further reduce the potential for invasive plant establishment and protect native plants and wildlife.

*Effects of Project Repairs, Construction, Operation, and Maintenance on Special Status Terrestrial Species*

Georgia aster is not known to occur within the project boundary and there is limited potential habitat for this species in the project area. No measures were proposed or recommended to protect this species.

*Our Analysis*

Because the majority of the project area is dominated by mature riparian hardwood forest and Lockhart Power proposes to minimize disturbances to existing vegetation wherever possible, it is unlikely that Georgia aster would become established in the project area. Therefore the proposed project repairs, operation, and maintenance are not expected to affect Georgia aster.

**3.3.4 Threatened and Endangered Species**

**3.3.4.1 Affected Environment**

Three federally listed terrestrial species and one aquatic species are known to or potentially occur in Spartanburg or Laurens Counties, South Carolina and could potentially occur within the project area.

*Aquatic Species*

FWS lists the federally endangered Carolina heelsplitter mussel (*Lasmigona decorate*) as potentially occurring in Laurens County. Endemic to South Carolina and North Carolina, the historic range of this species is not known, although current data suggest it was relatively widespread in the Pee Dee and Catawba river systems in North Carolina and the Pee Dee, Savannah and Saluda systems in South Carolina. Current distribution in South Carolina is limited to generally small populations in the Lynches River (Pee Dee River system), tributaries to the Savannah River, a tributary to the Saluda River, and one location in the Catawba River Basin. Carolina heelsplitter is usually found on mud, muddy sand, or muddy gravel substrates in cool, slow-moving, small to medium-sized streams or rivers along well-shaded streambanks. Stable streambanks and channels, with pool, riffle and run sequences, little or no fine sediment, and periodic natural flooding, appear to be required for the Carolina heelsplitter. The stability of the stream banks appears to be a very important factor in the habitat.

South Carolina DNR spatial distribution data for threatened and endangered species indicate no known occurrences of Carolina heelsplitter in Laurens or Spartanburg Counties. Further, freshwater gastropods surveys conducted in the project area in support of relicensing found no live, dead, or shell fragments of Carolina heelsplitter; this species was one of the primary target species of the survey effort.

*Terrestrial Species*

One federally listed plant species, the dwarf-flowered heartleaf (*Hexastylis naniflora*), is known to occur in Spartanburg County. Dwarf-flowered heartleaf is a terrestrial plant species that typically occurs on bluffs and in ravines in deciduous forests with acidic sandy loam soils, often in association with mountain laurel. A search of the South Carolina Heritage Trust Geographic Database of Rare and Endangered Species revealed no occurrences of dwarf-flowered heartleaf in the Enoree Quad, where the project would be located. Further, field surveys of sites containing the Pacolet, Madison, or Musella soil types required by this species, conducted in support of licensing as part of the Rare, Threatened and Endangered Species Assessment, found no occurrences of the species within the project area.

The red-cockaded woodpecker (*Picoides borealis*) is listed as endangered at both the state and federal level and is known to occur in Laurens County. The red-cockaded woodpecker is endemic to open, mature, and old growth pine ecosystems in the southeastern United States. Over 97 percent of the pre-colonial era red-cockaded woodpecker population has been eradicated, leaving only roughly 14,000 red-cockaded woodpeckers living in about 5,600 colonies scattered across eleven states, including South Carolina. Red-cockaded woodpecker decline is generally attributed to a loss of suitable nesting and foraging habitats, including longleaf pine systems, due to logging, agriculture, fire suppression, and other factors. Suitable nesting habitat generally consists of open pine forests and savannahs with large, older pines and minimal hardwood midstory or overstory. Living trees, especially older trees that are susceptible to red-heart disease making them more easily excavated, provide red-cockaded woodpecker's preferred nesting cavities. Suitable foraging habitat consists of open-canopy, mature pine forests with low densities of small pines, little midstory vegetation, limited hardwood

overstory, and abundant bunchgrass and forb groundcover.

The expansive old-growth pine forests required by this species do not occur in the areas surrounding the project. Further, South Carolina DNR spatial distribution data indicate no documented occurrences of red-cockaded woodpecker in Laurens and Spartanburg Counties, suggesting that the ''known'' status listed by FWS for Laurens County may potentially be related to historical records of this species. Terrestrial areas within the project area were examined for presence of the mature longleaf pine forest required by red-cockaded woodpeckers as part of the Rare, Threatened and Endangered Species Assessment. No such habitat was documented.

#### 3.3.4.2 Environmental Effects

*Our Analysis*

No federally listed species are known to occur within the project area. Suitable habitat for the red-cockaded woodpecker does not occur in the area. Therefore, refurbishment, operation, and maintenance of the proposed project would have no effect on the endangered Carolina heelsplitter mussel, the threatened dwarf-flowered heartleaf, or the endangered red-cockaded woodpecker.

### 3.3.5 Recreation and Land Use

#### 3.3.5.1 Affected Environment

*Recreation*

*Statewide Recreation Plan*

The 2008 South Carolina State Comprehensive Outdoor Recreation Plan (SCORP) guides recreation planning and development in the state. The plan has no specific recommendations for the project area; however, it does identify major goals for recreation within the state. These goals include: Providing a balanced and comprehensive system of public and private recreation opportunities; conserving and interpreting significant historic, cultural, and natural areas; and encouraging cooperation between various agencies, levels of government, private enterprise, and volunteers to meet the state's recreation needs. The SCORP also identifies issues associated with recreation supply and demand in the state. The plan indicates there is a demand for additional trail development for walking, boating, and equestrian use; additional education and outreach relating to outdoor recreation opportunities; and development of, or improvements to, recreation access for various user groups including the elderly and disabled (South Carolina DPRT, 2008).

*Regional Recreation Resources*

Spartanburg and Laurens counties are regionally-important destinations for outdoor recreation activities such as fishing, hiking and sightseeing. The region is home to several state parks, recreation areas and historic sites. Recreation lands account for over 28,000 acres in the region and provide opportunities for hiking, camping, fishing, motorized- and non-motorized boating, horseback riding, picnicking, and wildlife viewing.

The South Carolina Rivers Assessment (1988) identifies several high-value recreation areas on the Enoree River. A four-mile reach of the Enoree, upstream of the project, from State Route 14 in Pelham to State Route 296 is identified as regionally significant for whitewater boating, which American Whitewater (2009) identifies as having Class II and III rapids under normal flow conditions. Downstream from the project, from RM 42 to the confluence with the Broad River, the Enoree River is designated as both a regionally-significant flatwater boating river and as a back-country boating river of statewide significance. The entire Enoree River from its headwaters to the confluence with the Broad River is categorized as a recreational fishing river of regional or local significance (South Carolina WRC and NPS, 1988).

Formal recreational boating opportunities are provided on the Enoree River Canoe Trail, which begins approximately 16 miles downstream from the project, at the western border of the Sumter National Forest's Enoree Ranger district (RM 36). The trail continues through the National Forest to the Enoree River's confluence with the Broad River. Six hand-carry boat ramps provide access to the canoe trail for non-motorized boaters. The canoe trail is characterized by steep hardwood bluffs, bottomland forests, and small marshy areas. In the early spring, high flows make the river unsafe for flatwater recreational boating. In the late spring and fall, fast-moving flatwater conditions are best for experienced paddlers. Summer flows, particularly during drought conditions, are generally too low for recreational boating (U.S. Forest Service, 2010). The South Carolina Trails Plan (2002) identifies 45 miles of Enoree River in Spartanburg County and 5 miles of the river in Union County for future development as a canoe trail.

*Recreation in the Project Vicinity*

In the vicinity of the project, boating on the Enoree River is limited by a lack of developed boating access and boat ramps. The shallow nature of some sections of the river, which typically ranges in depth from 2 to 6 feet, limits boating access to canoes and flat-bottomed boats of less than 14 feet in length (U.S. Forest Service, 2010). Non-motorized boaters typically access the river at informal locations like bridge crossings or dams. There are no formal portage facilities on the stretch of river near the proposed project, and small dams, such as the Riverdale dam, impede navigation.

Angling activities near the proposed project occur primarily from shore and are concentrated in tributaries and below the Pelham and Riverdale dams. Largemouth bass, crappie, channel catfish, yellow perch, bluegill, gizzard shad, redear sunfish, and redbreast sunfish are the primary game fish expected in the Enoree River (see section 3.3.2, *Aquatic Resources*). There is no fish consumption advisory for the Enoree River in the vicinity of the project.

*Recreation at the Proposed Project*

There are no formal recreation facilities located at the project. Under Inman Mill's license, the project was exempt from filing the Licensed Hydropower Development Recreation Report (FERC Form 80) because of the lack of recreation facilities and potential for recreation use.[53] However, members of the public periodically use the impoundment for fishing, as evidenced by the presence of discarded bait containers, fishing line, and other debris.

*Land Use*

The project is located on the Enoree River, which comprises the border between Laurens and Spartanburg counties, South Carolina. The project is located within the Enoree River subwatershed, which extends from the confluence of Beaverdam Creek, immediately upstream of the project impoundment at RM 52, to Duncan Creek south of the town of Whitmire at RM 20. Lands in the subwatershed are typically undeveloped, with forest lands comprising 61.6 percent of the watershed and agricultural lands comprising an additional 26.7 percent. Major agricultural uses include hay pastures and crops such as peaches, soybeans, and grain corn. Other land uses within the watershed are urban/

[53] *See* FERC issuance of March 16, 1998 for the Riverdale Project No. 4362.

developed lands (5.8 percent), wetlands (4.5 percent), and barren lands (1.8 percent).

The most intensive land uses in the project vicinity occur in the town of Enoree, located north of the project in Spartanburg County, and the town of Lanford, to the south of the project in Laurens County. These areas are characterized primarily by residential, commercial, and industrial development. Both counties regulate private land development through planning and zoning measures.

The project boundary encloses approximately 25.9 acres, of which 11.3 acres are land. The remainder is occupied by the waters of the impoundment, bypassed reach, and tailrace. Aerial photos indicate that within the project boundary, the predominant land cover is forest. The bypassed reach of the Enoree River is characterized by bedrock, granite dome, and cobble overlaid with sand bars, which create a series of riffles and pools. Limited industrial use, including the project's powerhouse and disturbed areas formerly occupied by Inman Mills, is also present along the northern shoreline of the project. For more information about ground cover and wildlife habitat within the project boundary, see sections 3.3.1, *Geologic and Soil Resources* and 3.3.3, *Terrestrial Resources.*

There are no lands in the immediate vicinity of the project that are included in the national trails system or designated as wilderness lands. No portion of the Enoree River is included on the list of wild and scenic rivers; however, the reach of the Enoree River from RM 0 to RM 98 is listed on the Nationwide Rivers Inventory (NRI) for its outstanding values in scenery, recreation, geology, fish, wildlife, history, and cultural significance. The NRI, which was created in 1982 and amended in 1993, identifies river segments in the United States that are believed to possess one or more ''outstandingly remarkable'' natural or cultural values judged to be of more than local or regional significance (NPS, 2011).

#### 3.3.5.2 Environmental Effects

*Recreation Enhancements and Public Access*

Lockhart Power proposes to construct and maintain a 1,650 foot-long portage trail around the dam, a parking area adjacent to the portage trail, a canoe take-out located approximately 220 feet upstream of the dam, and a canoe put-in located approximately 1,075 feet downstream from the dam. Signage would be posted at both the canoe take-out and put-in denoting their purpose. Directional signage would be used along the portage trail to indicate the locations of the take-out and put-in. Lockhart Power also proposes to provide informal public access for fishing at the project, including at the impoundment, tailrace, and bypass reach.

All proposed recreation facilities would be located within the project boundary. The proposed portage trail and parking area would be located entirely on lands owned by the Woodruff Roebuck Water District. The trail would follow two separate transmission line ROW, owned and maintained by Duke Energy, that cross the Water District's property. Lockhart Power has proposed to operate and maintain the recreation facilities through an agreement with the Water District. FWS, South Carolina DNR, and American Rivers concur with the proposed recreation measures.

*Our Analysis*

Lockhart Power's proposed recreation enhancement measures, including the canoe take-out, put-in, and portage trail would address the need for canoe trail development in the region, as identified by the South Carolina State Trails Plan (2002) and South Carolina SCORP (2008). The addition of a formal portage trail along with signs identifying the canoe take-out and put-in would improve access to the outdoors and enhance the quality of the recreation experience on the Enoree River. Signage and parking would improve accessibility and provide information about recreation opportunities at the site.

Increased recreation use induced by the proposed recreation features may negatively affect wildlife and aquatic habitat at the project. However, by formalizing recreation access, Lockhart Power would have more opportunities to manage the effects of recreation on sensitive areas. For example, although the portage trail may bring additional recreation use to the area, it would also protect terrestrial resources from the effects of informal portaging that may already be occurring. The shoals in the bypassed reach, a unique habitat on the Enoree River, would be protected by guiding users to a developed put-in, rather than dispersing access along the reach. The spread of non-native invasive terrestrial plant species, such as Japanese stilt grass, would be minimized by restricting foot traffic to the maintained transmission line ROW.

Lockhart Power expects that the public would continue informal use of the impoundment and areas downstream from the dam for fishing or sightseeing. Signage indicating standard safety measures, as required as part of any Commission-issued license, would ensure that public access would not compromise project operations, safety, or security. Additional signage referring to ''pack-it-in, pack-it-out'' garbage disposal at the parking area, as well as the canoe take-out and put-in, could limit negative effects of public use on the surrounding environment. The Licensed Hydropower Development Recreation Report (Form 80—filed every 6 years) would allow Lockhart Power to assess recreation use at the project and determine if additional measures would be needed to address future recreation use.

*Effects of Project Operation and Flows on Recreation*

Project operation has the potential to affect recreational boating at the project. Lockhart Power proposes to operate the project in ROR mode with daily peaking, as well as maintain continuous minimum flows of 50 cfs in the bypassed reach during project operations. See section 2.2.1, *Proposed Project Operation,* for a more detailed description of Lockhart Power's proposal. Interior and South Carolina DNR recommend Lockhart Power provide minimum flows to the bypassed reach that are consistent with the Water Plan. American Rivers recommends seasonally-adjusted, continuous instream flows for the bypassed reach. The minimum flows recommended by Interior, South Carolina DNR, and American Rivers are higher than those recommended by Lockhart Power.

*Our Analysis*

The proposed canoe put-in, which would be located downstream from the dam on the shore of the bypassed reach, may be unusable under low-flow conditions. In situations where the canoe launch is unusable, boaters would be required to portage to an area farther downstream past the confluence of the Enoree River and the project tailrace. Informal portaging could affect wildlife habitat or increase the spread of invasive plant species.

Higher minimum flows in the bypassed reach, as recommended by Interior, South Carolina DNR, and American Rivers would provide greater latitude for boat launching in the bypassed reach. However, the effect of diverting flows from the bypassed reach is unlikely to be significant because during summer months or in drought conditions, much of the Enoree River is too shallow for recreational boating, independent of project operations.

Spring and fall are the primary boating seasons on the Enoree, and during those periods flows through the project would be sufficient for use of the proposed portage trail and canoe put-in.

Flow fluctuations associated with peaking also have the potential to affect recreational flows downstream from the project in the Enoree River. As discussed in section 3.3.2, Aquatic Resources, peaking operations would ultimately alter the existing natural flow regime to one of increased daily fluctuation downstream from the tailrace and in the bypassed reach. Lower flow through the project when the project's impoundment recharges would negatively affect recreation downstream from the project by increasing the likelihood that boaters would need to portage shallow areas of the river. However, pulses of higher flows when peaking operation begins may provide recreational benefits by providing additional boating depth downstream from the project. Because Lockhart Power anticipates operating in ROR mode for much of the time, the effects of peaking operations are expected to be minimal.

Drawdowns of the project impoundment associated with peaking operations, may also affect use and maintenance of the proposed canoe take-out and recreational boating upstream of the dam. However, standard canoe launch designs can accommodate a wide range of river levels, with proper siting and maintenance. Lockhart Power's proposed canoe take-out would be a positive amenity on a section of the river that currently is undeveloped for recreation. Additionally, conditions for recreational boating immediately upstream of the project may improve with repair to the project's flashboards and maintenance of the project impoundment.

*Land Use*

Lockhart Power proposes to restore the project to operating status and construct recreation enhancements within the project boundary. In addition, Lockhart Power proposes to maintain all lands within 25 feet of the project shorelines as a forested riparian buffer, unless those lands are required for other project purposes. Lockhart Power also proposes to negotiate with the Water District regarding maintenance of forested riparian buffers on any lands that the applicant cannot obtain through purchase. FWS and South Carolina DNR concur with the proposed land management measures to stabilize erosion of project shorelines, reduce runoff into the Enoree River, and provide wildlife habitat.

*Our Analysis*

Refurbishing, operating, and maintaining the proposed project would have no effect on land use within the project boundary. The addition of a portage trail would add additional recreation lands to the project boundary; however, that use would be consistent with existing land use. Additionally, the portage trail would follow two existing transmission line ROW, limiting ground disturbance and reducing the potential for effects on terrestrial habitat within the project boundary.

The applicant's proposal to maintain a 25-foot forested buffer along project shorelines would be consistent with the recommendations by FWS and South Carolina DNR to protect shoreline and riparian habitats. Additional analysis of measures to reduce erosion, prevent runoff, and protect wildlife habitat are discussed in sections 3.3.1., *Geologic and Soil Resources,* and 3.3.3., *Terrestrial Resources.*

The Enoree River's designation on the NRI would not be affected by the proposed project. The reach of the Enoree River from RM 0 to RM 98 was listed on the NRI in 1982, when the project was operational. Returning the project to operating status would be unlikely to significantly affect or alter the character of the river. Further, the addition of a portage trail would improve recreation access to a reach of the Enoree River that has been identified for its outstanding recreation value.

**3.3.6 Cultural Resources**

**3.3.6.1 Affected Environment**

*Area of Potential Effects*

Section 106 of the NHPA of 1966, as amended, requires that the Commission evaluate the potential effects of continued operation of the project on properties listed or eligible for listing on the National Register. Such properties listed, or eligible for listing, in the National Register are called historic properties. In this case, the Commission must take into account whether any historic property could be affected within the project's area of potential effects (APE). The APE is defined as the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. We define the APE for the proposed Riverdale Project as: (1) Lands enclosed by the proposed project boundary; and (2) lands or properties adjoining the proposed project boundary, where the authorized project uses may cause changes in the character or use of historic properties, if historic properties exist.

*Cultural History Overview*

The archaeological record dates Native American presence in central South Carolina to at least the late Paleo-Indian period (11,000 B.C.-8,000 B.C.). The earliest Native Americans in the area used the region to forage and hunt on a seasonal basis. Over the Archaic (8,000 B.C.-1,000 B.C.) and Woodland (1,000 B.C.-1000 A.D.) periods, Native populations grew larger and more sedentary. These populations developed trade networks and became more dependent on agriculture for subsistence (FERC, 2010). Prior to European settlement, the primary Native American groups in the region were the Catawba and Cherokee. The Cherokee maintained territory in the area of Spartanburg County until 1777 (Benson, 2006).

Permanent European settlement in South Carolina began in 1670 on the Ashley River near present-day Charleston. By 1700, settlers had moved inland and up the Congaree River to the fall line (south of present-day Columbia, South Carolina), which marked the upper limit of navigation. Modern industrial development of upstate South Carolina began in 1815 with the construction of series of water-powered textile mills in Greenville and Spartanburg counties. Many early mills failed due to lack of capital, shortage of workers, limited distribution, and competition from more established textile mills in New England and New York. Following the Civil War, local investors began to renew their interest in the region's textile mills.

In 1888, a group of Charleston investors purchased property for the Riverdale Mill, which was constructed between two hills with Two Mile Creek running under the factory. The project's original hydroelectric facilities, including the dam, forebay, headrace, penstock, and turbine were installed between 1910 and 1913 and were used to power the manufacturing operations at the mill. The mill changed owners several times during the twentieth century, being last owned by Inman Mills, which refurbished the project's turbine and penstock in the 1980s. The project has been inoperable since 2001, when the adjacent textile mill was closed. The original mill buildings and powerhouse were removed by the current owner and the original concrete and brick masonry powerhouse was replaced with a wood frame building with a wood truss roof system and asphalt shingles.

*Archeological Resources and Historic Properties*

There are no known archeological sites or historic properties that would be affected by the proposed Riverdale Project. As discussed previously, while the project dates from the early 20th century, many of the mill's original facilities were removed in recent years.

**3.3.6.2 Environmental Effects**

On November 23, 2009, the Commission designated Lockhart Power as a non-federal section 106 representative, which enabled it to conduct the day-to-day section 106 consultation responsibilities pursuant to 36 CFR § 800.2(c)(4) of the Preservation Act regarding their proposal to repair or upgrade the existing turbine unit and return the project to operation. By letter dated December 7, 2009 and filed as part of the license application on August 31, 2010, the South Carolina SHPO determined that no historic properties listed in, or eligible for listing in, the National Register would be affected by the project.

By letter filed September 30, 2010, the Catawba Indian Nation stated that they have no immediate concerns with regard to traditional cultural properties, sacred sites, or Native American archeological sites at the project. The Catawba Indian Nation also commented that the tribe should be notified if Native American artifacts and/or human remains are located during ground disturbing activities. In comments e-filed January 18, 2012, the Catawba Indian Nation requested that the applicant consult with the tribe prior to any ground disturbing activities and indicated that a cultural resource survey involving shovel testing would likely be required.

*Our Analysis*

Based on the assessment of the South Carolina SHPO and the information in the record for this proceeding, operation of the proposed project would not alter the historic character of existing structures. In addition, there would be no historic properties affected by the construction and operation of the proposed project.

At this time, there is also no evidence indicating the presence of archeological properties within the project's APE that would warrant a cultural resource survey and shovel testing as recommended by the Catawba Indian Nation. However, it is possible that unknown archaeological or historic resources may be discovered in the future as a result of project construction, operation, or other project related activities. If such resources are discovered, immediately stopping work and consulting with the Commission, the South Carolina SHPO and the Catawba Indian Nation to define appropriate treatment would prevent any further harm to previously unidentified archaeological or cultural artifacts.

**3.4 No-Action Alternative**

Under the no-action alternative, the Riverdale Project would not be refurbished, operated, and maintained by Lockhart Power. There would be no changes to the physical, biological, or cultural resources of the area, and electrical generation from the project would not occur. The power that would have been developed from a renewable resource would have to be replaced from nonrenewable fuels. The proposed public recreation amenities and access points would not be built and public access to the Enoree River in this area would not be available.

**4.0 Developmental Analysis**

In this section, we look at the Riverdale Project's use of the Enoree River for hydropower purposes to see what effect various environmental measures would have on the project's costs and power benefits. Under the Commission's approach to evaluating the economics of hydropower projects, as articulated in *Mead Corp.,*[54] the Commission compares the current project cost to an estimate of the cost of obtaining the same amount of energy and capacity using a likely alternative source of power for the region (cost of alternative power). In keeping with Commission policy as described in Mead, our economic analysis is based on current electric power cost conditions and does not consider future escalation of fuel prices in valuing the hydropower project's power benefits.

For each of the licensing alternatives, our analysis includes an estimate of: (1) The cost of individual measures considered in the EA for the protection, mitigation, and enhancement of environmental resources affected by the project; (2) the cost of alternative power; (3) the total project cost (i.e. for construction, operation, maintenance, and environmental measures); and (4) the difference between the cost of alternative power and the total project cost. If the difference between the cost of alternative power and the total project cost is positive, the project would produce power for less than the cost of alternative power. If the difference between the cost of alternative power and the total project cost is negative, the project would produce power for more than the cost of alternative power. This estimate helps to support an informed decision concerning what is in the public interest with respect to a proposed license. However, project economics is only one of many public interest factors the Commission considers in determining whether, and under what conditions, to issue a license.

**4.1 Power and Developmental Benefits of the Project**

Table 12 summarizes the assumptions and economic information we use in our analysis. This information was provided by Lockhart Power in its license application and its responses to staff's additional information requests. We find that the values provided by Lockhart Power are reasonable for the purposes of our analysis. Cost items common to all alternatives include: Taxes and insurance costs; net investment (the total investment in power plant facilities to be depreciated); estimated future capital investment required to maintain and extend the life of plant equipment and facilities; licensing costs; normal operation and maintenance cost; and Commission fees. Throughout this section all dollars are 2013, unless otherwise specified.

TABLE 12—PARAMETERS FOR THE ECONOMIC ANALYSIS OF THE PROPOSED RIVERDALE PROJECT

[Source: Staff and Lockhart Power]

| Economic parameter | Value |
|---|---|
| Average annual generation (MWh). | 4,895.[a] |
| Composite power value | $72.31/MWh.[b] |
| Period of analysis | 30 years. |
| Term of financing | 20 years. |
| Capital investment | $5,225,000.[c] |
| License application cost | $200,000.[a] |
| Interest/discount rate | 7.0 percent.[d] |
| Federal tax rate | 34 percent.[d] |
| State tax | 3.0 percent.[d] |
| Insurance (percent) | 0.25. |
| Annual Operation and Maintenance. | $81,000.[d] |

[a] Value from license application dated August 31, 2010, as clarified in Lockhart Power's responses to staff's additional information request, filed on August 5, 2011.

[54] See *Mead Corporation, Publishing Paper Division,* 72 FERC ¶ 61,027 (July 13, 1995). In most cases, electricity from hydropower would displace some form of fossil-fueled generation, in which fuel cost is the largest component of the cost of electricity production.

[b] The composite power value was provided by Lockhart Power and incorporates peak and off-peak energy and capacity rates and a value for Renewable Energy Credits offered by North Carolina. The basis of these values is a power purchase contract currently offered by Duke Energy Carolinas, LLC.

[c] This value includes staff's estimate of cost to purchase the project site and Lockhart Power's estimate to rehabilitate the project features.

[d] Assumed by staff.

### 4.2 Comparison of Alternatives

Table 13 summarizes the installed capacity, annual generation, cost of alternative power, estimated total project cost, and the difference between the cost of alternative power and total project cost for the three alternatives considered in this EA: No-action, Lockhart Power's proposal, and the staff alternative.

TABLE 13—SUMMARY OF ANNUAL COST, POWER BENEFITS, AND ANNUAL NET BENEFITS OF THE ALTERNATIVES FOR THE RIVERDALE PROJECT

[Source: Staff]

| Parameter | No-action | Lockhart Power's proposal | Staff alternative |
|---|---|---|---|
| Annual generation (MWh) | 0.0 | 4,895 | 4,370 |
| Annual cost of alternative power | $0 | $353,957 | $315,995 |
| ($/MWh) | 0.00 | 72.31 | 72.31 |
| Annual project cost | $0.00 | $619,336 | $613,481 |
| ($/MWh) | 0.00 | 126.52 | 140.38 |
| Difference between the cost of alternative power and project cost | $0.0 | ($265,378) | ($297,487) |
| ($/MWh) | 0.00 | (54.21) | (68.07) |

**Note:** A number in parentheses denotes that the difference between the cost of alternative power and project cost is negative, thus the total project cost is greater than the cost of alternative power.

#### 4.2.1 No-Action Alternative

Under the no-action alternative, Lockhart Power would not rehabilitate the Riverdale Project; the project would not generate electricity; and no environmental protection, mitigation, or enhancement measures would be implemented.

#### 4.2.2 Lockhart Power's Proposal

The Riverdale Project has been inoperable since 2001. After repairing the hydroelectric facilities, Lockhart Power proposes to operate the project in a ROR mode, with daily peaking under certain flow conditions. Upon completion of the proposed repairs, the project's installed capacity would be 1.24 MW and would generate an average of 4,895 MWh of electricity annually. The average annual cost of alternative power under Lockhart Power's proposal would be about $353,957 ($72.31/MWh). The average annual project cost would be about $619,336 ($126.52/MWh). Overall, the project would produce power at a cost that is about $265,378 ($54.21/MWh) more than the cost of alternative power.

#### 4.2.3 Staff Alternative

The staff alternative includes most of the measures proposed by Lockhart Power, with some modifications and additional recommended measures. The additional staff-recommended measures that would increase the annual cost of the project include: (a) A soil erosion and sediment control plan; (b) a sediment management plan; (c) a shoreline stabilization plan; (d) a water quality monitoring plan; (e) higher continuous minimum flows in the bypassed reach; (f) an operation compliance monitoring plan; (g) an invasive vegetation monitoring and control plan; and (h) an evaluation of the project transmission line consistency with APLIC guidelines.

Under the staff alternative, the project would generate an average of 4,370 MWh of electricity annually. The average annual cost of alternative power under the staff alternative would be about $315,995 ($72.31/MWh). The average annual project cost would be about $613,481 ($140.38/MWh). Overall, the project would produce power at a cost that is about $297,487 ($68.07/MWh) more than the cost of alternative power. The staff alternative would increase the annual project cost about $32,109, or about $13.86/MWh, compared to the project as proposed by Lockhart Power.

### 4.3 Cost of Environmental Measures

Table 14 gives the cost of each of the environmental enhancement measures considered in our analysis.[55] We convert all costs to equal annual (levelized) values over a 30-year period of analysis to give a uniform basis for comparing the benefits of a measure to its cost.

TABLE 14—COST OF ENVIRONMENTAL MITIGATION AND ENHANCEMENT MEASURES CONSIDERED IN ASSESSING THE ENVIRONMENTAL EFFECTS OF REFURBISHING, OPERATING, AND MAINTAINING THE RIVERDALE PROJECT

[Source: Staff and Lockhart Power]

| Enhancement/mitigation measure | Entities | Capital cost (2013$) | Annual cost (2013$) | Levelized cost (2013$) |
|---|---|---|---|---|
| **Geology and Soils Resources** | | | | |
| 1. Develop and implement a soil erosion and sediment control plan, which includes the BMPs described in the South Carolina DHEC's Stormwater BMP Handbook. | South Carolina DNR, Staff. | 5,000 | 0 | 390 |

[55] Lockhart Power provided costs for specific protection, mitigation, and enhancement measures in its license application dated August 31, 2010, and in its responses to the Commission's additional information request (Lockhart Power, 2011a; 2011b; 2012).

TABLE 14—COST OF ENVIRONMENTAL MITIGATION AND ENHANCEMENT MEASURES CONSIDERED IN ASSESSING THE ENVIRONMENTAL EFFECTS OF REFURBISHING, OPERATING, AND MAINTAINING THE RIVERDALE PROJECT—Continued

[Source: Staff and Lockhart Power]

| Enhancement/mitigation measure | Entities | Capital cost (2013$) | Annual cost (2013$) | Levelized cost (2013$) |
|---|---|---|---|---|
| 2. Implement a sediment management plan that consists of using the sand gates for periodic inspections and maintenance drawdowns and, if possible, avoiding drawdowns from March 15 through June 1. | Lockhart Power ..... | 0 | [a] 0 | 0 |
| 3. Develop and implement a sediment management plan that includes provisions to: (a) Test impoundment sediments for heavy metals and other contaminants prior to beginning in-water construction activities; (b) prepare a contingency plan for proper disposal [b] of any contaminated sediments found in the impoundment; (c) monitor sediment accumulation in the impoundment annually; (d) develop criteria that would trigger, sediment removal and proper disposal, if necessary; (e) conduct maintenance drawdowns in late fall and winter (November through January); (f) avoid drawdowns from March 15 through June 1, if possible; and (g) file an annual report. | Interior, South Carolina DNR, Staff. | [c] 12,000 | [d] 1,000 | 1,597 |
| 4. Develop and implement a shoreline stabilization plan with provisions to: (a) Identify eroding or potential project-induced erosion sites on project shorelines prior to operation; (b) stabilize areas of shoreline erosion; (c) monitor shorelines after resuming operation and implement stabilization techniques as necessary; (d) conduct shoreline stabilization activities from September through February if possible; and (e) file an annual report. | Interior, Staff ..... | 5,000 | 1,000 | 1,050 |
| **Aquatic Resources** | | | | |
| 5. Develop and implement a water quality monitoring plan with provisions to: (a) Monitor DO, temperature, and turbidity prior to the start of construction, during construction, and for 1 year after project operation begins; (b) define sampling methods, timing, and locations for monitoring these parameters in consultation with South Carolina DHEC, FWS, and NMFS; and (c) file a report that presents the monitoring data, describes any project-related effects and identifies corrective actions if necessary. | Interior, NMFS, Staff. | 20,000 | 0 | 1,561 |
| 6. Maintain a minimum flow of 50 cfs in the bypassed reach and a total minimum continuous flow of 60 cfs downstream from the project. | Lockhart Power ..... | 0 | 30,567 | [e] 20,174 |
| 7. Provide the following seasonal minimum instream flows into the bypassed reach (based on the South Carolina Water Plan and a MADF of 393 cfs): 79 cfs (July–November), 118 cfs (May, June, and December), and 157 cfs (January–April). | Interior,[f] South Carolina DNR, NMFS, American Rivers. | 0 | 122,501 | [e] 80,851 |
| 8. Provide a continuous minimum instream flow of 75 cfs into the bypassed reach. | Staff ..... | 0 | 69,000 | [e] 45,540 |
| 9. Develop and implement a plan to release required minimum flows into the bypassed reach that includes: (a) A feasibility assessment for using the sand gates as a flow-release mechanism; (b) if found to be feasible, a study to determine how the sand gates would be used to distribute flow into the bypassed reach; (c) if the sand gates are not feasible, a description of how the minimum instream flows would be provided to the bypassed reach; (d) a report documenting the outcome of the feasibility assessment, flow study, and consultation with the agencies; and (e) an implementation schedule. | Interior, South Carolina DNR, NMFS, Staff. | 7,000 | 0 | 546 |
| 10. Develop and implement a low inflow protocol/drought contingency plan. | South Carolina DNR, Interior, staff. | 5,000 | 0 | 390 |
| 11. Develop and implement an operation compliance monitoring plan that includes: (a) A rating curve to provide the seasonally defined flows; (b) protocols to monitor and document compliance with required flows; (c) protocols to monitor and document impoundment fluctuations; and (d) an implementation schedule. | Lockhart Power, Staff. | 15,000 | 1,500 | 2,161 |
| 12. Modify trash rack bar spacing at the headrace intake by decreasing the spacing from 2.25 inches to 1 inch. | Interior ..... | 15,000 | 0 | 1,171 |

TABLE 14—COST OF ENVIRONMENTAL MITIGATION AND ENHANCEMENT MEASURES CONSIDERED IN ASSESSING THE ENVIRONMENTAL EFFECTS OF REFURBISHING, OPERATING, AND MAINTAINING THE RIVERDALE PROJECT—Continued

[Source: Staff and Lockhart Power]

| Enhancement/mitigation measure | Entities | Capital cost (2013$) | Annual cost (2013$) | Levelized cost (2013$) |
|---|---|---|---|---|
| 13. Conduct fish surveys before and after construction, and 1 year after construction is complete. | Interior | 30,000 | 0 | 2,341 |
| 14. Conduct comprehensive invertebrate surveys before and after construction, and 1 year after construction is complete. | Interior | 9,000 | 0 | 702 |
| **Terrestrial Resources** | | | | |
| 15. Implement BMPs to protect vegetation within the project boundary, such as limiting vegetation and ground-disturbing activities and maintaining a minimum 25-foot-wide forested riparian buffer on project shorelines, as long as this does not interfere with Lockhart Power's ability to perform project-related activities. | Lockhart Power, Interior, South Carolina DNR, and Staff. | [g] 0 | [g] 0 | 0 |
| 16. Develop and implement an invasive vegetation monitoring and control plan that includes: (a) Survey methods to determine the extent of alligatorweed in the impoundment and riparian area prior to beginning refurbishment activities; (b) BMPs, as well as monitoring and control methods to prevent the spread of alligatorweed in the impoundment to areas downstream from the dam during project refurbishment; (c) monitoring protocols to detect the introduction or spread of other invasive plants within the project boundary during operation and maintenance; (d) criteria that would determine when corrective actions would be required; and (e) a schedule for filing monitoring reports and any recommended control measures. | Staff | [h] 6,000 | [h] 1,000 | 1,128 |
| 17. Determine if the project transmission line is consistent with APLIC guidelines, consult with FWS, and file a report with the Commission describing the results of the evaluation and any measures recommended by FWS. | Staff | [h] 5,000 | 0 | 390 |
| **Recreational and Land Use** | | | | |
| 18. Construct and maintain a canoe take-out located approximately 220 feet upstream of the dam; a canoe put-in located approximately 1,075 feet downstream from the dam; a 1,650-foot-long portage trail connecting the proposed canoe take-out and put-in; and a parking area located adjacent to the proposed portage trail. | Lockhart Power, Interior, South Carolina DNR, and Staff. | 15,000 | 4,000 | [e] 3,811 |
| 19. Provide informal public access for fishing at the project impoundment, tailrace, and bypassed reach. | Lockhart Power, Interior, South Carolina DNR, and Staff. | 0 | 0 | 0 |
| 20. Install informational signage that includes: (1) Identification of the canoe take-out and put in; (2) directions from the parking area to river access points; and (3) information regarding garbage disposal. | Lockhart Power, Staff. | [i] 0 | 1,000 | [e] 660 |
| **Cultural Resources** | | | | |
| 21. Stop work and notify the South Carolina SHPO and the Catawba Indian Nation, and follow the South Carolina SHPO's guidance if any unknown archaeological resources are discovered as a result of project construction, operation, or project-related activities. | Staff | 0 | 0 | 0 |
| 22. Consult with the Catawba Indian Nation prior to any ground disturbing activities, and conduct a cultural resource survey involving shovel tests, if necessary. | Catawba Indian Nation. | [h] 10,000 | 0 | 780 |

[a] Sediment management would occur in conjunction with periodic inspections and maintenance activities. There are no additional costs associated with this measure.

[b] We assume that the cost of initial sediment disposal, if necessary, is included in Lockhart Power's estimates for project refurbishment.

[c] This cost includes the initial/capital cost of monitoring sediment accumulation in the impoundment.

[d] The precise frequency of monitoring sediment accumulation would likely be determined after consultation with the South Carolina DHEC, the Corps, South Carolina DNR, and Interior.

[e] In many cases in this table, the 30-year levelized cost is lower than the annual cost (i.e. operation and maintenance cost). The reason for this is the levelized cost includes an estimate of tax savings that the applicant would realize due to the combined high capital (including interest and depreciation) and operation and maintenance costs of the measure.

[f] Interior's recommendation actually called for a seasonal flow of 80 cfs from July through November instead of 79 cfs.

[g] We estimate that the implementation of the measure would not result in any appreciable additional cost.
[h] Cost estimated by staff.
[i] This cost is included in the $15K for constructing and maintaining the portage trail. The additional staff measures are not expected to increase the overall cost.

## 5.0 Conclusions and Recommendations

### 5.1 Comparison of Alternatives

In this section we compare the development and non-developmental effects of Lockhart Power's proposal, Lockhart Power's proposal as modified by staff, and the no-action alternative. We estimate the annual generation of the project under those three alternatives. Our analysis shows that the annual generation would be 4,895 MWh for the proposed action and 4,370 MWh for the staff alternative. Under the no-action alternative, no power would be generated. We summarize the environmental effects of the different alternatives below in table 15.

TABLE 15—COMPARISON OF ALTERNATIVES FOR THE RIVERDALE PROJECT

[Source: staff]

| Resource | No action alternative | Proposed action | Staff recommended alternative |
|---|---|---|---|
| Generation | 0 MWh | 4,895 MWh | 4,370 MWh. |
| Geology and Soils | Impoundment sediments would continue to accumulate and be flushed downstream from the dam during high flows. | Project refurbishment would disturb about 2 acres of vegetation. Implementing BMPs would minimize soil disturbance and erosion. Avoiding drawing down the impoundment between March 15 and June 1 would prevent the release of large quantities of sediment into the bypassed reach in the Enoree River during fish spawning season. | Same as proposed action, but implementing a site-specific soil erosion and sediment control plan and a more clearly defined sediment management plan would more effectively minimize erosion and impoundment sediment loads, helping to prevent an accidental release of large quantities of sediment downstream. Implementing a shoreline stabilization plan would further reduce potential erosion and sedimentation during operations and also benefit fish and wildlife in the riparian and littoral areas of the project. |
| Water Quality (*during construction*). | No change in existing water quality conditions. | Short-term increases in turbidity and sedimentation during rehabilitation; BMPs would minimize erosion and sedimentation. | Same proposed action, but implementing a water quality monitoring plan during pre- and post- construction activities would provide a mechanism to identify and address water quality effects. |
| Water Quality (*post-construction*). | No change in existing water quality conditions. | Project flow diversions could reduce DO levels and raise water temperatures in bypassed reach. | Same as proposed action, except higher minimum flows would reduce the potential for elevated temperatures and low DO levels. Implementing a water quality monitoring plan would detect any effects to water quality caused by project operations and maintenance. |
| Fishery Resources (*during construction*). | No change to the fishery resources. | Short-term increases in turbidity and sedimentation during construction could adversely affect fish habitat in the Enoree River downstream from the dam. | Same as proposed action, except that implementation of a water quality monitoring plan and a soil erosion and sediment control plan during construction activities may minimize adverse effects of turbidity and sedimentation on fish habitat downstream from the dam. |
| Fishery Resources (*post-construction*). | No change to the fishery resources. | Reduction of flow to 50 cfs in the bypassed reach and 60 cfs downstream from the project would likely result in poor to low quality fishery and benthic habitat conditions in the bypassed reach; Impoundment surface elevation fluctuations of up to 4 feet below full pool with associated adverse effects on impoundment fish habitats; Entrainment of fish through the development's 2.25-inch trashrack. | Same as the proposed action except that minimum flows in the bypassed reach would be reduced to 75 cfs year-round. Minimum flows would maintain adequate conditions for fish and benthic macroinvertebrates. |
| Terrestrial Resources | No change in existing conditions. | Project refurbishment, operation, and maintenance would result in minor, temporary disturbances to upland vegetation and wildlife. However, in-water repair work, peaking operation, and sediment management activities could fragment and spread alligatorweed from the impoundment to areas downstream or facilitate introduction of other invasive plants. In addition, project transmission lines may represent an electrocution hazard to birds. | Same as proposed action, except developing and implementing an invasive vegetation monitoring and control plan, would minimize spread and introductions of non-native invasive plants and benefit native plant communities and the fish and wildlife in the project area. In addition, evaluating the transmission line for consistency with APLIC guidelines and consulting with FWS to identify mitigative measures, if needed, would minimize the risk of avian electrocution. |
| Wetlands | No effect | No effect | No effect. |

TABLE 15—COMPARISON OF ALTERNATIVES FOR THE RIVERDALE PROJECT—Continued

[Source: staff]

| Resource | No action alternative | Proposed action | Staff recommended alternative |
|---|---|---|---|
| Threatened and Endangered Species. | No effect | No effect | No effect. |
| Recreational Access | No effect | The addition of a portage trail, parking, and directional signage would improve canoe portaging around the project. | Same as the proposed action. Additional signage requesting visitors to pack out their garbage would reduce the likelihood that any increase in recreation use at the project would negatively affect the surrounding environment. |
| Land Use | No effect | Slight increase in recreation land use within the project boundary. This use would be consistent with existing land uses, and, therefore, would have no adverse effect. | Same as proposed action. |
| Cultural Resources | No effect | No effect | No effect. However, if any unknown archaeological resources were found, Lockhart Power would stop work and notify the South Carolina SHPO and the Catawba Indian Nation. |

**5.2 Comprehensive Development and Recommended Alternative**

Sections 4(e) and 10(a)(1) of the FPA require the Commission to give equal consideration to the power development purposes and to the purposes of energy conservation; the protection, mitigation of damage to, and enhancement of fish and wildlife; the protection of recreational opportunities; and the preservation of other aspects of environmental quality. Any license issued shall be such, as in the Commission's judgment, will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for all beneficial public uses. This section contains the basis for, and a summary of, our recommendations for licensing the Riverdale Project. We weigh the costs and benefits of our recommended alternative against other proposed measures.

Based on our independent review of agency and public comments filed on this project and our review of the environmental and economic effects of the proposed project and its alternatives, we selected the staff alternative, as the preferred option. We recommend this option because: (1) Issuance of a hydropower license for the project would allow Lockhart Power to develop and operate the project and provide a dependable source of electrical energy for the region (4,370 MWh annually); (2) the 1.24 MW of electric energy generated from a renewable resource may offset the use of fossil-fueled, steam-electric generating plants, thereby conserving non-reviewable resources and reducing atmospheric pollution; (3) the public benefits of this alternative would exceed those of the no-action alternative; and (4) the recommended environmental measures would protect and enhance environmental resources affected by the project.

In the following section, we make recommendations as to which environmental measures proposed by Lockhart Power or recommended by agencies and other entities should be included in any license issued for the project. In addition to Lockhart Power's proposed environmental measures, we recommend additional staff-recommended environmental measures to be included in any license issued for the project. We also discuss which measures we do not recommend including in the license.

Measures Proposed by Lockhart Power

Based on our environmental analysis of Lockhart Power's proposal discussed in section 3.0, *Environmental Analysis,* and the costs discussed in section 4.0, *Developmental Analysis,* we conclude that the following measures proposed by Lockhart Power would protect and enhance environmental resources in the project area, and would be worth the cost. Therefore, we recommend including these measures in any license issued for the project.

- Implement BMPs to protect vegetation within the project boundary, such as limiting vegetation and ground-disturbing activities and maintaining a minimum 25-foot-wide forested riparian buffer on project shorelines, as long as this does not interfere with Lockhart Power's ability to perform project-related activities.
- Construct and maintain: (1) A canoe take-out located approximately 220 feet upstream of the dam; (2) a canoe put-in located approximately 1,075 feet downstream from the dam; (3) a 1,650-foot-long portage trail connecting the proposed canoe take-out and put-in; (4) a parking area located adjacent to the proposed portage trail; and (5) signage to improve public access at the project and to the Enoree River.
- Provide informal public access for fishing at the project impoundment, tailrace, and bypassed reach.

Additional Measures Recommended by Staff

We recommend the measures described above, as well as 12 additional staff-recommended measures and modifications to Lockhart Power's proposed measure(s). These additional and modified measures include the following:

- Develop and implement a site-specific soil erosion and sediment control plan, which includes the BMPs described in the South Carolina DHEC's Stormwater BMP Handbook, to minimize erosion and sedimentation during soil-disturbing activities associated with project construction and repairs.
- Develop and implement a sediment management plan that includes provisions to: (a) Test impoundment sediments for heavy metals and other contaminants prior to beginning in-water project construction activities and initial operation; (b) prepare a contingency plan for proper disposal of any contaminated sediments that may be found in the impoundment; (c) monitor sediment accumulation in the impoundment annually to facilitate planning of sediment management activities; (d) develop criteria that would trigger sediment removal from the impoundment (i.e. by opening the sand gates, if appropriate, during high flow events, or via mechanical

methods); (e) conduct sediment management activities during the months of November through January except during high rain events (e.g. tropical storms or hurricanes); (f) avoid maintenance activities that would draw down the impoundment below normal operating levels and potentially pass sediment into the bypassed reach from March 15 through June 1, if possible, to minimize adverse impacts to spawning fish; and (g) prepare annual reports with sediment monitoring results, sediment management activities, and an evaluation of the effectiveness of the plan in minimizing sediment accumulation in the impoundment.

• Develop and implement a shoreline stabilization plan that includes provisions to: (a) Identify eroding or potential project-induced erosion sites on the project shorelines prior to beginning operation; (b) stabilize areas of shoreline erosion using native vegetation, bio-engineering, slope flattening, toe armoring with anchored logs, and/or riprap that incorporates native vegetation plantings; (c) monitor shorelines after resuming operation, and implement stabilization measures if project-induced erosion is identified; (d) conduct shoreline stabilization activities from September through February to protect aquatic species and wildlife; and (e) file annual reports describing monitoring results and any implemented shoreline stabilization measures.

• Develop and implement a water quality monitoring plan that includes provisions to: (a) Monitor DO, temperature, and turbidity prior to the start of project construction, during construction, and for 1 year after project operation begins to ensure the levels specified by the current state water quality standards are met and aquatic resources are protected; (b) define sampling methods, timing, and locations for these parameters in consultation with South Carolina DHEC, FWS, and NMFS; and (c) file a report that presents the monitoring data, describes any project-related effects and identifies corrective actions if necessary.

• Release a continuous minimum flow of 75 cfs in the bypassed reach to protect aquatic habitat.

• Develop and implement a plan to release required minimum flows into the bypassed reach that includes: (a) A feasibility assessment for using the sand gates as a flow-release mechanism; (b) if found to be feasible, a flow study to determine how the sand gates would be used to distribute flow into the bypassed reach to protect aquatic habitats; (c) if the sand gates are not feasible, a description of how the minimum instream flows would be provided to the bypassed reach; (d) a report documenting the outcome of the feasibility assessment, flow study, and consultation with the agencies; and (e) an implementation schedule.

• Develop and implement a low inflow protocol/drought contingency plan to define periods of extended drought and the low inflow protocols to minimize adverse effects on generation, and on fish and wildlife, water quality, water supply, and generation.

• Develop and implement an operation compliance monitoring plan that includes: (a) A rating curve to provide the seasonally defined flows; (b) protocols to monitor and document compliance with required flows; (c) protocols to monitor and document impoundment fluctuations; and (d) an implementation schedule.

• Develop and implement an invasive vegetation monitoring and control plan that includes: (a) Survey methods to determine the extent of alligatorweed in the impoundment and riparian area prior to beginning refurbishment activities; (b) BMPs, as well as monitoring and control methods to prevent the spread of alligatorweed in the impoundment to areas downstream from the dam during project refurbishment; (c) monitoring protocols to detect the introduction or spread of other invasive plants within the project boundary during project operation and maintenance; (d) criteria that would determine when control measures would be required; and (e) a schedule for filing monitoring reports and any recommended control measures with the Commission.

• Determine whether the existing project transmission line is consistent with APLIC guidelines. Identify, in consultation with FWS, measures to minimize potential electrocution hazards to birds and file a report with the Commission describing the results of the evaluation and any measures recommended by FWS.

• Install informational signage that includes: (a) Identification of the canoe take-out and put in; (b) directions from the parking area to river access points; and (c) information regarding garbage disposal in order to improve public information available at the project and protect environmental resources.

• Stop work and notify the South Carolina SHPO and the Catawba Indian Nation if any unknown archaeological resources are discovered as a result of project construction, operation, or project-related activities to avoid, lessen, or mitigate potential adverse effects.

We discuss the basis for our recommended measures below.

*Soil Erosion and Sediment Control Plan*

Project refurbishment, tailrace dredging, and construction of the proposed canoe take-out, put-in, and portage trail would result in soil-disturbing activities that could increase turbidity and sedimentation in the Enoree River. Lockhart Power's proposal would limit ground-disturbing activities to previously disturbed areas within the footprint of the former textile mill and associated parking lots and roadways, minimizing adverse effects on vegetated areas. Developing a site-specific soil erosion and sediment control plan that includes standard industry BMPs (such as those found in South Carolina DHEC's Stormwater BMP Handbook) would further reduce potential soil erosion and sedimentation effects. Applicable erosion and sediment control BMPs may include the use of silt fences, sediment traps, stabilized construction entrances, and alternative techniques that may be developed in consultation with the South Carolina DHEC. We do not expect that development of the soil erosion and sediment control plan would incur any additional costs not already included in the costs for project refurbishment. Based on our review and analysis contained in section 3.3.1, *Geologic and Soil Resources,* we find that the benefits of implementing a soil erosion and sediment control plan as described above are worth these costs.

*Initial Testing of Impoundment Sediments*

There currently is no information on the volume of sediment deposits and potentially embedded contaminants in the Riverdale impoundment. However, the Enoree River carries a high sediment load and visual observations indicate a significant buildup of sediment in the impoundment. Project refurbishment activities and operation could disturb the bottom sediments and release a large amount of sediment downstream, causing any heavy metals or other contaminants present within the sediments to re-suspend with clays, silt, sand, and other sediments in the water column. Depending on the toxicity, contaminants suspended and transported in the water column could then harm fish and wildlife and adversely affect other stream uses.

Testing for heavy metals and other contaminants in the sediment in the impoundment prior to beginning operation, as recommended by Interior, would prevent the accidental release of any toxic substances and allow for their

proper disposal. The test results would help Lockhart Power, the resource agencies, and South Carolina DHEC design appropriate methods for short- and long-term sediment management at the project, discussed next. Preparing a contingency plan for handling any contaminated sediments would ensure that sediments are disposed of properly and would minimize potential adverse effects to aquatic resources. Based on our review and analysis contained in section 3.3.1, *Geologic and Soil Resources,* we find that the benefits of initial testing of impoundment sediments and preparing a plan for proper disposal of any identified contaminated sediments as elements of a sediment management plan are worth the estimated annual levelized cost provided below.

*Sediment Management Plan*

Project rehabilitation and periodic dam maintenance (e.g., repair the sand gates) would likely require drawing down the impoundment below the normal operating levels of four feet, resulting in the re-suspension and discharge of sediment from the impoundment. Heavy sediment loads can adversely affect fish and wildlife, recreation opportunities, and other stream uses.

Lockhart Power's proposal to avoid periodic inspection and maintenance drawdowns from March 15 to June 1 would prevent the release of large sediment loads during fish spawning periods, but would do little to actively manage sediment deposited behind the dam. Actively managing sediment within the impoundment, as recommended by Interior, and South Carolina DNR, would help prevent the buildup of sediment in the impoundment and minimize the risk of potentially releasing excessive sediment loads through the sand gates during planned and un-planned maintenance activities. Conducting maintenance drawdowns and sediment management activities between November and January, as recommended by the agencies, would ensure that sediment management is occurring when flows are most likely to be high enough to carry the sediment downstream from the sensitive shoals habitat and avoid fish spawning periods.

To be effective, sediment management would need to include provisions to: (a) Test impoundment sediments for heavy metals and other contaminants prior to beginning project repairs; (b) prepare a contingency plan for proper disposal of any contaminated sediments that may be found; (c) monitor sediment accumulation in the impoundment annually; (d) develop criteria triggering sediment removal from the impoundment (i.e. by opening the sand gates, if appropriate, during high flow events, or via mechanical methods); (e) conduct sediment management activities from November through January except during high rain events (e.g., tropical storms or hurricanes); and (f) avoid maintenance activities that would draw down the impoundment below normal operating levels and potentially pass sediment into the bypassed reach from March 15 through June 1 unless required for emergency purposes. Annual monitoring reports would assist the Commission and resource agencies in documenting compliance with the requirements of any license issued and evaluating the overall effectiveness of the sediment management plan.

Based on our review and analysis contained in section 3.3.1, *Geologic and Soil Resources,* we find that the benefits of implementing a sediment management plan with the measures outlined above are worth the estimated annual levelized cost of $1,597.

*Shoreline Stabilization Plan*

Resuming project operation as Lockhart Power proposes would result in impoundment fluctuations between 1 and 4 feet. As Interior notes, such fluctuations may cause shoreline erosion and lead to instability in the riparian zone, channel aggradation, increased turbidity, and associated adverse effects to fish and invertebrates. Developing and implementing a shoreline stabilization plan, as recommended by Interior, would identify and stabilize any existing areas of active erosion, minimizing the potential for erosion due to project operation. It would also allow Lockhart Power to effectively and efficiently focus any monitoring efforts on specific areas prone to erosion in the project boundary and address those areas before they become a significant problem. Using native vegetation and techniques such as bio-engineering, slope flattening, toe armoring with anchored logs, and/or riprap that incorporates native vegetation plantings would stabilize eroding shorelines while providing habitat for wildlife and aquatic species. Implementing shoreline stabilization measures during the fall and winter (i.e. September through February), except under emergency situations, as recommended by Interior, would help minimize potential disturbances to aquatic species and wildlife. As with the sediment management plan discussed above, annual reports would assist the Commission and resource agencies in documenting compliance with the requirements of any license and evaluating the overall effectiveness of the shoreline stabilization plan. Based on our review and analysis contained in section 3.3.1, *Geologic and Soil Resources,* we find that the benefits of implementing a shoreline stabilization plan with the measures outlined above are worth the estimated annual levelized cost of $1,050.

*Water Quality Monitoring Plan*

Refurbishing and operating the project could increase turbidity levels, raise water temperatures, and lower DO levels in the impoundment and bypassed reach. Lockhart Power intends to monitor water quality as may be required by South Carolina DHEC, but did not propose any specific monitoring measures.

Interior recommends that Lockhart Power: (1) Conduct water quality monitoring in the impoundment at all proposed operational drawdowns for a minimum of 1 year and (2) submit water quality monitoring results to South Carolina DHEC, South Carolina DNR, NMFS, Interior, and the Commission.

Our understanding of water quality in the project vicinity under existing conditions is limited. Monitoring turbidity, DO, and temperature in the impoundment and bypassed reach prior to the start of construction, during construction, and for 1 year after project operation begins would provide a means to ensure that the current state water quality standards (table 4) are met and that erosion control measures and minimum flows are adequately protecting aquatic resources. Therefore, we recommend that Lockhart Power develop a water quality monitoring plan that defines sampling methods, timing, and locations for monitoring these parameters in consultation with South Carolina DHEC, FWS, and NMFS. Based on our review and analysis contained in section 3.3.2, *Aquatic Resources,* we find that the benefits of developing and implementing the water quality monitoring plan with the measures outlined above would be worth the estimated annual levelized cost of $1,561.

*Minimum Instream Flows*

Since 2001, flows at the project have passed over the dam rather than the through the powerhouse to generate electricity. These flows provide habitat conditions in the bypassed reach that support a diversity of fish and invertebrate species in the complex shoals habitat, including eight species identified by the State of South Carolina

as ''Conservation Species.'' Two of the species, redeye bass and panhandle pebblesnail, are either declining or rare, and both are limited in their distribution within the state.

Lockhart Power proposes to provide a minimum continuous flow of 60 cfs downstream from the tailrace and 50 cfs in the bypassed reach to maintain and protect aquatic resources in the bypassed reach and in the Enoree River. South Carolina DNR, Interior, NMFS, and American Rivers recommend the following minimum flows in the bypassed reach based on the state's Water Plan: 79 cfs in July–November (20 percent of MADF); 157 cfs in January–April (40 percent of MADF); and 118 cfs in May, June, and December (30 percent of MADF). Using flow data for the period 1994 through 2009, South Carolina DNR, Interior, NMFS, and American Rivers calculated the flows based on a prorated MADF of 393 cfs. Using the most current flow data available (1994–2012), we calculated a MADF of 374 cfs and base our recommendations on this flow calculation.

The Water Plan's minimum flow regime is based on flow studies conducted at six regulated reaches in the South Carolina Piedmont, and three distinct periods that capture high (January–April), low (July–November), and increasing (December) or decreasing (May, June) flow periods (Bulak and Jobsis, 1989). The Water Plan states that seasonal variation in flow is important because fish have evolved to spawn in synchrony with the hydrologic cycle. While beneficial to a certain extent, there is currently no evidence that the fishes or invertebrates in the bypassed reach, or downstream from the tailrace require such annual variation in the flow regime to complete their life-cycle.

The state's Water Plan concludes that the 20 and 30 percent flows represent ''generally adequate'' and ''adequate'' flows, respectively, to protect aquatic habitat and fish during low flow periods, while 40 percent flows would protect fishery resources during high flow periods. As discussed in section 3.3.2.2, *Environmental Effects,* a flow of 60 cfs (16 percent of MADF) downstream of the tailrace and 50 cfs (13 percent of MADF) into the bypassed reach falls considerably short of the Water Plan's recommended flows in most months, thus would not likely maintain adequate aquatic habitat conditions. However, the Water Plan recommended flows for January through April (150 cfs, 40 percent MADF) were based on flows needed to provide a 1.5-foot-deep by 10-foot-wide passage route at shoals for striped bass. There are no striped bass, or other anadromous species present at the project.[56] In contrast, a flow of 75 cfs (20 percent MADF [57]) from January to April is expected to provide a channel 1.0-foot-deep by 10-foot-wide, which would be sufficient to maintain habitat and passage requirements for fish currently inhabiting the bypassed reach. A flow of 75 cfs also provides generally adequate flows during low flow periods based the study conducted by Bulak and Jobsis (1989).

Based on the Tennant (1976) method, a flow of 60 cfs (16 percent of MADF) downstream of the tailrace and of 50 cfs (13 percent of MADF) into the bypassed reach would represent fair or degrading conditions during the dry season, and close to poor or minimum conditions during the wet season. South Carolina DNR's variable flows based on the state Water Plan would result in good conditions year-round. However, a continuous minimum flow of 75 cfs (20 percent of MADF) year round would represent good conditions during the dry season and close to fair or degrading conditions during the wet season.

The annual levelized cost of Lockhart Power's minimum flow for the bypassed reach would be $20,174. Providing a continuous 75-cfs minimum flow to the bypassed reach would have an annual levelized cost of $45,540, which is $25,366 more than the annual levelized cost of Lockhart Power's proposed flow regime. Providing the agency-recommended minimum flows would have an annual levelized cost of $80,851, which would be $60,677 more than the annual levelized cost of Lockhart Power's proposed flow regime.

In consideration of the benefits and costs of the proposed and recommended minimum flows as well as the relative uniqueness of the bypassed reach fishery within the state of South Carolina, we conclude that the appropriate balance of the benefits and costs of the various flows is best met through a bypassed reach flow of 75 cfs. For this reason, we recommend a license condition requiring Lockhart Power to provide a continuous minimum flow of 75 cfs within the bypassed reach, or inflow if less. We see no need for a separate minimum flow requirement for the reach downstream of the powerhouse as proposed by Lockhart Power given that a continuous 75-cfs minimum flow in the bypassed reach would flow downstream to the reach below the powerhouse and provide the same benefits to aquatic resources.

*Flow Release Plan for Minimum Flows Into the Bypassed Reach*

Lockhart Power proposes to repair the sand gates and work with the resource agencies to determine which combination of gates to use to provide the required bypassed reach minimum flows. South Carolina DNR and Interior recommend Lockhart Power evaluate the feasibility of using the sand gates to reliably provide minimum instream flows on a continuous basis, and the flow distribution through the gate(s) to optimize aquatic habitat in the bypassed reach. American Rivers recommends Lockhart Power study alternatives to releasing minimum instream flows to select the best method to deliver flows that ensure that the bypassed reach is fully wetted. NMFS recommends conducting an instream flow study.

The shoals below the dam are complex and its distinct physical features create different habitats on the north and south side of the bypassed reach that support different fish and benthic macroinvertebrate assemblages, including some rare species. Because the lack of access prevented Lockhart Power from determining if it could make the sand gates operable, a feasibility assessment would be necessary as proposed by Lockhart Power and recommended by the agencies. If the gates cannot be made operational or used in a manner to provide the required flows, alternative mechanisms would need to be identified and made operational prior to operating the project to ensure that the aquatic resources in the bypassed reach are protected.

Assuming that the bypassed flows can be provided through the sand gates, distributing the flows across the shoals to optimize benthic invertebrate and fish habitat may require delivering flows from one or more sand gates. While fully wetting the shoals as recommended by American Rivers would likely provide some benthic invertebrate and fish habitat, it may not provide the best habitat for targeted channels supporting rare species. To determine which combination of gates to use would require a post-licensing flow study as recommended by NMFS. Such a study would not be used to establish required minimum flows because the minimum flow requirements have been determined as described above. Rather, it would be used to determine how to distribute the

[56] Anadromous fish are also unable to pass upstream of Parr dam, which is located 65 miles downstream on the Broad River.

[57] The study (i.e. Bulak and Jobsis, 1989) used to identify Water Plan minimum flows indicated that if a 1.0-foot-deep by 10-foot-wide was acceptable, required flows in shoals habitat ranged from 15 to 32 percent of MADF (mean = 24 percent of MADF).

required flows to optimize habitat. The study would need to examine depth, velocity, and wetted width across the shoals using various combinations of the sand gates. We recommend Lockhart Power select the targeted species and habitat suitability criteria to evaluate the flows in consultation with the South Carolina DNR, FWS, NMFS, and American Rivers. Developing a flow release plan that includes the feasibility assessment and the above flow study would have an estimated annualized cost of $546. The benefits of determining which combination of gates best optimize aquatic habitats would be worth the cost.

*Low Inflow Protocol/Drought Management Plan*

As discussed above, the staff recommended minimum flow releases would adequately maintain aquatic habitat in the bypassed reach during most years. However, during moderate and extreme drought years, such as those experienced in the Southeast U.S. from 1998–2002, 2005–2007, and 2012, inflows to the project may be insufficient to continually release the required flow.

During such low inflow periods, Lockhart Power would implement the following low inflow protocol: When average daily project inflow is less than approximately 80 cfs (+/− 10 percent), continuous project outflow shall approximately (+/− 10 percent) equal project inflow. However, Lockhart Power does not explain how or where such flows would be released, or its basis for selecting 80 cfs as defining low inflow/drought conditions. A flow of 80 cfs represents about 20 percent of the MADF which would be ''generally adequate'' to maintain aquatic resources during typical low inflow periods (July through November), but would be inadequate if drought conditions extended into the typically high flow periods.

The South Carolina DNR and Interior recommend that Lockhart Power develop low inflow protocol (i.e. a drought contingency plan) in consultation with appropriate federal and state agencies, local governments, and other stakeholders that continues to protect fish and wildlife and other water uses in the Enoree River.

Ideally, a low inflow protocol would provide some flexibility to adjust minimum flows during drought periods so that the effects of low inflows are balanced among competing uses. We recommend Lockhart Power develop a low inflow protocol in consultation with South Carolina DNR, Interior, and NMFS. The protocol should define water shortage severity levels (i.e. drought conditions), and how project operation would be adjusted depending on drought conditions to balance competing needs.

Developing the low inflow protocol would have an annual levelized cost of $390. There could be additional costs in some years during droughts that depend on the operational changes needed and the frequency and severity of drought over the term of the license. We find that the benefits of these measures are worth the cost.

*Operation Compliance Monitoring Plan*

Lockhart Power proposes to operate the Riverdale Project using a combination of ROR and peaking modes, resulting in fluctuations between 1 and 4 feet from the top of the flashboards. Lockhart Power would ensure minimum flow releases are being provided through one or more of the sand gates by establishing a rating curve and verifying the rating curve every 6 years.

To assist the Commission in monitoring compliance with operation limitations, we recommend Lockhart Power develop and implement an operation compliance monitoring plan. Such a plan would need to explain how Lockhart Power would monitor impoundment fluctuations to ensure that the impoundment is not drawn down below 4 feet unless required for maintenance or emergencies beyond the control of the applicant. The plan would also need to define how Lockhart Power would document flows through the sand gates into the bypassed reach as required based on the flow release plan. In addition, the plan should include a schedule for implementing the provisions of the plan, maintaining monitoring equipment, and filing annual reports with the resource agencies and the Commission. Based on our review and analysis contained in section 3.3.2, *Aquatic Resources,* we find that the benefits of implementing an operation compliance monitoring plan, with the measures outlined above, would be worth the estimated levelized annual cost of $2,161.

*Invasive Vegetation Monitoring and Control Plan*

Alligatorweed is a prolific state noxious weed and that has become established in the project impoundment. Alligatorweed competes with native aquatic species, reducing the quality of fish and wildlife habitat where it becomes established. In mats covering extensive areas, it can impede boating and access to the shore.

Existing mats of alligatorweed can become fragmented and spread during in-water construction activities, such as during the installation of the canoe portage facilities and repairs to the sand gates, as well as during sediment management activities. Fluctuations in the impoundment levels may also create conditions facilitating its spread. Lockhart Power does not propose any measures to monitor or control the spread of alligatorweed or other invasive plants that may become established in the project area.

Developing and implementing an invasive vegetation monitoring and control plan would minimize the potential spread and adverse effects of alligatorweed during project refurbishment, and project-related recreation activities as well as other invasive plants that may be detected during project operation and maintenance. We recommend that Lockhart Power develop an invasive vegetation monitoring and control plan that includes surveying the impoundment to determine the distribution of alligatorweed prior to beginning construction repairs or installing the canoe portage facilities and identifying specific BMPs that should be taken to prevent spreading this species. We also recommend periodic monitoring for invasive species in the impoundment to facilitate early detection of new invasive plant introductions, as well as the spread of the existing mats of alligatorweed. Such monitoring would allow Lockhart Power, the resource agencies, and the Commission to determine when, and if, correction measures may be needed to protect native plant communities and the wildlife that depend on them.

To be effective, the monitoring program should define the monitoring schedule, document changes in invasive species composition and distribution between monitoring events, and include criteria that would determine when corrective actions may be required. Based on our review and analysis contained in section 3.3.3, *Terrestrial Resources,* we find that the benefits of implementing an invasive vegetation management plan with the measures outlined above are worth the estimated levelized annual cost of $1,128.

*Avian Protection*

Lockhart Power proposes to use the existing transmission line which extends from the powerhouse along the project access road to an existing Duke Energy distribution line. Transmission lines with inadequate spacing between the conductors can represent an electrocution hazards for birds with

broad wingspans, such as raptors. However, Lockhart Power's limited access to the project prevented it from determining and whether the line could represent an electrocution hazard.

Evaluating the consistency of the transmission line with APLIC guidelines would allow Lockhart Power to determine if a potential hazard exists and if protective measures may be needed. If the transmission lines do not meet APLIC guidelines, potential mitigation measures could include changing the relative position of conductors, or installing insulators, or structures to discourage perching and/or nesting (APLIC, 2006). A small cost would be incurred in evaluating the consistency of the transmission line design with APLIC guidelines, preparing a report, and consulting with the FWS to determine if potential measures are needed. Based on our review and analysis contained in section 3.3.3, *Terrestrial Resources,* we find that the benefits of evaluating the transmission line against APLIC guidelines would be worth the estimated levelized annual cost of $390.

*Recreation Signage*

Lockhart Power proposes to install a canoe put-in and take-out, a portage trail, a parking area, and to use informational and directional signage to indicate recreation access at the project. However, development of more formal recreation facilities is likely to induce greater amounts of garbage and debris. Although recreation use at the project is expected to remain relatively low, adding signage reminding users to ''pack-it-in, pack-it-out'' or a similar ''leave no trace'' message would help minimize the accumulation of garbage at project recreation facilities and reduce the maintenance responsibility for the applicant.

Because Lockhart Power has proposed developing directional and informational signage for the project, the additional signage relating to garbage disposal would not result in a significant change to the applicant's levelized annual cost of $660.

*Cultural Resources*

There are no known archeological sites or historic properties within the proposed project's APE; however, there is a possibility that unknown archaeological resources may be discovered due to project construction, operation, or other project-related activities. To ensure proper treatment of any unknown archaeological resources that may be discovered at the project, we recommend in the case of any such discovery that Lockhart Power notify and consult with the South Carolina SHPO and the Catawba Indian Nation to: (1) Stop work and determine if the discovered archaeological resource is eligible for the National Register; (2) determine if the proposed project would adversely affect the resource; and (3) if the resource would be adversely affected, obtain guidance from the South Carolina SHPO on how to avoid, lessen, or mitigate for any adverse effects. Also we recommend that Lockhart Power inform the Commission of its discovery of any unknown archaeological resource, and any measures proposed if the archaeological resource is eligible for the National Register and is adversely affected by project construction or operation. There is no estimated cost associated with this measure.

*Measures Not Recommended by Staff*

*Fish Impingement and Entrainment*

Water intake structures at hydropower projects can injure or kill fish through impingement at intake screens/trash-racks, or entrainment through intakes and into turbines. The Riverdale Project currently includes two sets of trash racks, one of which is located at the intake to the project headrace and has 2.25-inch bar spacing. Interior recommends that Lockhart Power install 1-inch bar spacing at the headrace trash-rack to avoid and minimize fish entrainment and mortality.

Our analysis in section 3.3.2.2, *Environmental Effects,* indicates that entrainment and turbine mortality impacts of a trash-rack design with 1-inch bar spacing are potentially greater than the impacts of a design with the existing 2.25-inch bar spacing. Further, based on the intake velocities and the size of the bar spacing, most fish residing in the impoundment would be able to avoid impingement on the trashrack, but could be susceptible to entrainment through the turbines if they fail to use behavioral avoidance (i.e. burst swimming). The fish involved would likely consist of younger and smaller fish, which generally have high rates of mortality, even in the absence of hydropower operations. Fish populations have generally evolved to withstand losses of these smaller and younger individuals with little or no impact to long-term population sustainability. Consequently, replacing the existing trash-rack with a design having 1-inch bar spacing would not likely provide any benefits to fishery resources at the Riverdale Project. Therefore, we conclude that installation of 1-inch bar spacing at the headrace trashrack would not be worth the estimated levelized annual cost of $1,171.

*Fish and Macroinvertebrate Surveys*

The bypassed reach supports seven species of fish and one macroinvertebrate that are considered of conservation concern by the state. Interior recommends that Lockhart Power conduct surveys for fish and invertebrates before and after construction at the project, and again 1 year later, to provide information on the presence of the eight Conservation Species. Interior requests that Lockhart Power design the surveys in consultation with South Carolina DNR, South Carolina DHEC, NMFS, and FWS, and that sampling efforts be concentrated in the multiple habitat types in the bypassed reach. Interior states that additional surveys may be necessary depending on the results.

As explained in section 3.3.2.2, *Environmental Effects,* sufficient information already exists to document their occurrence in the bypassed reach and to evaluate how best to distribute flows to optimize aquatic habitat to support these species. Therefore, there is no need for this information. Consequently, we conclude that the information obtained from such surveys is not worth the estimated levelized annual costs of $2,341 and $702, for fish surveys and invertebrate surveys respectively.

*Cultural Resource Survey*

The Catawba Indian Nation recommends that Lockhart Power consult with the tribe prior to any ground-disturbing activity and states that Lockhart Power would most likely need to conduct a cultural resources survey involving shovel testing. Our analysis in section 3.3.6, *Cultural Resources,* indicates that there is no evidence archeological properties are present within the project's APE that would warrant a cultural resource survey and shovel testing prior to project construction. Rather, we recommend that should unknown archeological or historic resources be discovered in the future, as a result of project construction, operation, or other project related activities, Lockhart Power cease ground disturbing activities and consult with the Commission, the South Carolina SHPO, and the Catawba Indian Nation to establish the proper treatment of any potential archaeological or cultural resources. Therefore, we conclude that a cultural resources survey and shovel testing prior to ground-disturbing activity would not be worth the estimated levelized annual cost of $780.

### 5.3 Unavoidable Adverse Effects

Project refurbishment and the addition of canoe portage facilities would result in some land-disturbing activities that would affect approximately 2 acres of land. Implementing the erosion and sediment control plan would minimize these effects. Repairs to the sand gates on the Riverdale dam spillway would cause minor amounts of sediment to enter the Enoree River; however, the sediment management plan and sediment testing would ensure that the timing of sediment releases would occur when they would have the least adverse effect to aquatic resources. Repairs to the dam, penstock, powerhouse and other project facilities would also cause temporary and minor disturbances to wildlife near the construction activities.

Project operation would reduce flows to the bypassed reach and may release water that has a lower DO concentration than existing flows. Recommended minimum flows would be adequate to protect existing aquatic resources. Water quality monitoring would allow identification of any needed measures to maintain state water quality standards. Project operation would result in some fish impingement and entrainment mortality of resident fish in the Enoree River, but these would represent young fish and be comprised of highly prolific species that have the ability to compensate for losses.

### 5.4 Fish and Wildlife Agency Recommendations

Under the provisions of section 10(j) of the FPA, each hydroelectric license issued by the Commission shall include conditions based on recommendations provided by federal and state fish and wildlife agencies for the protection, mitigation, and enhancement of fish and wildlife resources affected by the project.

Section 10(j) of the FPA states that whenever the Commission believes that any fish and wildlife agency recommendation is inconsistent with the purposes and the requirements of the FPA or other applicable law, the Commission and the agency will attempt to resolve any such inconsistency, giving due weight to the recommendations, expertise, and statutory responsibilities of such agency.

In response to our REA notice, the following fish and wildlife agencies submitted recommendations for the project: Interior (letter filed September 10, 2012), South Carolina DNR (letter filed September 10, 2012), and NMFS (letter filed September 11, 2012). Table 16 lists the federal and state recommendations filed pursuant to section 10(j), and indicate whether the recommendations are included as part of the Staff Alternative. Environmental recommendations that we consider outside the scope of section 10(j) have been considered under section 10(a) of the FPA, and are addressed in the specific resource sections of this document.

Of the 9 recommendations that we consider to be within the scope of section 10(j), we include 7, and do not include 2 in the staff alternative. We discuss the reasons for not including those recommendations in section 5.2, *Comprehensive Development and Recommended Alternative.* Table 16 indicates the basis for our preliminary determinations concerning measures that we consider inconsistent with section 10(j).

TABLE 16—FISH AND WILDLIFE AGENCY RECOMMENDATIONS FOR THE RIVERDALE PROJECT

[Source: staff]

| Recommendation | Agency | Within the scope of section 10(j) | Annualized cost ($) | Adopted? |
|---|---|---|---|---|
| **Erosion and Sediment Control** | | | | |
| Implement South Carolina DHEC's stormwater BMP's during construction and maintenance activities to prevent or minimize erosion and sedimentation. | South Carolina DNR ... | Yes ..... | 390 | Yes.[a] |
| **Sediment Management Plan** | | | | |
| Develop and implement a sediment management plan with provisions to: (a) Consult with South Carolina DHEC to address the potential presence of contaminated sediments in the impoundment and additional monitoring and sediment management needs; (b) test impoundment sediment for heavy metals and other contaminants; (c) monitor sediment accumulation in the impoundment annually; (d) develop criteria that would trigger sediment removal from the impoundment, by opening sand gates, if appropriate, during high flow events, or mechanical methods; (e) conduct sediment management activities from November–January; and (f) file an annual report describing sediment monitoring and management activities, and an evaluation of the effectiveness of the plan. | South Carolina DNR, Interior. | Yes ..... | 1,597 | Yes.[b c] |

TABLE 16—FISH AND WILDLIFE AGENCY RECOMMENDATIONS FOR THE RIVERDALE PROJECT—Continued

[Source: staff]

| Recommendation | Agency | Within the scope of section 10(j) | Annualized cost ($) | Adopted? |
|---|---|---|---|---|
| **Management of Shoreline Erosion** | | | | |
| Implement the following measures to minimize the effects of project operations and associated shoreline erosion: (a) Identify eroding or potential project-induced erosion sites on project shorelines prior to beginning operation; (b) stabilize areas of shoreline erosion with native plants, bioengineering, slope flattening, toe armoring, and/or rip-rap which incorporates native vegetation plantings; (c) monitor shorelines after operation and implement stabilization techniques as necessary; and (d) conduct shoreline stabilization activities September–February to protect aquatic species and wildlife. | Interior | Yes, because it could not be done prior to licensing. | 1,050 | Yes.[d] |
| **Water Quality Monitoring** | | | | |
| Conduct Water quality monitoring for 1-year at the impoundment during all proposed project operational drawdowns. | Interior | No[e] | 1,561 | Yes. |
| **Instream Flows** | | | | |
| Provide minimum seasonal instream flows into the bypassed reach based on a MADF of 393 cfs. Seasonal flows to include:<br>○ 79 cfs—July–November<br>○ 118 cfs—May, June, and December<br>○ 157 cfs—January–April | Interior, South Carolina DNR, NMFS. | Yes | 80,851 | Not Adopted[f] (see section 5.2). |
| Develop an instream flow study plan within 6-months of license issuance and implement the plan after spillway gate renovations are complete, in consultation with NMFS, Interior, South Carolina DNR. | NMFS | Yes | 6,244 | Yes.[g] |
| Develop and implement a low inflow protocol/drought contingency plan, consistent with the South Carolina Water Plan including provisions for minimum flow requirements during drought periods. | South Carolina DNR, Interior. | Yes | 390 | Yes. |
| Evaluate the feasibility and effectiveness of using sand gates to provide minimum flows into the bypassed reach. Evaluation should include optimizing downstream habitat. | Interior, South Carolina DNR. | Yes | 546 | Yes.[h] |
| **Aquatic Species Measures** | | | | |
| Modify trash rack bar spacing at headrace intake from 2.25 inches to 1 inch to avoid and minimize fish entrainment and mortality. | Interior | Yes | 1,171 | Not Adopted[f] (see section 5.2). |
| South Carolina Conservation Species study: Conduct comprehensive fish surveys of redeye bass, santee chub, piedmont darter, thicklip chub, greenfin shiner, notchlip redhorse, flat bullhead, snail bullhead. Conduct surveys before and after construction activities as well as 1 year after construction is complete to provide status of above mentioned priority species. Survey areas are to include multiple habitats within bypassed reach. | Interior | No[e] | 2,341 | No.[i] |
| Enhance and protect the panhandle pebblesnail to include provisions of appropriate minimum flows in bypassed reach. | Interior | No[e] | [j] 0 | No (staff-recommended minimum flows would maintain habitat). |

TABLE 16—FISH AND WILDLIFE AGENCY RECOMMENDATIONS FOR THE RIVERDALE PROJECT—Continued

[Source: staff]

| Recommendation | Agency | Within the scope of section 10(j) | Annualized cost ($) | Adopted? |
|---|---|---|---|---|
| Conduct comprehensive invertebrate surveys within the bypassed reach before and after construction, and one year after construction is complete. Surveys should be designed in consultation with South Carolina DNR, NMFS, South Carolina DHEC, and Interior. | Interior | No [e] | 702 | No.[i] |
| **Riparian Buffer Zone** | | | | |
| Implement BMPs to protect vegetation within the project boundary, such as limiting vegetation and ground-disturbing activities and maintaining a minimum of 25-foot-wide vegetated buffer zone on all shorelines within the project boundary. | South Carolina DNR, Interior. | Yes | 0 | Yes. |

[a] The measure was adopted under the staff-recommended soil erosion control plan.
[b] The measures were adopted under the staff-recommended sediment management plan.
[c] The measures were adopted under the staff-recommended measure to conduct testing for contaminants in the impoundment sediments prior to beginning project refurbishment activities.
[d] The measures were adopted under the staff-recommended shoreline stabilization plan.
[e] Not specific measures to protect, mitigate, or enhance fish and wildlife resources.
[f] Preliminary findings that recommendations found to be within the scope of section 10(j) are inconsistent with the comprehensive planning standard of section 10(a) of the FPA, including the equal consideration provision of section 4(e) of the FPA, are based on staff's determination that the cost of the measures outweigh the expected benefits.
[g] This measure is accommodated as part of the flow distribution study to determine how best to distribute flows in the bypassed reach to protect aquatic resources, but not to determine appropriate flows.
[h] This measure was adopted under the staff-recommendation flow release plan.
[i] Preliminary findings that recommendations found to be within the scope of section 10(j) are inconsistent with the substantial evidence standards of section 313(b) of the FPA based on a lack of evidence to support the reasonableness of the recommendation or a lack of justification for the measure.
[j] The measure is too vaguely defined to assign a cost and instream flow costs are included in the minimum instream flow recommendations.

### 5.5 Consistency With Comprehensive Plans

Section 10(a)(2)(A) of the FPA,[58] requires the Commission to consider the extent to which a project is consistent with the federal or state comprehensive plans for improving, developing, or conserving a waterway or waterways affected by the project. We reviewed 22 state and federal comprehensive plans that are applicable to the Riverdale Project, located in South Carolina. The project would be consistent with their provisions with the exception of the state Water Plan. As discussed in section 5.2, *Comprehensive Development and Recommended Alternative,* the Water Plan's minimum flow regime is based on flow studies that capture high (January-April), low (July-November), and increasing (December) or decreasing (May, June) flow periods in the South Carolina Piedmont (Bulak and Jobsis, 1989). The Water Plan states that periods of seasonal variation in flow are important because fish have evolved to spawn in synchrony with the hydrologic cycle. While true, there is currently no evidence that the fishes or invertebrates in the bypassed reach, or downstream from the tailrace require such variation in the annual flow regime to complete their life-cycle.

Based on the Tennant (1976) method, Lockhart Power's proposed minimum flow of 60 cfs (16 percent of MADF) downstream of the tailrace and of 50 cfs (13 percent of MADF) into the bypassed reach would represent fair or degrading conditions during the dry season, and close to poor or minimum conditions during the wet season. However, a continuous minimum flow of 75 cfs (20 percent of MADF) year round would represent good conditions during the dry season and close to fair or degrading conditions during the wet season.

In section 5.2 of this EA, we find that our recommended continuous minimum flow of 75 cfs provides the best balance between providing flows for generation and providing flows for aquatic resource protection.

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## 6.0 Finding of No Significant Impact

Licensing the Riverdale Project would allow Lockhart Power to rehabilitate an existing, inoperable hydro facility and begin generating power. Project repairs and the addition of canoe portage facilities would result in some land-disturbing activities that would permanently affect a small amount of vegetation. Our recommended measures would ensure that erosion and sedimentation at the site is minimized. Providing minimum flows in the bypassed reach would ensure state water quality standards are met and aquatic habitat is maintained. Project operation and associated fish impingement and entrainment would result in some loss of resident fish in the Enoree River, but these would represent young fish and be comprised of highly prolific species that have the ability to compensate for losses. Native vegetation and wildlife within the project boundary would be preserved by limiting vegetation and ground-disturbing activities and maintaining a minimum 25-foot-wide forested riparian buffer on project shorelines. Public recreation opportunities would be improved in the project area and historic resources are protected for the life of the license.

On the basis of our independent analysis, we find that issuance of a license for the Riverdale Project, with our recommended environmental measures, would not constitute a major federal action significantly affecting the quality of the human environment.

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## 8.0 List of Preparers

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## Appendix A

Fish lengths susceptible to impingement (shaded gray) and entrainment (shaded blue) as a function of burst swim speed. Horizontal dashed line is approach velocity and solid vertical line is minimum fish length susceptible to impingement. (Source: Staff).

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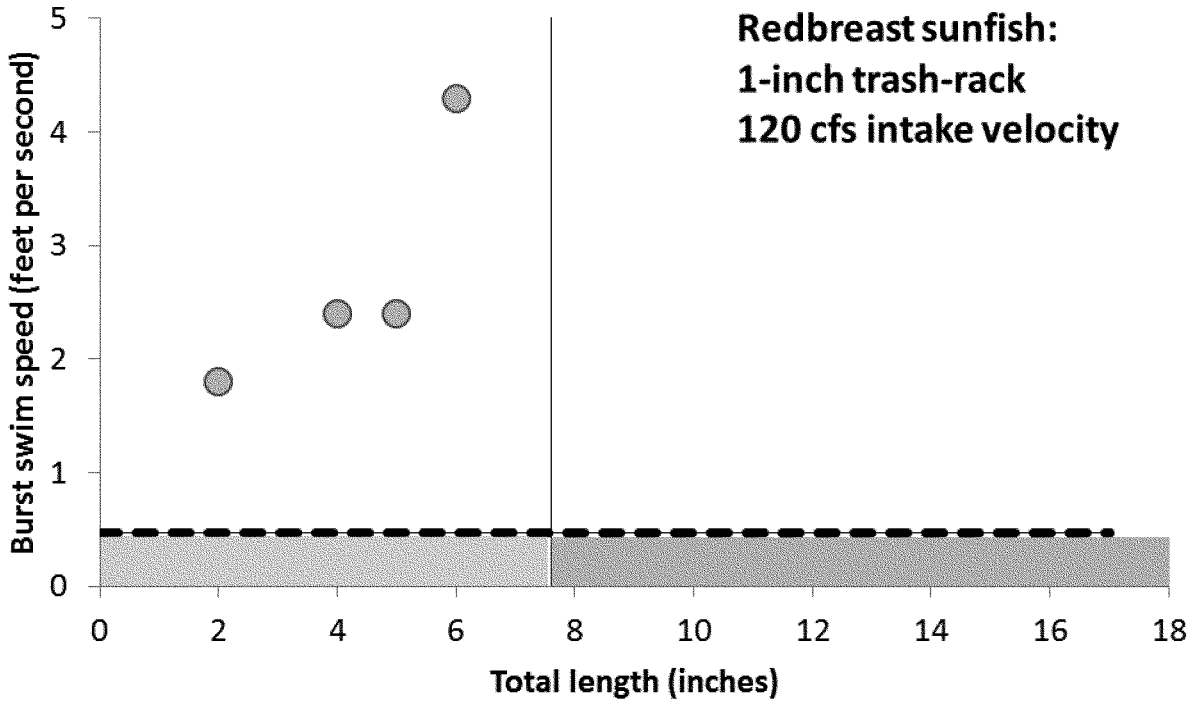
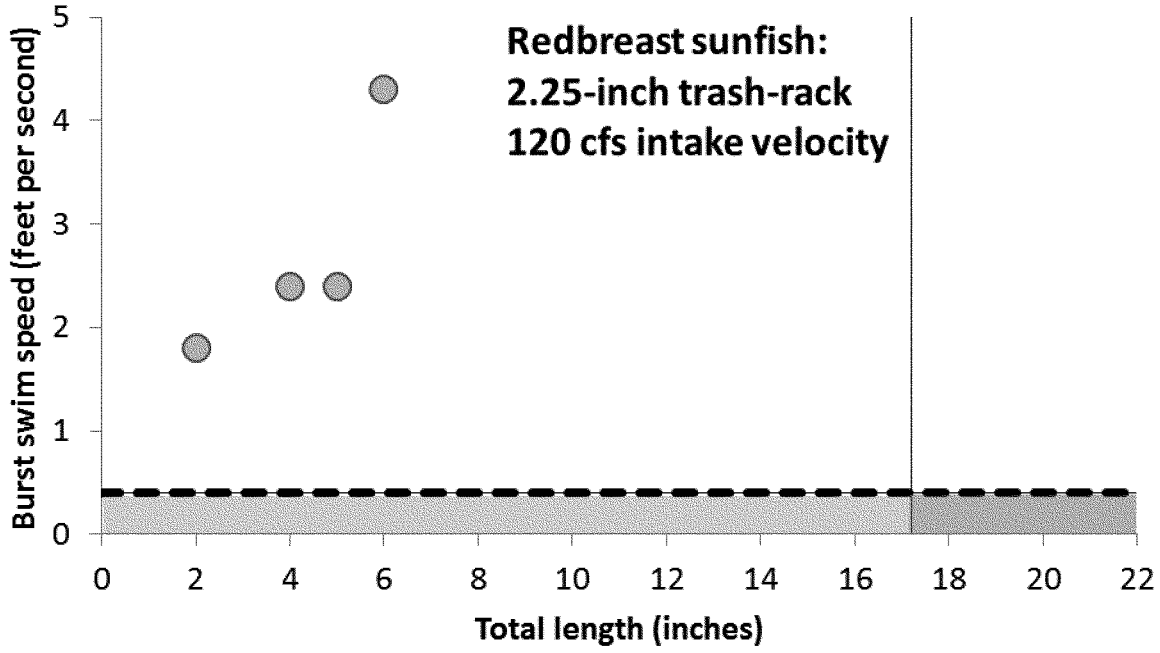
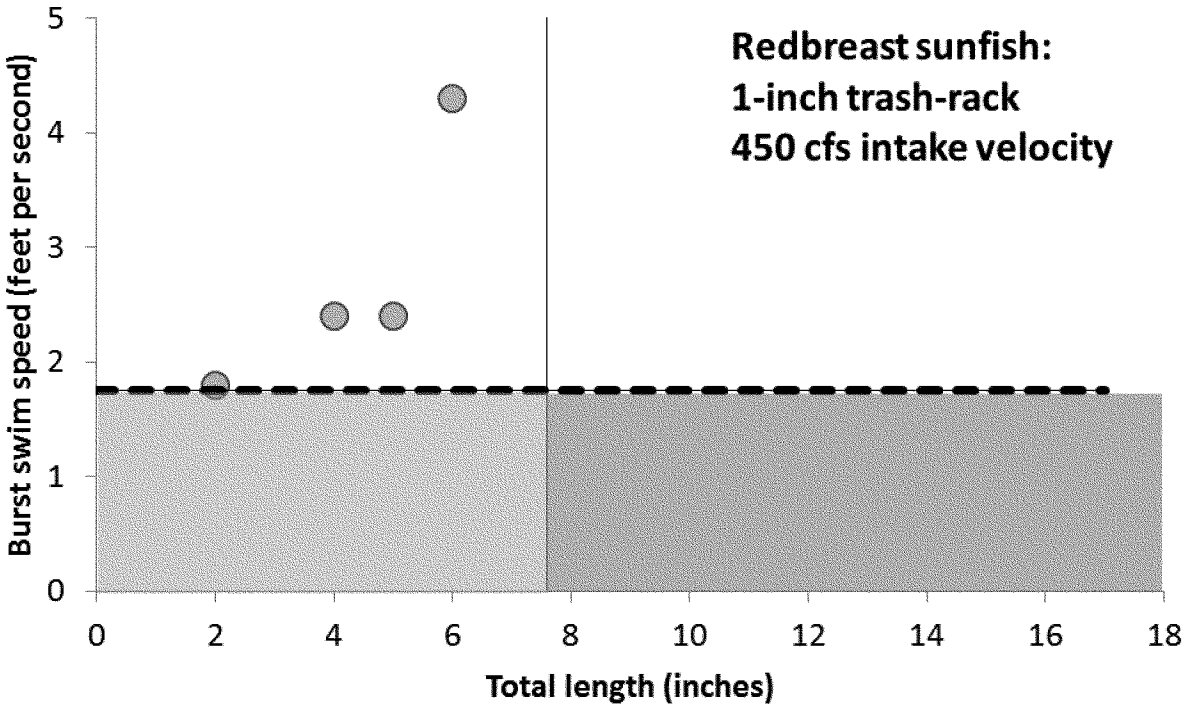


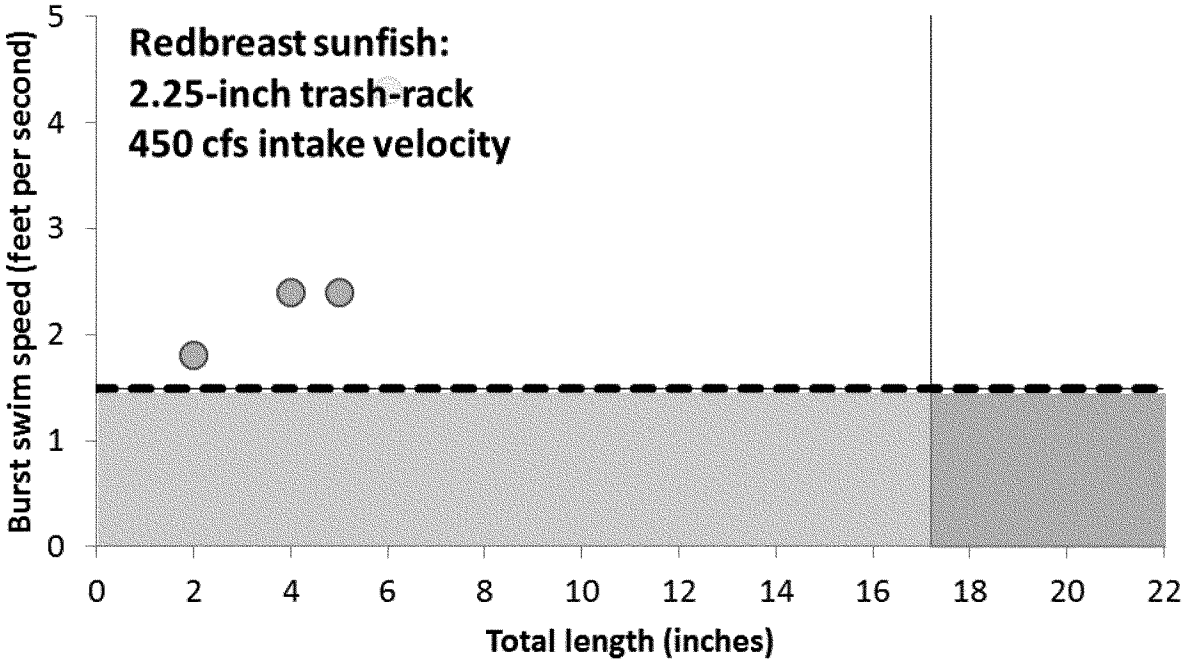

**Redbreast sunfish exposed to 1-inch trashrack and 120 cfs intake velocity.**




**Redbreast sunfish exposed to 2.25-inch trashrack and 120 cfs intake velocity.**




**Redbreast sunfish exposed to 1-inch trashrack and 450 cfs intake velocity.**

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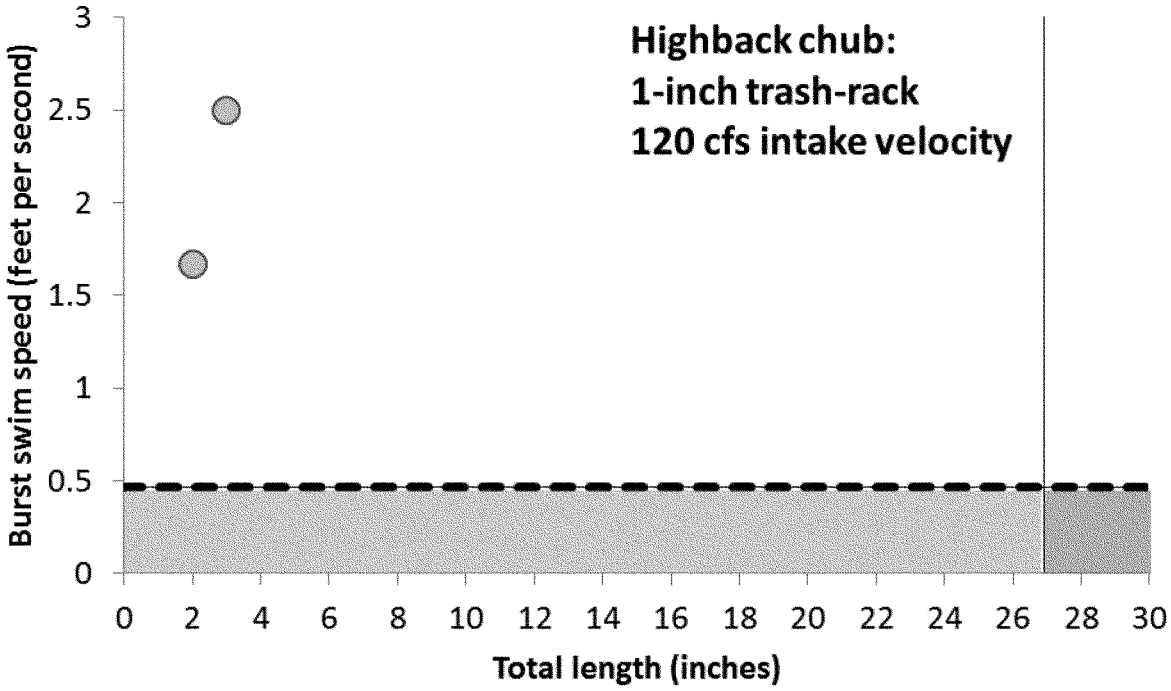
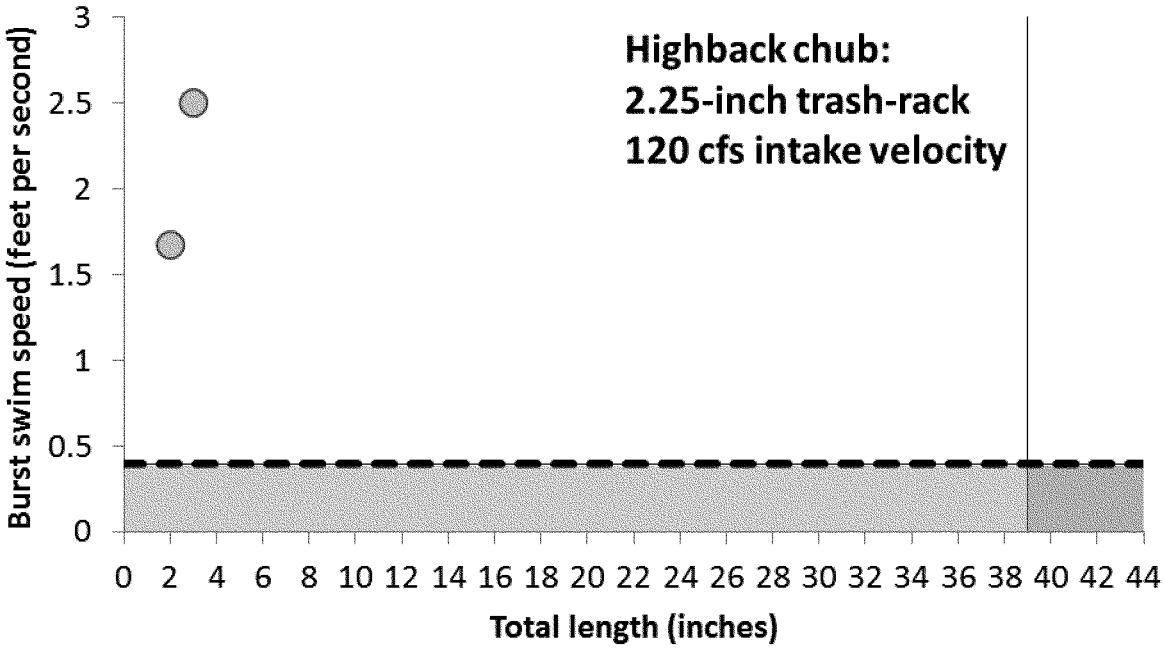



**Highback chub exposed to 1-inch trashrack and 120 cfs intake velocity**.

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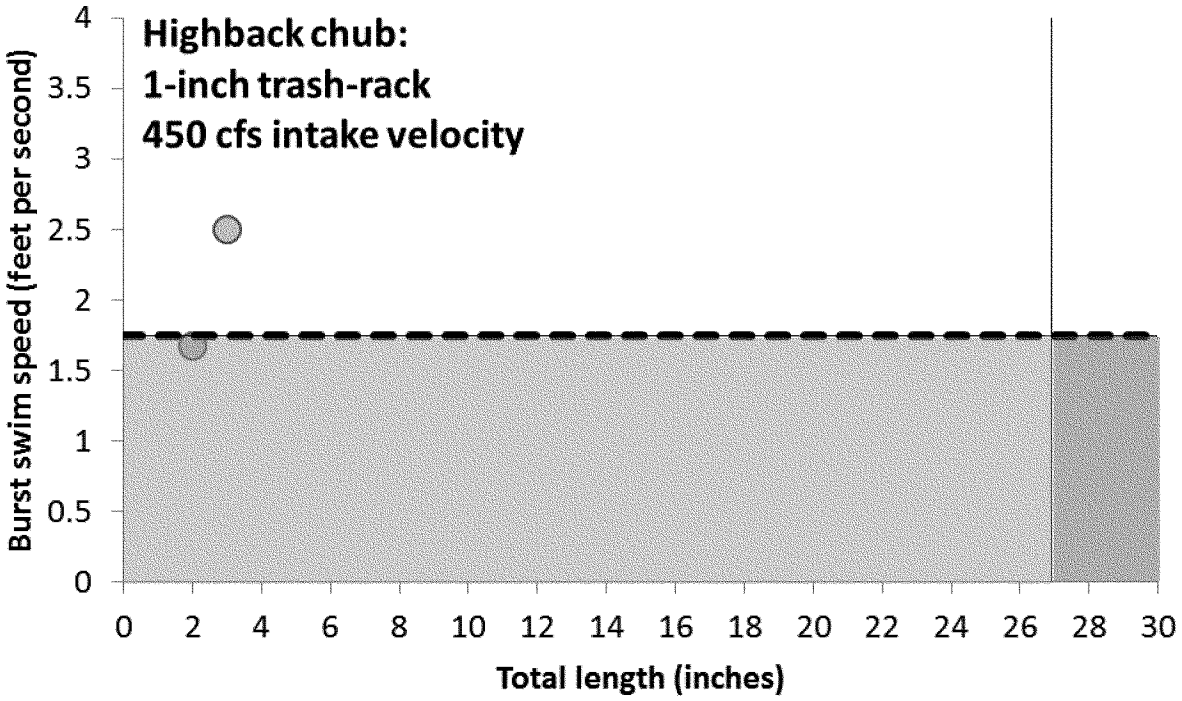


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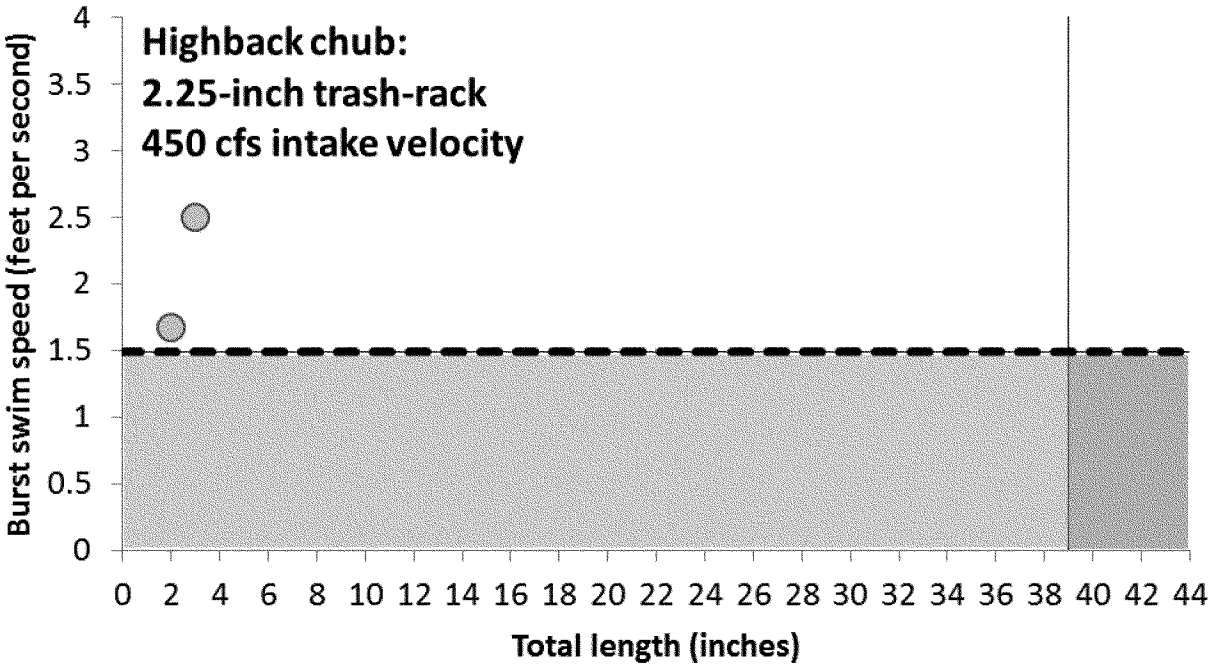


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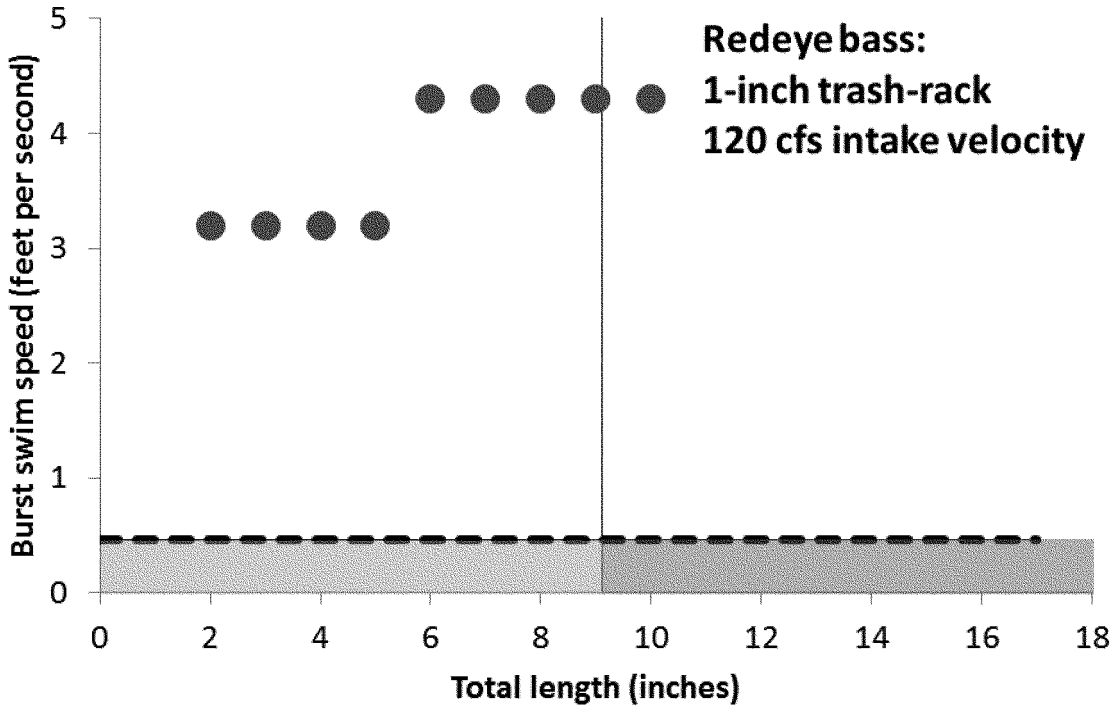


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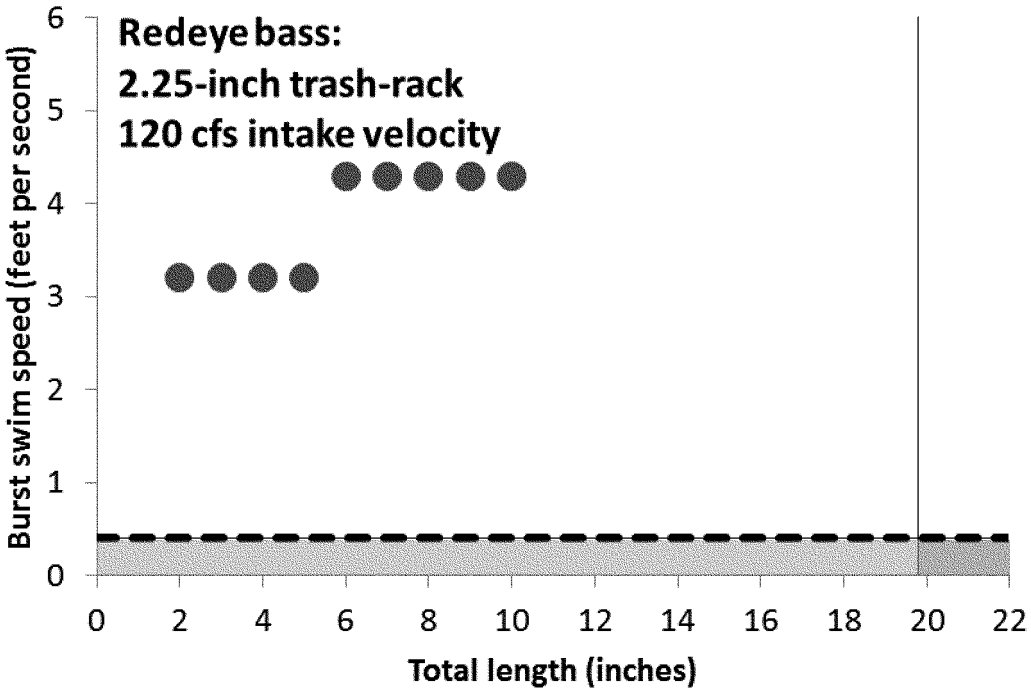


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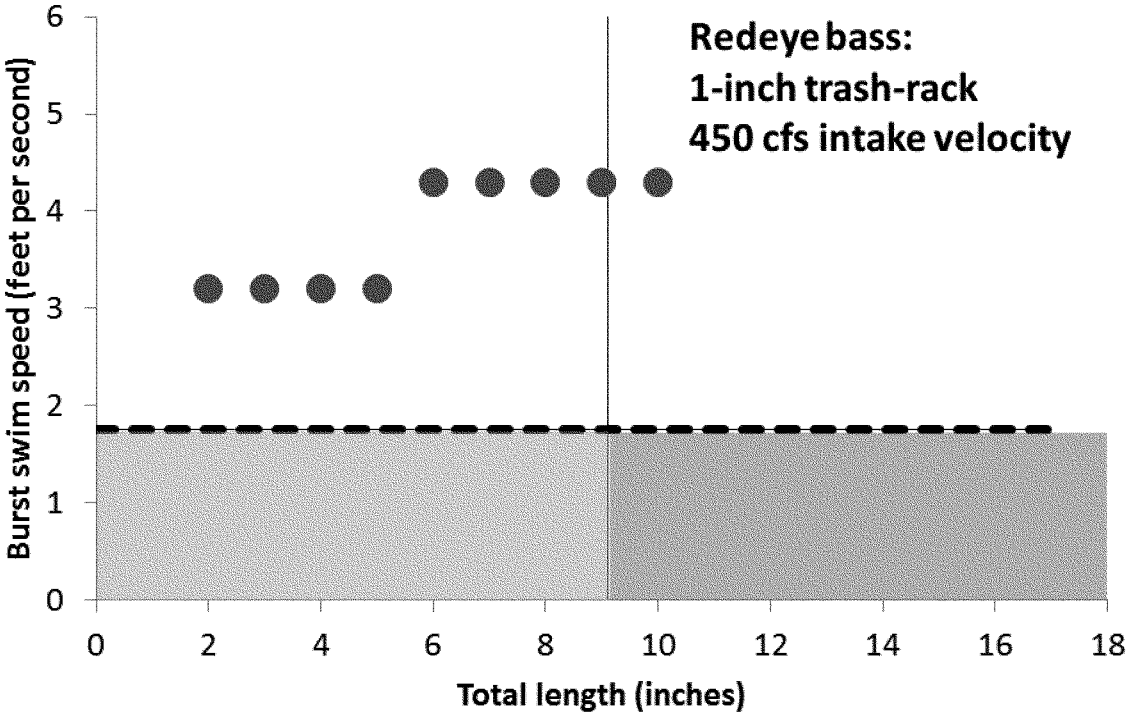


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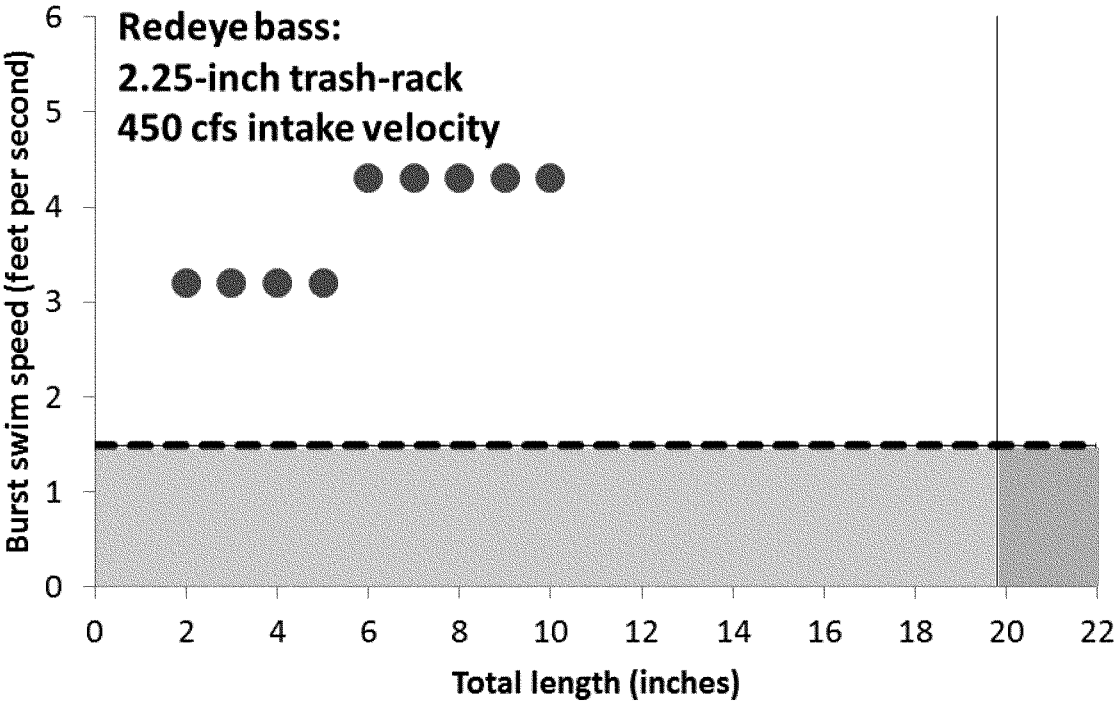
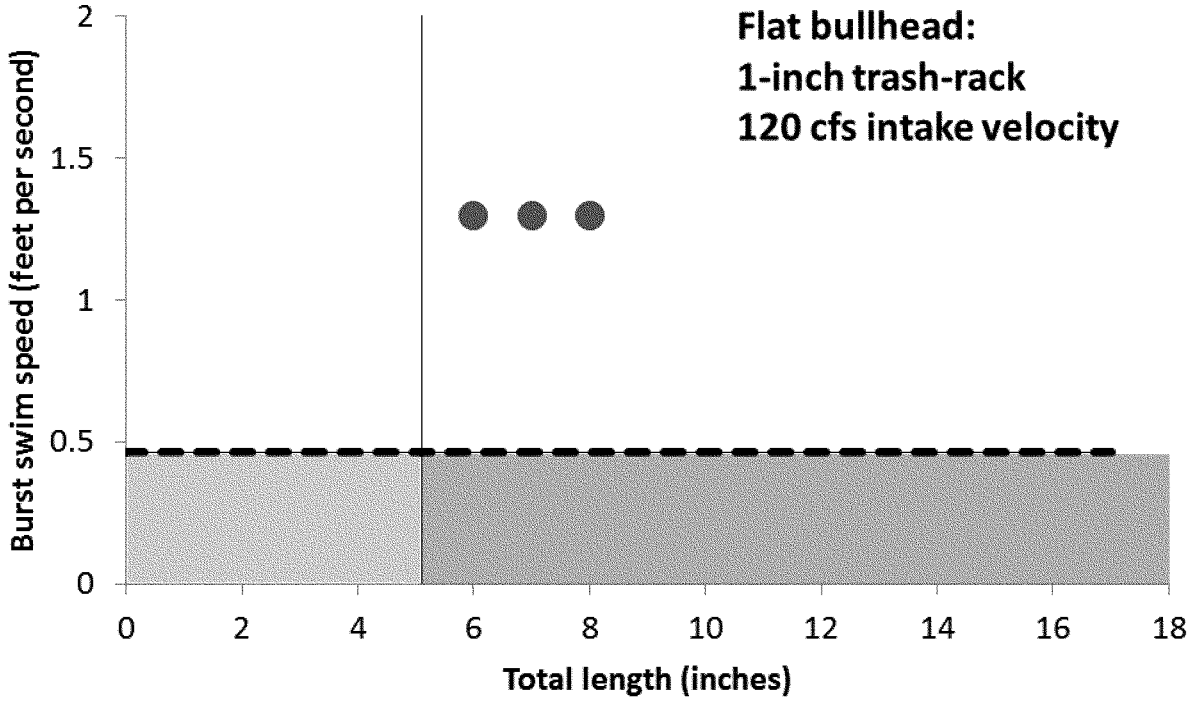
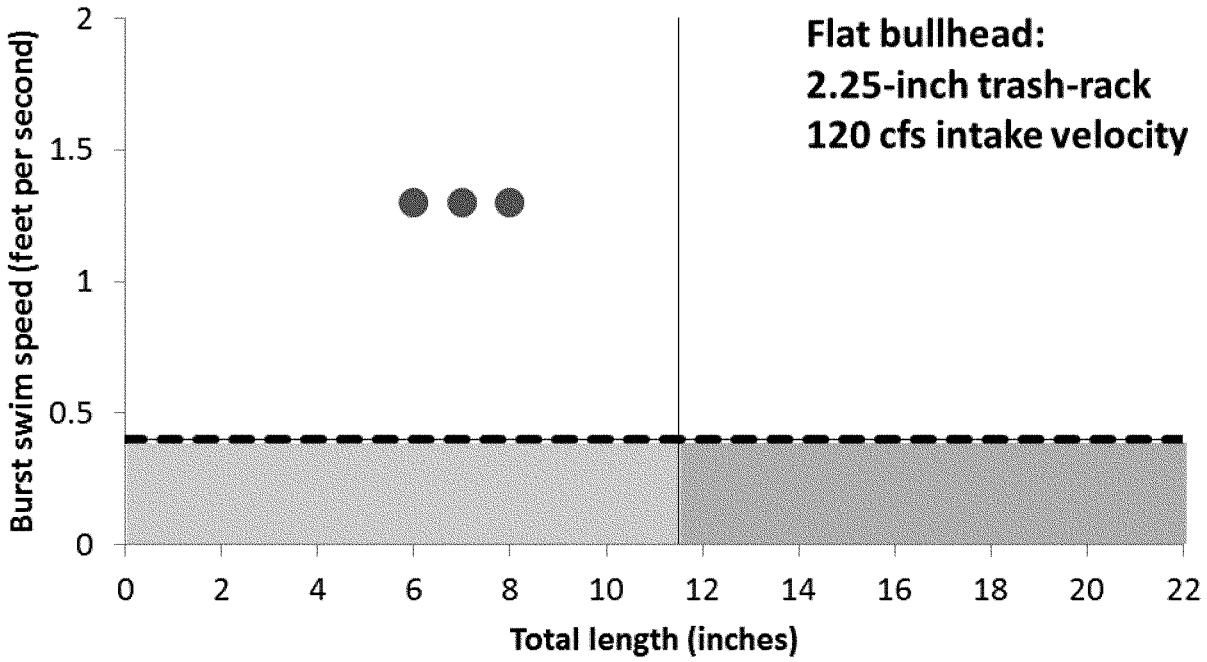


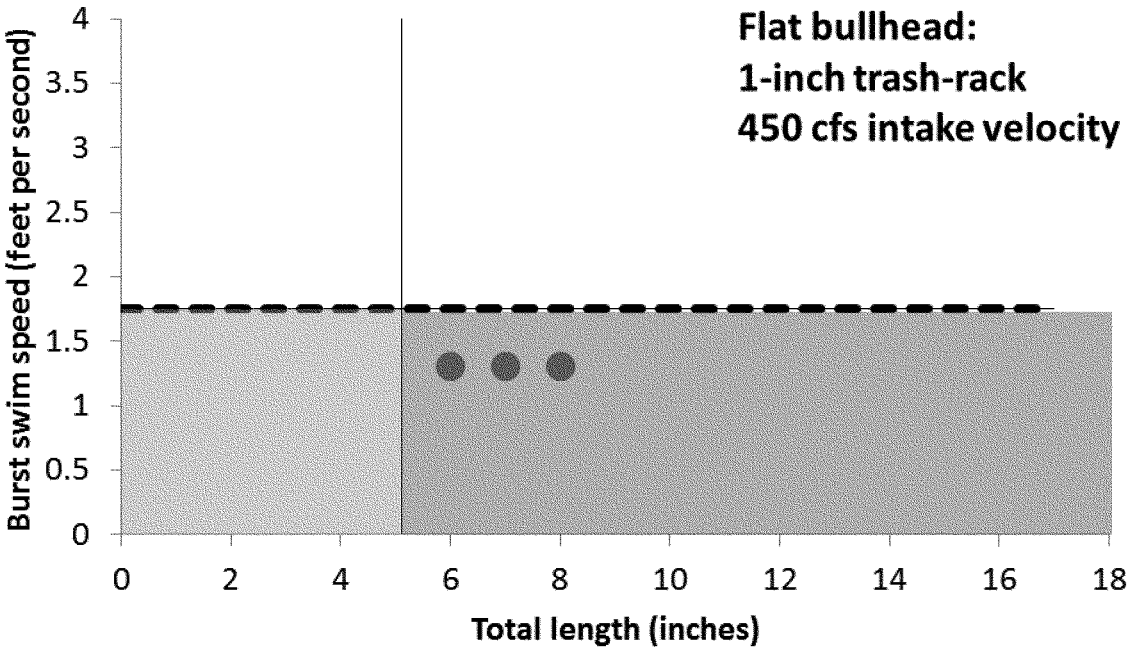

**Redeye bass exposed to 2.25-inchtrash rack and 450 cfs intake velocity**



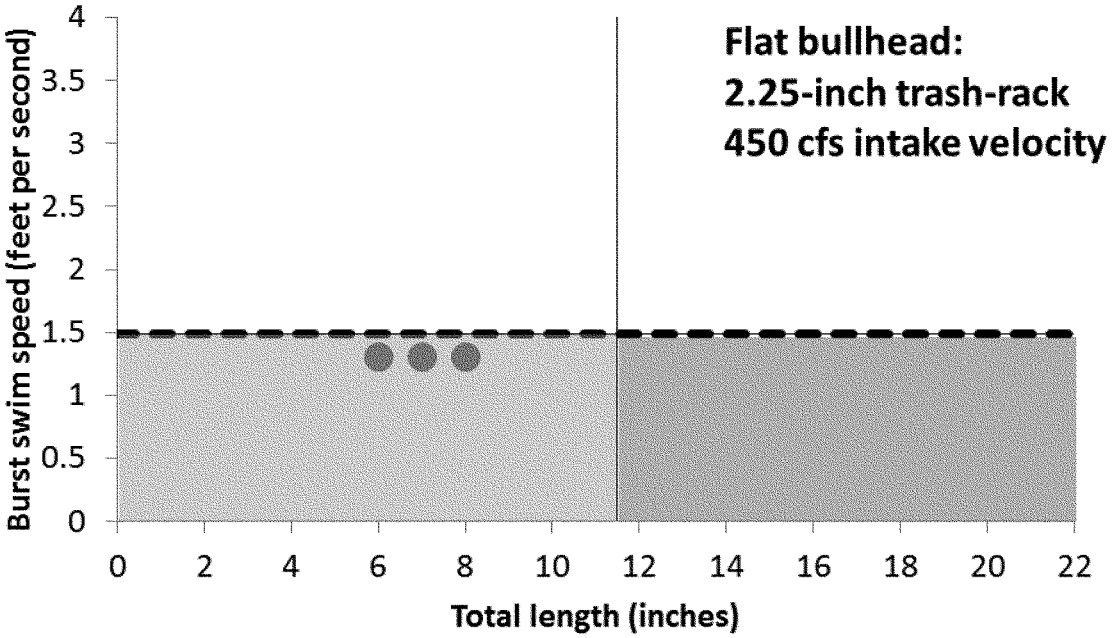

**Flat bullhead exposed to 1-inch trashrack and 120 cfs intake velocity**




**Flat bullhead exposed to 2.25-inch trashrack and 120 cfs intake velocity**




**Flat bullhead exposed to 1-inch trashrack and 450 cfs intake velocity**




**Flat bullhead exposed to 2.25-inch trashrack and 450 cfs intake velocity**

[FR Doc. 2013–30183 Filed 12–18–13; 8:45 am]
BILLING CODE 6717–01–C

# FEDERAL REGISTER

Vol. 78 Thursday,

No. 244 December 19, 2013


Part III

## The President

Proclamation 9071—Wright Brothers Day, 2013

Federal Register
Vol. 78, No. 244
Thursday, December 19, 2013

# Presidential Documents

**Title 3—**

## The President

**Proclamation 9071 of December 16, 2013**

## Wright Brothers Day, 2013

**By the President of the United States of America**

**A Proclamation**

On December 17, 1903, decades of dreaming, experimenting, and careful engineering culminated in 12 seconds of flight. Wilbur and Orville Wright's airplane soared above the wind-blown banks of Kitty Hawk, North Carolina, pushing the boundaries of human imagination and paving the way for over a century of innovation. On Wright Brothers Day, our Nation commemorates this once unthinkable achievement. We celebrate our scientists, engineers, inventors, and all Americans who set their sights on the impossible.

America has always been a Nation of strivers and creators. As our next generation carries forward this proud tradition, we must give them the tools to translate energy and creativity into concrete results. That is why my Administration is dedicated to improving education in the vital fields of science, technology, engineering, and mathematics (STEM). We are working to broaden participation among underrepresented groups, and through Race to the Top, we are raising standards and making STEM education a priority. Last year, we announced plans to create a national STEM Master Teacher Corps—a group of the best STEM teachers in the country, who will receive resources to mentor fellow educators, inspire students, and champion STEM education in their communities.

As we remember the Wright brothers, let us not forget another Wright who took up the mission of powered flight. Orville and Wilbur's sister, Katharine, used her teacher's salary to support the family and ran the Wrights' bicycle shop in Dayton, Ohio, while her brothers worked in Kitty Hawk. She went on to manage press, conduct business with foreign dignitaries and heads of state, and wrangle support for the burgeoning aviation enterprise. Today, let all of us draw inspiration from a family who taught us that when bold ideas meet scientific thinking and tireless experimentation, the sky is no limit.

The Congress, by a joint resolution approved December 17, 1963, as amended (77 Stat. 402; 36 U.S.C. 143), has designated December 17 of each year as ''Wright Brothers Day'' and has authorized and requested the President to issue annually a proclamation inviting the people of the United States to observe that day with appropriate ceremonies and activities.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim December 17, 2013, as Wright Brothers Day.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of December, in the year of our Lord two thousand thirteen, and of the Independence of the United States of America the two hundred and thirty-eighth.

[FR Doc. 2013–30463
Filed 12–18–13; 11:15 am]
Billing code 3295–F4

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**Federal Register**

Vol. 78, No. 244

Thursday, December 19, 2013

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| | |
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| **Federal Register/Code of Federal Regulations** | |
| General Information, indexes and other finding aids | **202–741–6000** |
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| **Other Services** | |
| Electronic and on-line services (voice) | **741–6020** |
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## FEDERAL REGISTER PAGES AND DATE, DECEMBER

71987–72532 ..... 2
72533–72788 ..... 3
72789–73078 ..... 4
73079–73376 ..... 5
73377–73686 ..... 6
73687–73992 ..... 9
73993–75214 .....10
75215–75448 .....11
75449–75896 .....12
75897–76028 .....13
76029–76194 .....16
76195–76520 .....17
76521–76720 .....18
76721–76972 .....19

## CFR PARTS AFFECTED DURING DECEMBER

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.

**3 CFR**

**Proclamations:**
9062 .....72529
9063 .....72531
9064 .....73077
9065 .....73375
9066 .....73685
9067 .....75205
9068 .....75207
9069 .....76029
9070 .....76719
9071 .....76971

**Administrative Orders:**
Memorandums:
Memorandum of August 2, 2013 .....72789
Memorandum of December 5, 2013 .....75209
Presidential Determinations:
No. 2013-12 of August 9, 2013 (Correction) .....73377
No. 2014–04 of December 3, 2013 .....75203
No. 2014–03 of November 29, 2013 .....76717

**5 CFR**

930 .....71987

**7 CFR**

923 .....76031
1710 .....73356
1717 .....73356
1721 .....73356
1724 .....73356
1730 .....73356
1980 .....73928
3555 .....73928

**Proposed Rules:**
970 .....73111

**9 CFR**

92 .....72980, 73993
93 .....72980, 73993
94 .....72980, 73993
95 .....72980, 73993
96 .....72980, 73993
98 .....72980, 73993

**Proposed Rules:**
317 .....72597

**10 CFR**

40 .....75449
50 .....75449
52 .....75449
70 .....75449
72 .....73379
430 .....72533
431 .....75962

**Proposed Rules:**
72 .....73456
430 .....73737
431 .....73590

**11 CFR**

100 .....76032

**12 CFR**

208 .....76521
225 .....76521
325 .....72534
344 .....76721
390 .....76721
703 .....76728
712 .....72537
721 .....76728
741 .....72537
1026 .....76033
1090 .....73383
1260 .....73407, 73415

**Proposed Rules:**
210 .....74041
346 .....76768
390 .....76768

**14 CFR**

25 .....73993, 73995, 75451, 75453, 76731, 76734, 76736
39 .....71989, 71992, 71996, 71998, 72550, 72552, 72554, 72558, 72561, 72564, 72567, 72568, 72791, 73687, 73689, 73997, 76035, 76040, 76045, 76047, 76050
71 .....72001, 72002, 72003, 72004, 72005, 72006, 72007, 72008, 72009, 72010, 72011, 74004, 74005, 74006, 74007, 74008, 76052, 76053, 76054, 76055, 76056
97 .....75455, 75456
460 .....72011
1204 .....76057
1230 .....76057
1232 .....76057

**Proposed Rules:**
25 .....75284, 75285, 75287, 75511, 76248, 76249, 76251, 76252, 76254, 76772, 76775
39 .....72598, 72834, 72831, 73457, 73460, 73462, 73739, 73744, 73749, 75289, 75291, 75512, 76572
71 .....72056, 73465, 73750, 73751, 73752, 76779, 76781, 76784

**15 CFR**

301 .....72570
303 .....72570
730 .....76738, 76741
732 .....76738

734 ....76738
736 ....76738
738 ....76738
740 ....76738, 76741
742 ....76738
743 ....76738
744 ....75458, 76738, 76741
745 ....76738
746 ....76738
747 ....76738
748 ....76738
750 ....76738
752 ....76738
754 ....76738
756 ....76738, 76741
758 ....76738, 76741
760 ....76738
762 ....76738, 76741
764 ....76738
766 ....76738
768 ....76738
770 ....76738
772 ....76738
774 ....76738
902 ....75844
**Proposed Rules:**
922 ....73112, 74046

**16 CFR**
1112 ....73415
1215 ....73692
1217 ....73692
1219 ....73692
1225 ....73415
**Proposed Rules:**
300 ....72057

**17 CFR**
39 ....72476
140 ....72476
190 ....72476
**Proposed Rules:**
1 ....75680, 76787
15 ....75680, 76787
17 ....75680, 76787
19 ....75680, 76787
32 ....75680, 76787
37 ....75680, 76787
38 ....75680, 76787
140 ....75680, 76787
150 ....75680, 76787

**18 CFR**
2 ....72794
35 ....73240
40 ....72756, 73424
157 ....72794
380 ....72794
**Proposed Rules:**
40 ....73112

**19 CFR**
148 ....76529

**20 CFR**
404 ....72571, 73696
**Proposed Rules:**
404 ....76508

**21 CFR**
10 ....76748
172 ....73434
510 ....73697
522 ....73697
524 ....73697
529 ....73697
558 ....76059
1308 ....72013
**Proposed Rules:**
Ch. I ....72838, 72840, 72841
310 ....76444
333 ....76444
514 ....75515
558 ....75515

**22 CFR**
**Proposed Rules:**
706 ....72843
707 ....73466
713 ....72850

**24 CFR**
50 ....74009
55 ....74009
58 ....74009
Ch. II ....75238
201 ....75215
203 ....75215
1005 ....75215
1007 ....75215
3280 ....73966

**26 CFR**
1 ....72394, 73079
31 ....75471
300 ....72016
602 ....72394
**Proposed Rules:**
1 ....72451, 73128, 73471, 73753, 75905, 76092

**28 CFR**
571 ....73083

**29 CFR**
4022 ....75897
4044 ....72018, 75897
**Proposed Rules:**
1910 ....73756

**30 CFR**
**Proposed Rules:**
7 ....73471
75 ....73471

**31 CFR**
1010 ....72813
**Proposed Rules:**
210 ....75528

**32 CFR**
158 ....72572
199 ....75245
211 ....73085
**Proposed Rules:**
57 ....75998

**33 CFR**
3 ....73438
100 ....72019, 73438
117 ....72020, 72022, 72023, 72817, 76195, 76750
165 ....72025, 73438, 74009, 74010, 75248, 75249, 75898, 75899, 76751
334 ....76060
**Proposed Rules:**
117 ....76255
165 ....74048

**34 CFR**
**Proposed Rules:**
Ch. I ....72851
Ch. II ....72851
Ch. III ....72851
Ch. IV ....72851
Ch. V ....72851
Ch. VI ....72851, 73143

**36 CFR**
7 ....72028, 73092
**Proposed Rules:**
7 ....72605
242 ....73144
1192 ....74056

**37 CFR**
1 ....75251

**38 CFR**
3 ....72573, 76196
17 ....72576, 76061, 76064
59 ....73441
**Proposed Rules:**
3 ....76574

**39 CFR**
111 ....76533, 76548

**40 CFR**
51 ....73698
52 ....72032, 72033, 72036, 72040, 72579, 73442, 73445, 73698, 74012, 75253, 75902, 76064, 76209
60 ....76753
62 ....72581
81 ....72036, 72040
180 ....75254, 75257, 75262, 76561, 76567
228 ....73097
300 ....73449, 75475
712 ....72818
716 ....72818
720 ....72818
721 ....72818
723 ....72818
725 ....72818
766 ....72818
790 ....72818
799 ....72818
**Proposed Rules:**
52 ....72608, 73472, 73769, 74057, 75293
60 ....76788
62 ....72609, 72611
81 ....73769
180 ....76589
194 ....72612
300 ....75534
372 ....73787

**41 CFR**
102–117 ....75484
300–90 ....73702
302–7 ....75483
303–70 ....73104

**42 CFR**
405 ....74230
410 ....74230
411 ....74684, 75304
412 ....74826
413 ....72156
414 ....72156, 74230
419 ....74826
423 ....74230
425 ....74230
431 ....72256
475 ....74826
476 ....74826
486 ....74826
495 ....74826

**44 CFR**
64 ....75485
**Proposed Rules:**
67 ....75542

**45 CFR**
147 ....76212
155 ....76212
156 ....76212
**Proposed Rules:**
144 ....72322
147 ....72322
153 ....72322
155 ....72322
156 ....72322

**47 CFR**
64 ....76218
73 ....73109
**Proposed Rules:**
1 ....73144
17 ....73144
54 ....76789, 76791
64 ....76096, 76097, 76257
73 ....73793, 75306
95 ....72851, 73794

**48 CFR**
App. F to Ch. 2 ....76067
201 ....73450
204 ....73450
211 ....76067
212 ....73450, 76067
216 ....73450
218 ....76067
225 ....73450
227 ....73450
231 ....73451
246 ....76067
252 ....73450, 76067
645 ....76064
652 ....76064
**Proposed Rules:**
44 ....72620
46 ....72620
52 ....72620
211 ....73472
212 ....73472
225 ....73474
232 ....73472
235 ....73475
252 ....73475

**49 CFR**
369 ....76241
395 ....76757
**Proposed Rules:**
381 ....76590
529 ....76265
530 ....76265
531 ....76265
532 ....76265
533 ....76265
534 ....76265
535 ....76265
536 ....76265

537 ....76265
538 ....76265
539 ....76265
540 ....76265
541 ....76265
542 ....76265
543 ....76265
544 ....76265
545 ....76265
546 ....76265
547 ....76265
548 ....76265
549 ....76265
550 ....76265
551 ....76265
552 ....76265
553 ....76265
554 ....76265
555 ....76265
556 ....76265
557 ....76265
558 ....76265
559 ....76265
560 ....76265
561 ....76265
562 ....76265
563 ....76265
564 ....76265
565 ....76265
566 ....76265
567 ....76265
568 ....76265
569 ....76265
570 ....76265
572 ....76265
573 ....76265
574 ....76265
576 ....76265
577 ....76265
578 ....76265
592 ....73169
Ch. X ....76098

**50 CFR**

13 ....73704
21 ....72830
22 ....73704
216 ....73010
217 ....75488
218 ....73010
224 ....73726
300 ....75844
622 ....72583, 76758
635 ....72584
648 ....72585, 75267, 76077, 76759, 76765, 76766
660 ....72586, 75268, 76570
679 ....73110, 73454, 75844, 76245, 76246
697 ....76077

**Proposed Rules:**

17 ....72058, 72622, 73173, 75306, 75313, 76795
92 ....75321
100 ....73144
217 ....73794
229 ....73477
622 ....76807
635 ....75327
640 ....76807
679 ....74063, 74079

## 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 December 13, 2013**

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